

Appellant seeks leave to appeal against the Court of Appeal judgment to the Judicial Committee of the Privy Council.

[2022]GCA102

**IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY
ON APPEAL FROM THE ROYAL COURT**

CIVIL DIVISION APPEAL No. [561]

29th December 2022

Before:

**Lord Anderson of Ipswich KBE KC, President
David Perry KC
Helen Mountfield KC**

Between:

JJW HOTELS & RESORT HOLDINGS INC.

Plaintiff/Appellant

and

**(1) BENJAMIN ALEXANDER RHODES
(2) ANDREA FRANCES ALICE HARRIS
(3) JJW LIMITED (IN COMPULSORY LIQUIDATION)**

Defendants/Respondents

Advocate P Richardson for the Appellant

ANDERSON JA:

This is the judgment of the Court

Introduction

1. By judgment of 9 December 2022 (JJW Hotels & Resort Holdings Inc. v Benjamin Alexander Rhodes and others ([2022] GCA077), this Court dismissed the appeal of the Appellant against a judgment of 4 July 2022 ([2022] GRC041) in which the Royal Court (Lieutenant Bailiff Hazell Marshall QC) granted summary judgment to JJW Limited, a company in compulsory liquidation, and its Joint Liquidators, who were Defendants before the Royal Court and Respondents before us.
2. The Appellant, a company incorporated in the British Virgin Islands whose ultimate beneficial owner is Sheikh Mohammed bin Issa Al Jaber, is the sole owner of JJW Limited. Before the Royal Court, the Appellant sought a declaration that an alleged Declaration of Trust, executed on 8 January 2009 by the Sheikh and purporting to constitute the Appellant the beneficial owner of all the shares legally owned by JJW Limited in its subsidiaries, was valid and

effective. The Respondents countered that even if the Declaration of Trust was capable of being valid and effective, the distribution of assets that it purported to effect was unlawful and void by s305 of the Companies (Guernsey) Law 2008 (“the Companies Law”), in particular because there was compelling evidence of non-compliance with the mandatory procedural requirements set out in s303. There being no realistic prospect that contrary evidence would come to light before trial, summary judgment was granted to the Respondents.

3. This Court rejected each of the nine grounds of appeal that was raised before us, and dismissed the appeal against the Royal Court’s grant of summary judgment to the Respondents. As summarised in our judgment at [13], some of those grounds raised questions of statutory interpretation, and others bore on the issue of whether it was appropriate to grant summary judgment.
4. By an undated document headed “Draft Grounds of Appeal”, communicated to the Court on 19 December 2022, the Appellant seeks leave to appeal against our judgment to the Judicial Committee of the Privy Council. We have felt able to rule on that application without inviting submissions from the Respondents.

Test for leave to appeal

5. Section 16 of the Court of Appeal (Guernsey) Law 2008, as amended, provides in relation to civil matters (Part II of the Law) that:

“No appeal shall lie from a decision of the Court of Appeal under this Part of this Law without the special leave of Her Majesty in Council or the leave of the Court of Appeal.”

We note that the former exclusion from the need for leave when the monetary value of the claim was or exceeded £500, described as “*anachronistic*” by the Privy Council in A (Appellant) v R (Respondent) (Guernsey) [2018] UKPC 4 at [4], was removed with effect from 7 February 2022 by the Court of Appeal (Guernsey) (Amendment) Law 2021.

6. The Privy Council grants leave to appeal:

“in civil cases for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Judicial Committee at that time, bearing in mind that the matter will already have been the subject of judicial decision and may already have been reviewed on appeal; an application which in the opinion of the Appeal Panel does not raise such a point of law is refused on that ground.”

(Privy Council Practice Direction 3, para 3.3.3(a)).

7. The practice of the Courts of Appeal of England and Wales and of Northern Ireland in relation to leave (or permission) to appeal to the Privy Council was expressed in the following terms by Lord Reed in Uprichard v Scottish Ministers [2013] UKSC 21, 2013 SC (UKSC) 219 at [59]-[60].

“59. ... Appeals against any order or judgment of the Court of Appeal in England and Wales or in Northern Ireland can be brought only with the permission of the Court of Appeal or of this court. In practice, the Court of Appeal normally refuses permission so as to enable an Appeal Panel of this court to select, from the applications before it for permission to appeal, the cases raising the most important issues.

60. The public interest is served, in relation to appeals from England and Wales and Northern Ireland, by the rule that permission to appeal is granted only for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal. An application which in the opinion of the Appeal Panel does not raise such a point of law is refused on that ground: Supreme Court Practice Direction 3.3.3. The reasons for adopting that approach were explained by Lord Bingham of Cornhill, at the time when the final court of appeal was the House of Lords, in R v Secretary of State for Trade and Industry, Ex p Eastaway [2000] 1 WLR 2222, 2228: “In its role as a supreme court the House must necessarily concentrate its attention on a relatively small number of cases recognised as raising legal questions of general public importance. It cannot seek to correct errors in the application of settled law, even where such are shown to exist.”

8. This Court adopted the approach there set out in Tchenguiz and Rawlinson & Hunter Trustees SA v Akers (Judgment 37/2018) at [9]. Following that approach, it is the practice of this Court to grant leave in a case such as this only if it satisfied that there is (i) an arguable point of law, (ii) of general public importance, (iii) that needs to be determined by the Privy Council at the present time. This Court may be well placed to judge the general public importance (for Guernsey) of a point of Guernsey law. But the third test – that the point needs to be determined by the Privy Council at the present time – is one which, as described in Uprichard at [59], this Court will normally be slow to find satisfied, given the many competing claims on the time of the Privy Council, and the unique ability of its Appeal Panel to assess their relative importance and immediacy.

Determination

9. The draft grounds of appeal submitted by the Appellant comprise seven paragraphs. The first five concentrate on the effect of s309 of the Companies Law (Grounds 6 and 7 of the appeal before us), which we dealt with in our judgment at [21]-[26]. The remaining two paragraphs raise issues relating to the determination of solvency (Grounds 4 and 9 of the appeal before us) that we dealt with at [29]-[34] and at [40], [55] and [57] of our judgment.
10. It is not necessary and would not be useful for us to repeat or rephrase our conclusions on those issues. Suffice it to say that we find the Appellant’s points no more persuasive now than we did then. Having considered the draft grounds of appeal in the light of the legal principles summarised above, we have not identified any point of general public importance that it would be appropriate for the Privy Council to consider at this time. If the Appellant wishes to pursue its application for leave, it must do so before the Judicial Committee.
11. We therefore refuse to grant leave to appeal to the Privy Council.