



**Stephen Chilcott v Janice Dockerill**  
Court of Appeal  
14<sup>th</sup> December 2018

**JUDGMENT**  
**49/2018**

Application for leave to appeal against an interlocutory order.

**IN THE COURT OF APPEAL OF GUERNSEY**  
**(Civil Division)**

**Before:**

**Robert Logan Martin QC**  
**Acting as a single judge of the Court of Appeal**

**Between:**

**Stephen Chilcott**

**Applicant**

**-v-**

**Janice Dockerill**

**Respondent**

**Decision handed down: 14<sup>th</sup> December 2018**

**JUDGMENT**

**Logan Martin, JA**

**Introduction and background**

1. The applicant is seeking leave to appeal to the Court of Appeal against an order of the Deputy Bailiff (McMahon) made by Act of Court dated 10th October 2018. That order was an interlocutory order in respect of which leave to appeal is required pursuant to section 15(e) of the Court of Appeal (Guernsey) Law 1961 ("the 1961 Law"). The applicant applied for leave to appeal from the Deputy Bailiff but leave was refused in a judgment dated 12th November 2018. The applicant has now applied for leave to the Court of Appeal pursuant to r 16(6) of the Court of Appeal (Civil Division) (Guernsey) Rules 1964 ("the 1964 Rules"). His application comes before me acting as a single judge pursuant to section 21(1) of the 1961 Law.
2. The background to the application is that the applicant is the son by his first marriage of the late Mr Paul Edward Chilcott ("the late Mr Chilcott") who died on 28th August 2008. The applicant has been in dispute with the respondent who is the executrix of the late Mrs Margaret Chilcott, formerly Brockway née Renton ("the late Mrs Chilcott") who died on 13th December 2016 and who was the third wife of the late Mr Chilcott. At the time of her death,

the late Mrs Chilcott had been appointed as executrix of the late Mr Chilcott but had not obtained any formal discharge of her functions as executrix although it may be that the administration of the late Mr Chilcott's estate was effectively completed.

3. The applicant applied for letters of administration so that he could in effect become the executor of the late Mr Chilcott for the purposes of the final administration of his estate. That application was opposed by the respondent who sought herself to be appointed as the executrix of the late Mr Chilcott upon the basis that she was the executrix of the late Mrs Chilcott who had been the executrix of the late Mr Chilcott. That application by the respondent was opposed by the applicant.
4. These competing applications came before the Royal Court (Lieutenant Bailiff HH Hazel Marshall QC sitting with jurats Le Pelley, Ferbrache and Boyle) at a hearing in November 2017. The Royal Court gave judgment dated 22nd December 2017 in which the respondent's application to be appointed as executrix of the estate of the late Mr Chilcott was granted and the competing application by the applicant to be appointed as Mr Chilcott's executor was dismissed. As a result, the respondent became the executrix of the estate of the late Mr Chilcott as well as the executrix of the estate of the late Mrs Chilcott.
5. The applicant subsequently raised the proceedings which are the subject of the present application for leave to appeal. In a Cause filed on 8th June 2018, the applicant made an application to the Royal Court for orders as set out in four paragraphs. In the first paragraph, the applicant seeks the setting aside of an agreement entered into by the late Mrs Chilcott on the ground of "the tort of deceit and misrepresentation". The second paragraph states:

"2) For the first respondent, Janice Dockerill, as duly appointed executrix of the Estate of her mother, the late Margaret Renton (Chilcott), and now also the incumbent executrix of the *as yet undistributed* Estate of my late father, Paul Edward Chilcott, and who is therefore now responsible *by Law* for the proper administration and distribution of that Estate, to produce a full and accurate set of historic accounts and final Estate values for both my father's and Margaret Renton's Estates, as the latter now largely consists of the *as yet undistributed* assets of my father's Estate, and no accounts have ever been disclosed in respect of either Estate.

These accounts then to be subjected to a full forensic audit by an independent, qualified accountant *and verified as correct* [emphasis in the original].

3) ..."

In the third paragraph, the applicant seeks an order requiring the respondent to produce "a full forensic trace" of funds said to have been used by the late Mrs Chilcott to purchase a specified property which funds the applicant states "are believed to be part of my father's Estate", and in addition to produce associated documentation. The fourth paragraph in the Cause states:

"4) For the Estate of Margaret Renton (Chilcott), which comprises, *for the greater part*, the assets of my father's Estate, which have not yet been properly disclosed to the beneficiaries or ever distributed according to Law, to be *frozen* until such time as the executrix has complied fully with paragraphs 3) and 4)

[sic] and has produced all the documents as specified above [emphasis in the original].”

It may be assumed that the reference to “paragraphs 3) and 4)” in that paragraph is intended to be a reference to “paragraphs 2) and 3)”.

6. The present respondent filed an application in the Royal Court seeking the striking out of the whole, or in the alternative part, of that Cause (or summary judgment to the same effect). That application for the respondent came before the Deputy Bailiff sitting alone who, after hearing counsel for the respondent and the applicant in person, made an order dated 10th October 2018 which included the following:

“Paragraph 2 of [the present applicant’s] Cause... shall be partially struck out so that reference to the estate of Margaret Renton shall be deleted.”

The Deputy Bailiff otherwise dismissed the application by the present respondent and made a number of other orders which it is not necessary to repeat.

7. The applicant sought leave to appeal against that striking out from the Deputy Bailiff. In his judgment dated 12th November 2018, the Deputy Bailiff refused that application for leave and it is renewed before me. The applicant has presented written submissions to the Court of Appeal requesting that it reconsiders the refusal of the Deputy Bailiff to grant leave to appeal. I have considered that application and the supporting submissions on the papers pursuant to r 16(5) of the 1964 Rules.

## Decision

8. The application by the applicant for leave to appeal to the Court of Appeal is dismissed.
9. In his judgment on the application for leave which was made to him, the Deputy Bailiff described the approach which is to be adopted in relation to an application for leave to appeal to the Court of Appeal. That approach is set out in the judgment of the Court of Appeal in Carlyle Capital Corporation Limited v Conway [2011-12] GLR 562 at para 31, under reference to what was said by the Deputy Bailiff (Collas as he then was) in McNamara v Gauson [2009-10] GLR 387. The approach is “that leave to appeal will be granted unless an appeal would have no prospects of success”, and an application for leave may also be granted “in exceptional circumstances” if it would involve an issue which in the public interest should be examined by the Court of Appeal “such as questions of great public interest or of general policy”.
10. The Deputy Bailiff in his judgment in the present case also noted that the analysis of the Deputy Bailiff (Collas) in McNamara v Gauson demonstrated that an order striking out part of a cause is an interlocutory order in respect of which leave to appeal to the Court of Appeal is required.
11. I am satisfied that an appeal by the applicant would have no prospects of success and that otherwise it would raise no issue which should be examined by the Court of Appeal in the public interest.
12. The essence of the Cause by the applicant is that he seeks various orders which relate to the actings of the late Mrs Chilcott in her capacity at the time as the executrix of the late Mr Chilcott. Insofar as can be discerned from his Cause, what the applicant appears to allege is that the late Mrs Chilcott used her position as executrix of her husband, the late Mr Chilcott,

to gain advantage for herself rather than properly exercising her duties as his executrix for the benefit of the late Mr Chilcott's beneficiaries who include the applicant. The merits of these allegations are yet to be examined by any court but the Deputy Bailiff refused the respondent's application that they be struck out and they remain for proper judicial consideration and determination.

13. What was deleted from the Cause by the Deputy Bailiff was reference in paragraph 2 "to the estate of Margaret Renton", that is the late Mrs Chilcott. As it is stated in the first sentence of paragraph 2 of the Cause, the applicant applies for an order that:

"the... respondent... as duly appointed executrix of the Estate of her mother, the late Margaret Renton (Chilcott), and now also the incumbent executrix of the *as yet undistributed* Estate of my late father, Paul Edward Chilcott, and who is therefore now responsible *by Law* for the proper administration and distribution of that Estate, to produce a full and accurate set of historic accounts and final Estate values for both my father's and Margaret Renton's Estates..."
14. That sentence narrates that the respondent is both the executrix of the late Mrs Chilcott's estate and the executrix of the late Mr Chilcott's estate. What it then states is that the respondent "is therefore now responsible by Law for the proper administration and distribution of that Estate", and that is a reference to the estate of the late Mr Chilcott. The responsibility for the administration of the late Mr Chilcott's estate lies on the holder of the office of executrix of that estate and the part of the first sentence in paragraph 2 of the Cause just quoted acknowledges that. The respondent has been appointed to that office as a result of the judgment of the Royal Court given by Lieutenant Bailiff Marshall which is referred to above and not because the respondent also holds the office of executrix of the late Mrs Chilcott.
15. In broad terms, a proper accounting for what the applicant alleges were parts of the late Mr Chilcott's estate will be established by a consideration of the records of the administration of that estate by the late Mrs Chilcott and the respondent as Mr Chilcott's executrices in succession.
16. That does not require the respondent to produce any accounting for her actings in her separate capacity as the executrix of the late Mrs Chilcott. If the late Mrs Chilcott was responsible for the personal use of any funds which were properly part of her late husband's estate, then that would have been done by her in her capacity as the then executrix of the late Mr Chilcott (and I emphasise that all and any such allegations remain to be established). That would be demonstrated by a proper accounting in the estate of the late Mr Chilcott for which the respondent is now responsible in her capacity as the present executrix of the late Mr Chilcott.
17. The applicant has not demonstrated otherwise that he has any interest in the estate of the late Mrs Chilcott. In addition, the Deputy Bailiff referred to what was said in paragraph 21 of the judgment of the Royal Court given by Lieutenant Bailiff Marshall which was that "Mr Chilcott does indeed have no interest in that estate". The applicant does not in his submissions to the Court of Appeal dispute that statement which is in any event a definitive statement by the Royal Court made after a hearing and it is sufficient by itself to demonstrate why the applicant is not entitled in his Cause to seek any order against the respondent in her capacity as the executrix of the estate of the late Mrs Chilcott.
18. The applicant does not present any other contention sufficient to demonstrate why the Deputy Bailiff was wrong to delete from paragraph 2 of the Cause reference to the estate of the late Mrs Chilcott. Further, and as the Deputy Bailiff himself noted, the applicant did not actually identify what might have been an error made by the Deputy Bailiff in making the

striking out order which he did.

19. The position is no different in the written submissions which the applicant has presented to the Court of Appeal. As stated in paragraph 5, these submissions refer to the position of the applicant “as sole residuary beneficiary of my father’s Will”, and the applicant refers at paragraph 3 to the alleged tort of deceit said to have been committed by the late Mrs Chilcott whom he states “was only the executrix/trustee [*sic*] by the Will of my father”. Once again, this is a direct reference to the actings of the late Mrs Chilcott in her capacity as executrix of the late Mr Chilcott.
20. At paragraph 9 of his submissions to the Court of Appeal, the applicant suggests that the Deputy Bailiff gave no reasoned judgment for his striking out but the applicant makes no reference to the judgment which the Deputy Bailiff did give dated 12th November 2018 in refusing leave to appeal. In the same paragraph, the applicant also claims that:

“As a wronged beneficiary, with the right to come to Court and ask the Court to right these wrongs, it seems unjust to be hindered and denied the ability to refer to the cause of those who have brought a wronged beneficiary to the Court door, those who are in breach of trust, breach of fiduciary duty, and breach of the law.”
21. That proposition does not provide any basis upon which an appeal by the applicant against the order of the Deputy Bailiff could be said to have any prospects of success. In any event, it ignores the fact that the applicant has been permitted to proceed with all other aspects of his Cause which relate to the administration of the estate of the late Mr Chilcott; it is simply that his attempt to require the respondent to provide accounts for the estate of the late Mrs Chilcott has been struck out. In saying this, it may be noted that the ultimate position of the applicant can be protected because in paragraph 4 of the Cause he applies for the freezing of the assets of the estate of the late Mrs Chilcott pending satisfaction of the earlier orders which he seeks, and paragraph 4 has not been struck out and remains for determination.
22. Finally, the Deputy Bailiff also considered whether there was any basis upon which the applicant might be permitted to amend his grounds of appeal in a way which could have persuaded the Deputy Bailiff to grant leave to appeal. The Deputy Bailiff found that there was no such basis and that it was not a situation in which he would grant leave because it was for the Court of Appeal to decide whether the test for leave was met. No issue is taken with that aspect of the Deputy Bailiff’s judgment and I have no reason to disagree with it.
23. For these reasons, I dismiss the applicant’s renewed application for leave to appeal to the Court of Appeal.