

Application for leave to appeal to His Majesty in Council from the decision of the Court of Appeal given on 15 January 2024 and **(ii)** for a stay **(a)** if leave is granted, until final determination of the appeal, or **(b)** if leave is not granted, until final determination of an application to the JCPC for special leave to appeal.

[2024]GCA033

IN THE COURT OF APPEAL OF GUERNSEY
CIVIL DIVISION

ON APPEAL FROM THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION

26 April 2024

Before:

Jonathan Crow, CVO, KC
David Perry, KC
Sir Adrian Fulford, PC

Between:

FORT TRUSTEES LIMITED

Appellant/Intervening Party/Current Trustee

-and-

(1) ITG LIMITED (formerly Investec Trust (Guernsey) Limited)

(2) BAYEUX LIMITED (formerly Bayeux Trustees Limited)

Respondents/Plaintiffs

-and-

(1) GLENALLA PROPERTIES LIMITED

(2) THORSON INVESTMENTS LTD

(3) ELIZA LIMITED

(4) OSCATELLO INVESTMENTS LIMITED

(5) GENEVA TRUST COMPANY SA (formerly Rawlinson & Hunter Trustees SA)

Respondents/Defendants

Crow JA

1. This is the judgment of the court on an application by Fort Trustees Limited (“**Fort**”) pursuant to s. 16 of the Court of Appeal (Guernsey) Law 1961 (**(i)**) for leave to appeal to His Majesty in Council (“**the JCPC**”) from the decision of this court given on 15 January 2024 (“**the main judgment**”) and (**ii**) for a stay (**(a)**) if leave is granted, until final determination of the appeal, or (**(b)**) if leave is not granted, until final determination of an application to the JCPC for special leave to appeal.
2. The background to the present dispute, and the issues that arose in the appeal to this court, are both explained in the main judgment, and they do not need to be repeated here. Capitalised terms used in this judgment have the same meaning as in the main judgment.
3. It is well established that leave to appeal will only be granted if this court is satisfied that the proposed appeal raises (**(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: see §8 of JJW Hotels v. Rhodes [2022] GCA 102.
4. The practice of this court is to deal with applications under s. 16 on the papers, unless it is satisfied that there are good reasons to convene an oral hearing. In this case, Fort did not request an oral hearing, and in our judgment the issues and the outcome are both sufficiently clear to justify adhering to the usual practice of dealing with the matter on the papers, and without inviting any submissions in response from the proposed Respondents.
5. Fort seeks leave to appeal on 6 grounds. It contends that, in the main judgment, this court: (**(i)**) failed to understand the proper context of the Transfer Order; (**(ii)**) misunderstood Fort’s historical position and its reasons for advancing the argument of construction on which it relied, (**(iii)**) erred in its approach to construing the relevant provisions of the Transfer Order, (**(iv)**) was wrong to express the view that it would have expected the Transfer Order to state expressly if it had intended to freeze the relevant Valuations and affect creditors’ substantive rights, (**(v)**) wrongly failed to undertake a sufficient examination of the parties’ submissions and the Lieutenant Bailiff’s comments

at the hearing of the Transfer Application, and **(vi)** wrongly gave primacy to the Lieutenant Bailiff's own analysis of the Transfer Order.

6. It is apparent from this brief summary of the proposed grounds of appeal that Fort is not seeking to raise any point of law, let alone a point of general public importance. As is clear from §2 of the main judgment, the issue before this court involved the correct interpretation of a bespoke order of the Royal Court in the unique circumstances of this case. There is no dispute as to the applicable legal principles for the interpretation of court orders, and the proposed appeal amounts to nothing more than an attempt to re-argue for the third time the points that were advanced and failed in the Royal Court and in this court. In our judgment, the proposed appeal has no prospect of success. Accordingly, none of the three tests listed in §3 above is satisfied. Leave to appeal is therefore refused.

7. That leaves the question whether to grant a stay pending Fort's proposed application to the JCPC for special leave. The Application does not identify the basis on which a stay is being sought. We are not aware of any grounds for granting a stay. So far as we understand, no stay was sought or granted in the Royal Court in August 2023. The application is accordingly refused.