



**Tchenguiz, Rawlinson & Hunter Trustees S.A. v Akers,
Hamedani & Fort Trustees Limited, Balchan
Management Limited**

Court of Appeal
8th January 2018

**JUDGMENT
2/2018**

Application for leave to appeal out of time and two leave applications.

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION

Between: (1) **ROBERT TCHENGUIZ** (“Applicants”)

(2) **RAWLINSON & HUNTER TRUSTEES S.A.**
(in its capacity as trustee of the Tchenguiz Discretionary Trust)

and

(1) **STEPHEN AKERS** (“Respondents”)

(2) **HOSSEIN HAMEDANI**

and

(1) **FORT TRUSTEES LIMITED** (“New Trustees”)

(2) **BALCHAN MANAGEMENT LIMITED**
(each in its capacity as trustee of the Tchenguiz Discretionary Trust)

LEAVE TO APPEAL

**Decision of a Single Judge
Sir Richard John Collas, Bailiff**

Introduction

1. I have before me two applications for leave to appeal (the “First Leave Application”, the “Second Leave Application” and together the “Leave Applications”). The First Leave Application is out of time and includes an application for an extension of time. The Applicants seek to appeal two judgments of Lieutenant-Bailiff Talbot QC concerning committal applications against the Respondents alleging the wrongful disclosure by the Respondents to the Serious Fraud Office of information arising out of private trust proceedings.

The Materials

2. As a single judge of the Court of Appeal, I have considered the Leave Applications on the papers and without an oral hearing. Unfortunately this judgment has been delayed because of confusion as to the materials that I was asked to consider. For the sake of clarity I confirm that I have taken account of the documents contained in the following bundles:

- a) Three bundles that were before Lieutenant Bailiff Talbot on 14 September: “Bundle for the Applicants’ Application for Leave to Appeal”; “Skeleton Argument of the Respondent Relating to the Applicants’ Application for Leave to Appeal”; and “Re the Applicants’ Application for Leave to Appeal Documents”.
- b) A bundle entitled “Application for Leave to Appeal”.
- c) A bundle entitled “Respondent’s Written Submissions in Response to the Applicants’ Application dated 31 October 2017”.

Procedural Background

3. The Second Respondent has never formally become a party to these proceedings as I explain below. The majority of this decision is concerned only with the Applicant and the First Respondent to whom I refer as “Mr Tchenguiz” and “Mr Akers” respectively.
4. In so far as Mr Akers is concerned, the committal proceedings were commenced in the Royal Court by a Notice dated 23 May 2014 (the “First Committal Application”). In a judgment handed down on 11 March 2016 (the “First Committal Judgment”), the Lieutenant Bailiff granted Mr Akers’ application to strike out the First Committal Application and refused Mr Tchenguiz’ application to amend the First Committal Application.
5. Mr Tchenguiz did not seek leave to appeal the First Committal Judgment at that time but instead issued a second committal application dated 29 March 2016 (the “Second Committal Application”) which was struck out by the Lieutenant Bailiff in a judgment handed down on 19 July 2017 (“Second Committal Judgment”) following an application by Mr Akers to strike it out.

The Second Respondent

6. Both of the Leave Applications name the Second Respondent as a party. His position requires separate consideration. The history of his involvement with the First Committal Application began on 28 May 2014 when, at an *ex parte* hearing, Lieutenant Bailiff Talbot gave permission to Mr Tchenguiz to serve the Second Respondent out of the jurisdiction. On 2 December 2014, the Lieutenant Bailiff handed down a judgment in which, *inter alia*, he dismissed an application to set aside the order for service out of the jurisdiction. His decision was overturned by the Court of Appeal (Sir Hugh Bennett, G. Bompas QC and Sir Michael Birt) in a judgment handed down on 23 July 2015 (“the 2015 Appeal Judgment”) in which the Court of Appeal allowed an appeal by the Second Respondent against that part of the Lieutenant Bailiff’s judgment dismissing the order for service out of the jurisdiction. In paragraph 142 of the 2015 Appeal Judgment, Bompas JA (delivering the judgment of the Court) held:

“For the reasons given above we conclude that the Lieutenant Bailiff should not have given leave for the [First Committal Application] to be served on the [Second Respondent]. We therefore allow the appeal and order that the order giving [Mr Tchenguiz] leave to serve the [First Committal Application] on the [Second Respondent] out of the jurisdiction should be set aside.”

7. The 2015 Appeal Judgment was handed down before the Lieutenant Bailiff heard the applications relating to the First Committal Application and thus the Second Respondent had ceased to be a party before the First Committal Judgment was handed down.

8. The First Committal Judgment contemplated the possibility of a fresh and revised committal application being issued by Mr Tchenguiz and the Second Committal Application followed after the judgment was handed down. The papers before me indicate that the Second Committal Application has never been served on the Second Respondent. That is confirmed at paragraph 6 of the Lieutenant Bailiff's judgment of 19 July 2017.
9. Consequently, as the Second Respondent was not a party to either of the judgments to which the Leave Applications relate there cannot be any basis on which he should be a party to any appeal if leave were to be granted. For that reason, I refuse the Leave Applications in so far as they purport to relate to the Second Respondent.

The 2015 Appeal Judgment

10. In the remainder of this judgment, I am concerned only with position of the First Respondent, Mr Akers, as a respondent to the Leave Applications.
11. The factual background to the First Committal Application was considered by the Court of Appeal in the 2015 Appeal Judgment where Bompas JA set it out in some detail because, as he said: "*No summary of the position can be complete or accurate*". I will not attempt to summarise the position and I will not repeat in this judgment what the Court of Appeal has already set out.
12. The reasoning of the Court of Appeal is relevant to the present applications. The principal reason given by the Court, in paragraphs 97 to 110 of the judgment, was that "*the case sought to be made against [Mr Akers] in the [First] Committal Application does not raise a seriously arguable case that he is guilty of contempt of court*". The Court described this as "The Factual Ground". The allegation relied upon in the First Committal Application was that certain information had been disclosed in breach of an order of the Royal Court described as the "Protocol Order". That allegation could not be made out because, for the reasons summarised at paragraph 102 of the judgment, the Court of Appeal held that the information imparted at the relevant meeting was not subject to any restriction resulting from the Protocol Order.

The First Committal Judgment

13. After the Court of Appeal had given its decision, Mr Akers made the application to strike out the First Committal Application and Mr Tchenguiz made the cross-application to amend, both of which were considered in the First Committal Judgment to which the First Leave Application relates. Lieutenant Bailiff Talbot relied upon the Court of Appeal's decision on the Factual Ground that the First Committal Application disclosed no reasonable cause of action and said he was satisfied that it would only disclose a reasonable cause of action if he were to allow it to be amended. He said at paragraph 18:

"Although the decision of the Court of Appeal on the Factual Ground does not, of itself, bind Mr Tchenguiz on his case against Mr Akers on the [First] Committal Application, the issue as between them is so substantially the same on the Factual Ground that it is, in my judgment, clear that, in accordance with the decision of the Court of Appeal, I should conclude that the [First] Committal Application discloses no reasonable claim against Mr Akers and that, subject to my decision on the amendment application, the [First] Committal Application must be struck out as against him."

14. On the cross-application for leave to amend, the Lieutenant-Bailiff distilled applicable legal principles from recent English cases in paragraph 24 of his judgment before applying those principles in paragraphs 26 to 32. The *ratio* of his decision was that whilst the Court has a power to allow a committal application to be amended, the discretion to do so has only been exercised in a few cases, primarily where the original application set out the case in sufficient particularity in the first place. He rejected a submission made on behalf of Mr Tchenguiz that the substance of the First Committal Application would remain the same if the amendment were allowed. He said (paragraph 27): “*It is clear to me that the degree of particularity in which the amended draft pleads the new case relates to alleged breaches of the in camera Orders, and not to the alleged particular breach of the Protocol Order which was the pleaded basis of the [First] Committal Application*”. He also said that he was satisfied that Mr Tchenguiz could have relied upon breaches of the *in camera* orders in the original application but was content not to do so; that is a statement which is strongly disputed on the part of Mr Tchenguiz and to which I refer below.

The Second Committal Judgment

15. Mr Tchenguiz did not seek leave to appeal the First Committal Judgment at that time but instead he brought the Second Committal Application which was later ordered to be struck out in the Second Committal Judgment in which the Lieutenant Bailiff dismissed it under Rule 52(2)(b) of the Royal Court Civil Rules, 2007 having determined that the pleading was an abuse of court. In doing so he had regard to the recent decision of the Court of Appeal in Rawlinson & Hunter Trustees S.A v Investec Trust (Guernsey) Limited [2016] GLR 332 which identified thirteen principles to be applied under Guernsey law on an abuse of process strike out application. The Lieutenant-Bailiff carefully applied those principles to the application before him.
16. After analysing the two Causes, he concluded that there existed “*a close and substantial overlapping of the matters in issue in the First Committal Application and those pleaded in the Second Committal Application*” (paragraph 45) and he held that Mr Tchenguiz could, and should, have brought all his claims in the one set of proceedings (paragraph 42). He found (paragraph 51) that at the time of bringing the First Committal Application Mr Tchenguiz was represented by “*experienced Counsel, and also by in-house Counsel, and in the absence of any explanation for bringing that application based only on an alleged breach of the Protocol Order, when the terms and effect of the in camera Orders were known to him and his advisors, the Second Committal Application was, in my judgment, brought as an abuse of the process of the Court*”. That is the basis on which he held that the Second Committal Application be struck out. He added that if he had not done so, he would not have ordered it be struck out under Rule 52 (2)(a) because he was not persuaded that it disclosed no reasonable grounds for bringing the application.

The Leave Applications

17. The Leave Applications were lodged first in the Royal Court and were heard by Lieutenant Bailiff Talbot who gave his decisions in two judgments which he handed down electronically on 3 October 2017. Firstly, he directed that the First Leave Application be heard by the Court of Appeal on the ground that he had no jurisdiction to entertain the application which had been submitted after the expiry of the time limit for appealing. Secondly, he dismissed the Second Leave Application on the basis that it had no reasonable prospect of success in circumstances where it amounted to unjustified criticism of his exercise of discretion in the application by him of established legal principles and. Thirdly, he directed that the application for an extension of time for filing and serving a Notice of Appeal (that is to say the First Leave Application) be referred to a single judge of the Court of Appeal.

18. One issue considered by the Lieutenant Bailiff was whether leave was required or whether “*the liberty of the subject...is concerned*” with the consequence that there would be a right of appeal under section 15(e)(i) of the Court of Appeal (Guernsey) Law, 1961. Whilst the Committal Applications sought the committal of Mr Akers to prison, no such order had been made and therefore, after citing English cases and extracts from the 4th edition of Aldridge, Eady & Smith on Contempt and the 2017 White Book, he concluded that the liberty of the subject was not concerned at this stage in the instant case.
19. For the reasons given by the Lieutenant Bailiff and the legal principles cited by him which I accept are of persuasive authority in this jurisdiction, I agree that leave to appeal is required in respect of both the First and the Second Committal Judgments.
20. It was submitted to the Lieutenant Bailiff that he had jurisdiction to hear the First Leave Applications out of time. In doing so, Advocate Richardson relied upon the decision of the Royal Court in McNamara v Gauson [2009-10] GLR 387 in which I, the judge at first instance, permitted an application for an extension of time after the time limit had expired. Mr Talbot correctly distinguished that decision because, as he identified, in that case the application had been lodged within the permitted time period but could not be considered until after the time limit had expired. Here, the application was submitted more than 16 months after expiry of the time period. Consequently he held, correctly in my view, that it can only be considered by the Court of Appeal where the court or a single judge thereof has power under Rule 17(1) of the Court of Appeal (Civil Division) (Guernsey) Rules 1964, (the “1964 Rules”) to extend time after the period has expired.
21. The factors to be taken into account by the Court of Appeal when considering an application for an extension of time after the expiry of the time period are to be found in E v E [2007-08] GLR 133 at paragraph 15 in the judgment of the Court delivered by Rowland B: “*Those factors include the length of the delay, the reasons for the delay, whether there is an arguable case on the appeal, and the degree of prejudice to the defendant if time is extended*”. In the First Leave Application, if an extension of time were to be given, it would then be necessary to consider whether to grant leave. The test for granting leave to appeal in this jurisdiction is whether the appeal has a real prospect of success following the Court of Appeal’s decision in Cotterill v Ozanne [2011-2012] GLR 1. I will apply the “real prospect of success” test rather than the “arguable case” test although it may be that each test would lead to the same conclusion.

The Application for an Extension of Time

22. The First Leave Application was tabled in the Royal Court more than 16 months after the judgment was handed down by Lieutenant Bailiff Talbot on 11 March 2016. Rule 3 of the 1964 Rules provides that any notice of appeal shall be served within one month from the date when the judgment was pronounced. By the date the First Leave Application was tabled in the Court of Appeal, 31 October 2017, more than 18 months had elapsed after the time limit had expired. In the materials before me I have been unable to find any affidavit evidence to explain the reason for such a long delay although the issue was addressed by Advocate Richardson in a skeleton argument dated 16 August 2017. In paragraph 25 he submitted:

“Mr Tchenguiz seeks leave to appeal the First [Committal] Judgment out of time, on the basis that the correct procedural course indicated by [paragraphs] 10, 28 and 32 of the First [Committal] Judgment had appeared to be to issue a fresh committal application. This meant that there was no indication when the First [Committal] Judgment was handed down that leave to appeal would be required (or appropriate). At the time when the First [Committal] Judgment was delivered, it appeared that any

appeal against that judgment would be otiose since it could have relevance only to costs.”

23. The case for Mr Tchenguiz is presented on the basis that in the First Committal Judgment *“the Lieutenant Bailiff refused leave to amend on the premise that it was better that Mr Tchenguiz start again and proceed by way of a second application”* (paragraph 16 of the skeleton). That is an incorrect summary of the reasons given by the Lieutenant Bailiff in paragraphs 26 to 31 of the judgment. He made it clear when giving his reasons that the possibility of starting a new action was no more than a possibility for Mr Tchenguiz and his Advocate to consider. At paragraph 18 of the First Committal Judgment he said that Mr Tchenguiz would have the option to start a new committal application *“so long as his Advocate can formulate a new application and satisfy himself that he is able to present it to the Royal Court on behalf of Mr Tchenguiz”*. After he had decided to strike out the First Committal Application, he stated that he was not saying that a fresh application would be successful (at paragraph 32):

“I do not express any further views than the limited views I have set out above about the contents of the proposed amendments. I have decided, in order to be fair to Mr Tchenguiz, that, rather than me making any further comments on the proposed amendments at this stage, I should leave him to decide, first, whether or not to issue a new contempt application against Mr Akers, and secondly, if he were so to decide, to have a further opportunity to ‘sign off’ on any new application which his Advocate might file on his behalf.”

24. Mr Tchenguiz was left with options, either he could have sought leave to appeal the First Committal Judgment or he could have issued a fresh application or he could have issued both a fresh committal application and an application for leave to appeal in case the former were to fail. The option he chose was to file a fresh application. He may now regret failing to pursue a different course but any regret would not be a good reason to allow an application for leave to be made after such a lapse of time.
25. If time were to be extended to enable a late application to be made, the prejudice to Mr Akers is obvious. He would continue to have the threat of imprisonment hanging over him.

The First Leave Application

26. I turn next to the merits of any appeal against the First Committal Judgment. The grounds that would be relied upon are set out in the first eight paragraphs of the draft Notice of Appeal.
27. In the first two paragraphs of the draft Notice of Appeal Advocate Richardson, on behalf of Mr Tchenguiz, has pleaded that the Lieutenant Bailiff erred in failing to allow the amendments to be made *“to enable the true issues in controversy to be resolved”* and that he was wrong in law in holding that the amendment *“would involve introducing a new cause of action and would substantially alter the character of the proceedings”* contrary to the principle articulated by Sumption JA in Ogier v Grand Havre Holdings Limited [2000] 29 GLJ 80 at page 42C. Advocate Richardson did not cite the full text of the relevant paragraph which begins with the following two sentences: *“Whether a litigant (represented or unrepresented) should be allowed to amend his pleadings depends on what justice requires in the particular case. Over elaborate definition is probably undesirable.”* What justice requires in a contempt application may be different from what is required in a substantive claim such as the Court of Appeal had before it in Ogier. Contempt proceedings are a form of satellite litigation. When considering such applications, a court should always bear in mind what Briggs J (as he then was) said in Sectorguard Plc v Dienne Plc [2009] EWHC 2693 (Ch):

“Committal proceedings are an appropriate way, albeit as a last resort, of seeking to obtain the compliance by a party with the court's order (including undertakings contained in orders), and they are also an appropriate means of bringing to the court's attention serious rather than technical, still less involuntary, breaches of them. In my judgment the court should, in the exercise of its case management powers, be astute to detect cases in which contempt proceedings are not being pursued for those legitimate ends.”

28. Lieutenant Bailiff Talbot carefully set out the legal principles and explained how he was applying them. In my judgment, any appeal against either of the two judgments would have no reasonable prospect of success on their merits.
29. In the third paragraph of the draft Grounds of Appeal, it is submitted that the two judgments are not consistent; if one of them is correct, the other must be wrong. A further ground of appeal in respect of the later judgment contends that the Second Committal Application should not have been dismissed on grounds of abuse of process when the purpose of making it was to remedy a procedural defect that had led to the striking out of the First Committal Application.
30. The assumption on the part of Mr Tchenguiz appears to be that one or other of his Committal Applications should have been allowed to proceed. That is not correct. There can be no expectation that someone who makes a committal application is guaranteed the right to have it heard; the Court may always strike out an application where there are grounds for doing so. In *Zimareva-Locke v Cetin* [2012] EWHC 430 (Ch), Newey J granted leave to amend a contempt application and expressly ordered that the alleged contemnor have liberty *“to apply to the court to challenge the appropriateness or sufficiency of the amendments and to argue that the application should after all be struck out”*. In my view, the alleged contemnor would have had the right to do so even if the learned judge had not felt it necessary to make that clear in his order. In the present case, the passages I quoted above from the First Committal Judgment made it clear that he was reserving his comments on the contents and the merits of any fresh application that might be made. There could be no presumption that one of the Committal Applications would be allowed to proceed.
31. The fourth paragraph contends that the Lieutenant Bailiff erred in accepting Mr Akers' submissions that costs considerations should justify refusal of the amendment application. Costs considerations are referenced in paragraph 10 of the First Committal Judgment as being the basis on which the amendment application was argued on behalf of Mr Akers but they do not feature as a material factor in the Lieutenant Bailiff's decision to refuse the application.
32. Paragraph 5 pleads the contention that the Lieutenant Bailiff had either forgotten or had ignored the reason why breaches of the *in camera* Orders were not relied on in the original application. This refers to the third reason for refusing the amendment given in paragraph 20 of the First Committal Judgment where he said that Mr Tchenguiz *“had been content to proceed on the basis of the claim pleaded in the [First] Committal Application as sufficient for their purpose”*. The Lieutenant Bailiff correctly observed that Mr Tchenguiz had not given any evidence himself. Earlier, at paragraph 9 he said that the application had proceeded largely on the basis of the first and fifth affidavits of Mrs Caroline Mayne. Mrs Mayne described herself in her first affidavit as being Legal Counsel to Mr Tchenguiz. She has not, as far as I can establish, sworn a fifth affidavit. The fifth affidavit to which the Lieutenant Bailiff referred was sworn by Nicole Martin who described herself as in-house legal counsel. It is clear that the Lieutenant Bailiff incorrectly confused the separate identities of the two counsel but notwithstanding that mistake, he was aware that reliance was placed upon the evidence in the fifth affidavit of Nicole Martin.

33. His view of the evidence given by the two in-house counsel is explained in paragraphs 30 and 36 of the Second Committal Judgment. In summary, Ms Martin became in-house counsel in about June to July 2014 and so has no first-hand knowledge of events prior to that date. He therefore treated much of the evidence in her affidavits as submissions rather than evidence of first-hand or second-hand facts. The Lieutenant Bailiff noted that Mrs Mayne had referred to the *in camera* Orders as well as the Protocol Order in paragraph 4 of her first affidavit before concluding that Mr Tchenguiz and his legal team must have made a choice to rely only on a breach of the Protocol Order even though at least one of the *in camera* Orders was in the mind of Mr Tchenguiz and his team.
34. It is for the judge at first instance to assess the evidence before him and the grounds on which an appellate court will interfere with his findings are well established. In my judgment, the view that the Lieutenant Bailiff reached on this issue is one that was reasonably open to him.
35. Paragraph 6 of the draft Notice of Appeal relates to observations made by the Lieutenant Bailiff in paragraph 30 of the First Committal Judgment regarding the identity of the applicant and the fact that Rawlinson & Hunter Trustees SA was not party. It is apparent that the Lieutenant Bailiff did not attach much importance to the issue and I am therefore satisfied that this ground, on its own, does not add to the prospects of success in any material respect.
36. For the reasons I have given, I am not persuaded that the proposed appeal against the First Committal Judgment would have reasonable prospects of success. Therefore, having regard to the length of the delay in bringing the application, the prejudice to Mr Akers in having the threat of imprisonment hanging over him and the lack of any reasonable prospect of success leads me to refuse leave to proceed out of time and even if the application were not out of time, I would have refused leave to appeal on the merits.

The Second Leave Application

37. I turn now to the application for leave to appeal the Second Committal Judgment, an application brought within the one month period in respect of which Lieutenant Bailiff Talbot refused leave for the reasons given in the Second Leave Judgment. The grounds sought to be relied upon by Mr Tchenguiz are set out in paragraphs 7 to 11 of the draft Notice of Appeal.
38. Paragraphs 7 to 9 relate to the application by the Lieutenant Bailiff of the principles in Henderson v Henderson (1843) 3 Hare 100 which the Court of Appeal set out as being applicable in Guernsey law in Rawlinson & Hunter Trustees v Investec [2016] GLR 332. The Lieutenant Bailiff carefully reasoned how he was applying those principles to the Second Committal Application. Paragraph 8 pleads that he failed to take into account the facts that in connection with the First Committal Application, Mr Akers had conceded that if the amendment application were refused Mr Tchenguiz could start again and that in the First Committal Judgment, the Lieutenant Bailiff had referred to Mr Tchenguiz' option and opportunity to issue a fresh application. Then at paragraph 8c, it is alleged that he had refused the amendment application "*on the express or implied basis that [Mr T] would be able (if so advised) to proceed with a fresh committal application*" (emphasis added). That is a misrepresentation of what was said in the First Committal Judgment. As I explained above, all that the Lieutenant Bailiff said was that Mr Tchenguiz would have the option of making a fresh application if one could be properly presented by his Advocate and if he were so advised. The Lieutenant Bailiff carefully reserved his comments on the merits of such an application until it was made and he had the opportunity to consider it.
39. Paragraph 9 of the draft Notice of Appeal pleads that the Lieutenant Bailiff misapplied the principles governing the power to strike out a contempt application on grounds of an abuse of process. However, the pleading misstates and misunderstands the reasons given by the

Lieutenant Bailiff in paragraph 47 and 48 of the judgment. What he said was that the bringing of a second claim amounted to unjust harassment by Mr Tchenguiz of Mr Akers who was entitled to know precisely how the case was put against him from the beginning i.e. for breaches of the *in camera* Orders as well as the Protocol Order. He also said that even if he were wrong on that, he would still have found the Second Committal Application to be an abuse of the process of the Court.

40. Paragraph 10 pleads that the Lieutenant Bailiff based his decision on an erroneous principle that the respondent to a committal application “*was entitled to know...precisely how the case was put against him from the beginning*”, a principle for which it is said that no authority was cited. As the Lieutenant Bailiff said in paragraph 18 of the Second Leave Judgment, his comment must be read in the context of the whole of the relevant passages of the Second Committal Judgment and not based solely on a selective reading of one part. However as a broad statement of principle, the quotation is not wrong. There is a clear, and well understood principle that “*A person whose liberty was in jeopardy was entitled to know the precise charges made against him*” (per Arnold P in Dorrell v Dorrell [1986] Fam. Law 15 and cited by Nicholls LJ in Harmsworth v Harmsworth [1987] 1 WLR 1676. The way that the Lieutenant Bailiff applied that principle is carefully explained in the Second Committal Judgment. He concluded that, contrary to the submission made in the draft Grounds of Appeal, reliance on the *in camera* Orders instead of the Protocol Order was more than a technicality. I am satisfied that that was a conclusion he was reasonably entitled to reach on the case before him.
41. Paragraph 11 repeats the allegation that the Lieutenant Bailiff erred in finding that there was no reasonable explanation or justification for the fact that breach of the *in camera* orders was not initially pleaded. I have addressed that issue above and will not repeat what I have already said. Paragraph 11c raises a new issue namely that the Lieutenant Bailiff was wrong as a matter of law to find that there was a burden on the Applicants to justify the failure to rely on the *in camera* Orders. In my judgment, the Lieutenant Bailiff correctly followed the decision of the Court of Appeal in Rawlinson & Hunter v Investec (*supra*) when he said that there was an evidential burden on the Applicants to give a credible explanation for the failure to include the *in camera* Orders in their original pleading. The overall burden to establish that there was an abuse of process remained with R.
42. Finally, paragraph 11d contends that the Lieutenant Bailiff was wrong to have approached the matter as he did because, in the present case unlike in Rawlinson & Hunter v Investec, Mr Tchenguiz had sought to raise the ‘new case’ by way of amendment to the First Committal Application. In my judgment, the statement by the Lieutenant Bailiff in paragraph 34 of the Second Committal Judgment that the principles are not confined to cases where there has been a contested hearing is correct. The authorities cited by him in that paragraph confirm that to be the case.
43. His careful application of those principles in the Second Committal Judgment is not wrong in law and the manner in which he has exercised discretion in doing so is not such as to invite reasonable prospect of being overturned on appeal.

Decision

44. For the reasons I have given, I refuse the applications for leave to appeal as respects the Second Respondent. Regarding Mr Akers, I refuse an extension of time and leave to appeal in respect of the First Committal Judgment and I refuse leave to appeal the Second Committal Judgment.