

Application for leave to appeal decision to dismiss application for summary judgment in respect of their Counterclaim and for Strike-out of the Defence to the Counterclaim.

[2023]GRC055

Civil Action No. 2407

IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION

APPLICATION FOR LEAVE TO APPEAL

Between:

- (1) WOLFGANG JOACHIM ERICH LANDL
- (2) ANDREA BRIITTA SCHAERER LANDL
- (3) KHKH HOLDINGS LIMITED
- (4) ALI HASAN MAHMOUD MOHAMED HUSAIN
- (5) KULDEEP SINGH LAMBA
- (6) GURVINER SINGH LAMBA
- (7) L'OEILLET LIMITED
- (8) ANUPE DHORAJIWALA
- (9) RUPAL TERAIYA
- (10) RAJEN R. SHAH
- (11) TEO STRUCTURED INVESTMENTS LIMITED
- (12) JAMAL ALAMER
- (13) FABRIZIO CERÉ
- (14) MOHAMED NOORUDDIN
- (15) EUGENIO BERENGA
- (16) VELES MANAGEMENT CORP.
- (17) CAREY AG (AS TRUSTEE OF THE MARRAKECH TRUST)
- (18) VLADIMIR ISAKOV
- (19) NAJAH HASAN ALAAJI
- (20) GIANCAROLO PAROLO
- (21) LANDSEND INVESTMENTS LIMITED
- (22) YASSER JEIROUDI
- (23) LUXX PCC LIMITED (IN LIQUIDATION)

Plaintiffs

-and-

- (1) STEPHEN WILLIAM HOGG
- (2) STEPHEN WATTS
- (3) IAN JAMES HENDERSON
- (4) EFG PRIVATE BANK (CHANNEL ISLANDS) LIMITED

Defendants

APPLICATON FOR LEAVE TO APPEAL THE JUDGMENT OF LIEUTENANT BAILIFF FINCH DATED 8 AUGUST 2023 [2023] GRC 033

Background

1. The first to third Defendants seek leave to appeal my decision handed-down on 8 August, 2023 following a hearing on 30th June, 2023, in which their application for summary judgment in respect of their Counterclaim and for Strike-out of the Defence to the Counterclaim were dismissed. The protagonists in this matter are the last Plaintiff listed: Luxx PCC Limited (in liquidation) and the named last “*Professional Directors*”. It is part of a complex and lengthy civil action. A bundle was provided on behalf of the Professional Directors (hereafter “A”) and reference documentation in this decision refer to that bundle. On 4th October, 2023 oral submissions from the Advocates who had conducted the original hearing were received – Advocate Jones for A and Advocate Bamford for Luxx (hereafter “R”). The leave to appeal application is made under section 15(1) (e) and (2) of the Court of Appeal (Guernsey) Law, 1961, as amended “*and/or the inherent jurisdiction of the Court.*”

Applicable Legal Principles

2. These are settled in the helpful Court of Appeal case of ITG Limited and Bayeux Limited v Glenalla Properties Limited and others, [2022] GCA 091 (a matter relating to the Tchenguiz series of cases) at Tab 11 of the bundle. Paragraph 40 sets out “*the correct approach*”, namely:

“.....this Court should not grant leave unless it is at least satisfied either: (i) that the appeal has a real prospect of success; or (ii) that even though the case has no real prospect of success, there is an issue which in the public interest, should be examined by the Court of Appeal.”

(Paragraph 43 “*aligns*” the tasks in the Bailiwick of Guernsey and Jersey, in practical terms).

3. In the present matter we are concerned only with requirement for (1). It is also worthwhile to cite some of the observations of the Court of Appeal in paragraph 41 of their decision, which allude to the Court of Appeal Law:

“Reflecting on the structure of that Article [i.e. Section 15(1)(e) of the Law], it places the onus of persuasion on the applicant to satisfy the court as a minimum either the appeal has a real prospect of success, or that there is, nevertheless, an issue which in the public interest should be examined by the Court of Appeal. The requirements recognise that an appeal would not be consistent with the proper use of judicial time unless, at least, one of those conditions is met.”

(It is repeated that only requirement (1) is engaged in this application).

Observations

4. It will be apparent from the wording of the decision (Tab 3) that there was no pretence of resolving the arguments put forward by the parties. It rested on the nature and extent of the law relating to the strike-out and summary judgment; see especially paragraph 12. The arguments put forward against the Professional Directors’ requests for summary judgment on their Counterclaim and strike-out of the Defence were, it was considered, “*neither weak, nor fanciful, nor bound to fail.*” It was concluded that a full trial in the circumstances was called for. The Guernsey case of Tranquility Holdings Limited v Invista Estate Management (C.I.) Limited (Royal Court 38/2015) was relied on – see paragraphs 2 and 3. There a Guernsey Court carefully set-out the authorities relevant to such applications and also endorsed “*the careful analysis*” in Invescap Holdings Limited v Douglass Limited (30th July, 2014). It is not necessary to repeat these observations. Putting it in rather basic terms – the point suggested on behalf of A may or may not succeed at a trial but the appropriate forum is a full trial. What therefore was set-out in the impugned decision was not in any way a purported ruling on the

points in contention, but rather an attempted examination of the relevant principles in the light of the cases on summary judgment and strike-out.

5. One aspect of A's Notice of Appeal (Tab 2) was the reference in paragraphs 13 – 14 about failing to “*give adequate reasons for decisions.*” I expressed my views on this to Advocate Jones at the oral hearing. Rightly or wrongly, it is considered that the decision was sufficiently detailed in what, after all, is one skirmish in a long campaign. In civil action, judges are often bedevilled by reams of paper, including skeleton arguments with too much flesh. In this case, what appeared to be the appropriate principles were, without adding greatly to the existing volume of documentation set-out fully and applied. The wisdom of a judicial decision is not necessarily enhanced by its length. (For an approach to documental prolixity, see Mylward v Weldon [1595] EWHC CH1; 21 ER 136).
6. In matters such as this, there is always the sensation of marking one's own homework, whilst the External Examiner, in the form of an appellate tribunal, is just around the corner. But that is really a comfort, as if a wrong decision is reached, aid is at hand. However, looking back at the case it still appears that in the application for summary judgment a fuller investigation was called for, and, it was merely an “*arguable claim*” and no more, and also in relation to strike-out R's case was by no means “*bound to fail.*” In particular, it was not found possible to distinguish the SPL Guernsey etc v Addison [2018] GCA 355 case, where the words of the then Deputy Bailiff, appear to be applicable to the present matter.

Decision

7. Leave to appeal is therefore refused, on the matters before the Royal Court and the decision reached. A, therefore, will have to approach the Court of Appeal to seek leave.

Costs

8. Reserved.

J R Finch OBE
Lieutenant Bailiff

16th October, 2023