

Costs Judgment in relation to (i) dismissing the Appellants' appeal against the decision of the Royal Court of 22 September 2023 and (ii) refusing an extension of time in respect of Grounds 2,3,7 and 10.

**[2024]GCA067**

**IN THE COURT OF APPEAL OF GUERNSEY  
(CIVIL DIVISION)**

**ON APPEAL FROM THE ROYAL COURT  
(ORDINARY DIVISION)**

**Court of Appeal Case No:578**

**1<sup>st</sup> October, 2024**

**Before:** Lord Anderson of Ipswich KBE, KC, President  
Jeremy Storey, KC  
Helen Mountfield, KC

**Between:**

- (1) AHMED KAZZAZ**
- (2) SHIELA KAZZAZ**
- (3) HANNAH KAZZAZ**
- (4) LANA KAZZAZ**
- (5) ASK ONE LIMITED**
- (6) HAIDER ABDUL RIDHA KAREEM AL-KAWAZ**  
(as Trustee of the Ask Trust)
- (7) ARI FAROOQ ABDUL WALID**  
(as Trustee of the Ask Trust)

**Appellants**

**-and-**

- (1) STANDARD CHARTERED TRUST (GUERNSEY) LIMITED (in liquidation)**
- (2) SONGBIRD LIMITED (in liquidation)**

**Respondents**

**Advocate Elaine Gray for the Appellants**  
**Advocate Anthony Williams for the Respondents**

**Storey JA:**

1. This is the judgment of the court. It should be read in conjunction with our substantive judgment of 21 August 2024 ([2024] GCA 058). In that judgment we gave our reasons for (i) dismissing the Appellants' appeal against the decision of the Royal Court of 22 September 2023 and (ii) refusing an extension of time in respect of Grounds 2,3,7 and 10.
2. We here address the issue of costs and ancillary matters. It is common ground that the unsuccessful Appellants should pay the costs of the Respondents.

Costs Judgment in relation to (i) dismissing the Appellants' appeal against the decision of the Royal Court of 22 September 2023 and (ii) refusing an extension of time in respect of Grounds 2,3,7 and 10.

3. The Respondents seek an order for the taxation of their costs on the indemnity basis which the Appellants resist. The Respondents seek an interim payment on account of costs, irrespective of the basis of taxation; the Appellants argue that such is neither necessary or appropriate. We have had the benefit of extensive written submissions from both appeal advocates and we have not been requested to conduct an oral hearing.
4. It is common ground that this court can award indemnity costs under sections 14(2) and 18(1) of the Court of Appeal (Guernsey) Law, 1961 and Rule 83(1) and (2) of the Royal Court Civil Rules, 2007: *Sherborne Corporate Services Limited v The Public Trustee* [2022] GCA 090 at [18].
5. Both advocates accept that it can be appropriate to look to guidance of the courts of England and Wales on the relevant applicable principles, albeit that the English and Guernsey Rules are not identical.
6. The question we must ask ourselves is whether there is some element of conduct by the paying party which takes this case out of the norm so as to justify an award of indemnity costs. As was made clear in *Sherborne* such conduct by the Appellants must be in relation to these appellate proceedings.
7. We propose to follow the approach recently confirmed by the English Court of Appeal in *Thakkar v Mican* [2024] EWCA Civ 552 per Coulson LJ at [19] and in *Houssain v London Credit Limited* [2024] EWCA Civ 721 per Asplin LJ at [101]. We can therefore take into account all relevant circumstances of the case but the touchstone is not the substantive merits of the appeal. We have a complete and unfettered discretion. There is no presumption in favour of indemnity costs where a claim of dishonesty fails; the burden of proof remains throughout upon the receiving party. Indemnity costs are not even the starting point or the default position (*Thakkar* at [20] – [21] and [28] – [31]).
8. We accept Advocate Gray's submission that the Appellants' unsuccessful renewed application for an extension of time to the plenary court is not in itself a ground for awarding indemnity costs. This was the Appellants' right, just as they had an unfettered right to appeal the Royal Court's decision.
9. Notwithstanding the provisional view at [150] of our substantive judgment we are persuaded that it is appropriate to award indemnity costs in the circumstances of this appeal because the Appellants' pursuit of it has been so unreasonable as to take the case out of the norm. It is not the Appellants' total lack of success that is important but the reasons therefor.
10. Like the unsuccessful claimant in *Three Rivers DC v Bank of England* [2006] EWHC 816 (Comm), [2006] 5 Costs LR 714, the Appellants here have advanced and aggressively pursued serious and speculative allegations of dishonesty or impropriety, despite the lack of any foundation in the documentary evidence, and maintained the allegations beyond the trial to the bitter end. The re-amended Cause failed primarily on causation because of Ahmed's own evidence, the contemporaneous documents and the Appellants' trial advocate's submissions: [40], [67] and [83]. As we observed at [26] it was only in Advocate Greenfield's closing speech in reply at trial that he finally attempted to identify persons at SCTG who allegedly had the necessary state of mind (namely actual knowledge that Sheila simply did not qualify for the ULIP, that a ULIP was quite unsuitable for her and that the Disclosure Booklet was an attempt to deceive Manulife). Such had not been put in cross-examination to the only relevant witness on this point. It appears to have been one of those cases where the Appellants had hoped that something would turn up at trial to justify their allegations.

Costs Judgment in relation to (i) dismissing the Appellants' appeal against the decision of the Royal Court of 22 September 2023 and (ii) refusing an extension of time in respect of Grounds 2,3,7 and 10.

11. Notwithstanding the failure to establish fraud by SCTG or causation at first instance (and an award of indemnity costs against the Appellants), Ground 2 was maintained on appeal despite there being no criticism of the Lieutenant Bailiff's direction on the law and no challenge to the findings that (i) no one at SCTG had intended to induce Sheila to agree the ULIP for any improper purpose (ii) no one at SCTG was ever aware of the contents of the Disclosure Booklet or of any discrepancy between the SOWM and the Booklet or (iii) SCTG had not been fraudulent in relation to the retention of the ULIP. The Appellants seemingly ignored the principle that fraud must be the only reasonably possible finding on the available evidence: [24] and [37] – [39].
12. We agree with Advocate Williams that the Respondents had no alternative but to come to court to defend (a second time) the allegations of dishonesty.
13. There were of course ten other grounds of appeal. However, so much depended upon Ground 2 because without success there the Appellants would be met with the defences of prescription and causation. Once Grounds 2 and 10 failed even at the permission hurdle, Grounds 1, 3-5 and 7 became largely irrelevant and the whole edifice of the Appellants' case crumbled away. This is something they must have appreciated.
14. We next consider the issue of an interim payment. We reject Advocate Gray's submission that such is inappropriate or unnecessary. The object of an interim payment is not to assist enforcement but to ensure fairness. The presumption is to order an interim payment. The fact that £332,500 is secure in court and interest bearing is no reason to deprive the Respondents of an immediate sum, albeit one to be arrived at conservatively. The Appellants will benefit when interest on costs comes to be calculated. There is no dispute as to the court's power under section 14 of the 1961 Law.
15. The Respondents seek a payment of £115,000 on account of their claimed costs of £219,000 (ie 52%). The Appellants have suggested £60,000 (27%). We must take a broad-brush approach and award no more than the Respondents will undoubtedly receive on taxation. We can see there is likely to be a challenge on hours spent, the level of fee earner and, in particular, the recoverability of £74,000 of English counsel's fees.
16. We are confident that the sum of £100,000 is less than the minimum which is likely to be ordered to be paid by the Appellants following taxation of the Respondents' costs.
17. We therefore order that £100,000 be released immediately from the funds standing in court in satisfaction of our order of an interim payment.

Costs Judgment in relation to (i) dismissing the Appellants' appeal against the decision of the Royal Court of 22 September 2023 and (ii) refusing an extension of time in respect of Grounds 2,3,7 and 10.