

Proposed appeal against a decision of the Royal Court, such being subject to the time for service of the Notice of Appeal being extended.

[2021]GCA049

**IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY
ON APPEAL FROM THE ROYAL COURT SITTING AS AN ORDINARY COURT
CIVIL APPEAL NO. 553**

14 July 2021

BEFORE:

**Sir Wyn Williams
Sitting as a Single Judge**

BETWEEN:

**SHERBORNE CORPORATE SERVICES LIMITED
-and-
KENILWORTH CONSULTANTS INC.**

(Appellants)

-AND-

THE PUBLIC TRUSTEE

(Respondent)

Williams, JA

Introduction

- 1 By Act of Court dated 22 December 2020 the Bailiff, sitting alone in the Royal Court, made orders in relation to a number of applications which were before him in litigation which had been commenced in 2016 or 2017 by the Public Trustee against a total of seven Respondents. One such order was to dismiss an application brought by the Respondents and referred to by the Bailiff as the “the Ultra Vires Application”.
- 2 By a notice of appeal which is undated, but which was issued earlier this month (July 2021), two of the Respondents, Sherborne Corporate Services Limited and Kenilworth Consultants Inc. (hereinafter referred to as “the Appellants”) give notice of a proposed appeal against the order dismissing the Ultra Vires Application. I use the expression “proposed appeal” quite deliberately. By Rule 3 of the Court of Appeal (Guernsey) Rules 1964 (“the Rules”), every

notice of appeal must be served within one month from the date upon which the judgment or order of the court which is the subject of the appeal was pronounced. Self-evidently, the notice of appeal in this case was served many months after the specified time for appealing had elapsed. The appeal can proceed, therefore, only if I extend time for service of the notice of appeal pursuant to the power to extend time conferred upon me by Rule 17. For the avoidance of any doubt I treat the application before me as an application to extend time for service of a notice of appeal pursuant to Rule 17.

Background

- 3 I take the relevant background from a document dated 4 July 2021 submitted by the Appellants in support of their notice of appeal and from a letter dated 14 July 2021 written by the lawyers acting for the Public Trustee addressed to the Greffe. The letter makes it clear that the Public Trustee opposes the application for an extension of time and I infer that a copy of the letter has been provided to the Appellants.
- 4 The Appellants are former trustees of the Interim Executives (Guernsey) Limited Occupational Pension Scheme. By Act of Court dated 29 March 2017 the Public Trustee was appointed to be the Trustee of the Scheme. The appointment was subject to conditions that the appointment be limited to a period of 6 months in the first instance and that it should “be limited to the making of a full investigation into the Schemes and the taking of all such steps as she considers necessary”.
- 5 On 22 September 2017 the Court continued the appointment of the Public Trustee until further order. At the hearing giving rise to the continuation of the appointment of the Public Trustee there was no application to extend the powers conferred upon the Public Trustee by the Act of Court of 29 March 2017.
- 6 By application dated 24 June 2020 the Public Trustee made various applications known collectively as the Account Application. On 3 December 2020 the Public Trustee applied to amend the Account Application. In an affidavit sworn in support of the Account Application dated 24 June 2020 the Public Trustee indicated that an order would be sought from the Court conferring upon the Public Trustee powers which were arguably more extensive than had been conferred in the Act of Court dated 29 March 2017.
- 7 Although it is not entirely clear from the papers before me, it seems that the Respondents’ Ultra Vires Application was aimed at preventing the Court from extending the powers conferred upon the Public Trustee as sought in the affidavit referred to above.
- 8 As I have said, the Bailiff dismissed the Ultra Vires Application made by the Respondents. He also dismissed applications by the Respondent to adjourn all the applications before him and an application to set aside the Account Application which the Respondents had issued on 3 August 2020.
- 9 The Bailiff permitted the Public Trustee to amend the Account Application. However, he did not determine the amended application; rather he gave directions which permitted the Public Trustee to file further written submissions in support of the amended Account Application. Any written submissions were to be served and filed on or before 4pm 15 January 2021. I have been provided with no information as to what order, if any, the Bailiff has made in respect of the amended Account Application.
- 10 There was one further application before the Bailiff on behalf of the Appellants. That was an application for funding under the Trust Instrument by which the Scheme was constituted which was referred to as the “Clause 3 (C)3 application”. The Bailiff did not determine this application; he gave directions for the filing of further evidence.
- 11 The applications described above were considered by the Bailiff over 4 days last December - the 9th, 10th, 18th and 22nd. The Public Trustee asserts that the Ultra Vires Application was heard

and considered on 9 December. There is no reason to doubt that is accurate. On that day the 6th Respondent who has, in effect, represented the Appellants was present at court and the Bailiff gave oral reasons for dismissing the Ultra Vires Application.

The Appellants' reasons for delay

- 12 The Appellants provide very little detail as to why they have taken so long to commence these appeal proceedings. They point out that they are not legally represented and that they are reliant upon the Sixth Respondent to act on their behalf. They assert that they were expecting to receive a “formal judgment” – by which I take it that they mean a written judgment providing reasons for the Act of Court of 22 December 2020 but there is no suggestion that they contacted anyone at the Royal Court making enquiries about such a judgment. In any event, they knew full well that the Ultra Vires Application had been dismissed on 9 December 2020 if, as I infer, the Public Trustee’s account of proceedings on that day is accurate and in any event they knew that it had been dismissed the as soon as they received the Act of Court. I appreciate that the applications before the Bailiff were considered at four separate hearings which took place in December 2020 and that the Appellants were represented only on 9 December (by the Sixth Respondent) but that, of itself, provides no explanation for the delay in initiating appeal proceedings in relation to the decision to dismiss the Ultra Vires Application.
- 13 The Appellants also seem to suggest that they have had correspondence with the Court which is relevant to the delay in bringing this appeal. They refer to an exchange of emails with HMDG in the document which supports the notice of appeal. I have read those emails. They are dated late June 2021 and apparently relate to a decision made by the Bailiff in May relating to the Clause 3(C)3 application. In my judgment this email exchange has no bearing upon the delay in bringing this appeal.

Discussion

- 14 I do not consider that the Appellants have provided a reasonable explanation for the delay in initiating these appeal proceedings. In reaching that conclusion I have taken into account that the Appellants are not legally represented. However, of itself, that cannot be a sufficient reason for granting the very long extension of time which the Appellants seek in this case. I am not satisfied that the Appellants took any appropriate steps to ascertain whether there was a time limit for bringing an appeal. There is nothing in the documentation before me which begins to suggest that the Appellants attempted to comply with the time limit for appealing and were precluded from so doing or that they genuinely thought that further documentation would be received from the court before they were obliged to start an appeal.
- 15 Even so, to the extent permitted by the documents provided by the Appellants, I have considered the proposed grounds of appeal. Despite the delay to which I have referred, I would be reluctant to refuse the necessary extension if the grounds relied upon demonstrated that an appeal would be likely to succeed. There are, in substance, two grounds. First, it is said that the Bailiff appeared to have been biased against the Appellants because he “acted in an advocacy role” and in so doing assisted the Public Trustee in his legal arguments. The Appellants have obtained no transcript of the proceedings so far as I am aware. It is impossible in these circumstances to make any kind of judgment about whether there is any basis for the Appellants’ complaint. I should make it clear, however, that judicial interventions which are designed to assist the parties as to the preliminary views of the judge upon some legal issue are not uncommon and are very unlikely to be any kind of basis for a finding of apparent bias. Second, the Appellants’ argue that in reaching his conclusion upon the Ultra Vires Application the Bailiff misconstrued the word “limited” in the Act of Court of 29 March 2017. The Appellants do not really develop the argument and I find it impossible to form any kind of judgment as to whether the ground of appeal has any prospect of success on the strength of what the Appellants assert in the papers before me. In these circumstances I cannot accede to the application for an extension of time on the basis that the appeal has a good prospect of success.

- 16 It is also worth noting that the proceedings have moved on since the Act of Court of 22 December 2020. It is clear from the email exchange to which I have referred at paragraph 12 above that the Bailiff or another judge has been dealing with the applications which were not resolved by 22 December 2020. In my judgment that is a factor which militates against the lengthy extension which is sought.
- 17 In all the circumstances I have reached the clear conclusion that it is not appropriate to extend the time for serving notice of appeal against the Act of Court of 22 December 2020 and I dismiss the application for such an extension.
- 18 I should record that the Public Trustee is disposed to argue that leave to appeal is required on the grounds that the order dismissing the Ultra Vires Application is an interlocutory order. I do not consider it appropriate to consider that suggestion given the paucity of information I have before me as to the nature of the proceedings before the Bailiff.