Application for Leave to Appeal Out of Time a Royal Court decision dated 8 November 2024, whereby the Court awarded judgment in favour of Frontier Wealth Management Limited against Clarona Limited in default of its appearance. The application was dismissed.

**[2025]GCA011**

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

**ON APPEAL FROM THE ROYAL COURT SITTING AS AN ORDINARY COURT**

**Civil Appeal No:593**

**Date of Decision: 20 February 2025**
**Leave to Appeal Out of Time**
**(determined on the papers)**

**BEFORE: Jessica E Roland, Deputy Bailiff**

**Sitting as a Single Judge**

**Between:**

**Clarona Limited**

**Appellant**

**-v-**

**Frontier Wealth Management Limited**

**Respondent**

**The applicant is unrepresented.**

**Counsel for the Respondent : Advocate S Duerden**

## Introduction

1. By an Act of Court dated 8 November 2024, Judge Connolly sitting alone in the Royal Court, awarded judgment in favour of Frontier Wealth Management Limited (the "Respondent") against Clarona Limited (the "Appellant") in default of its appearance, in the total sum of £1,755,849.09, plus interest and costs on a contractual basis and with power to levy execution on the real property of the Appellant (the "Judgment").

2. By a notice of appeal which was served by email on 14 January 2025, although first intimated to the Royal Court on 3 January 2025, the Appellant gave notice of appeal against the Judgment.

By Rule 3 of the Court of Appeal (Guernsey) Rules, 1964 (as amended) (the "Rules"), every notice of appeal must be served within 28 days from the date upon which the judgment or order of the court, which is the subject of the appeal, was pronounced. No point is taken by the Respondent as to the manner of service by the Appellant. The notice of appeal in this case was served over 5 weeks 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.

**Background**

3. I take the relevant background from documents filed by the parties.

4. The Appellant is a company registered in Guernsey on 9 November 1978 with registration number 7360. The Appellant owns the property known as The Captain Cook Hotel, 57 Hauteville, St Peter Port, GY1 1DQ (the "Property"). At all material times, the Appellant has acted through its sole director, Mr Reda Karim ("Mr Karim"). He was, at all material times, and currently remains the sole shareholder of the Appellant. The registered office of the Appellant is at the Property. The Respondent is a private company registered in the Turks and Caicos Islands. At all material times, the Plaintiff acted through its sole director and shareholder, Mr David Smith ("Mr Smith").

5. Between 29 October 2015 and 31 August 2016, the Respondent and the Appellant entered into six separate facility agreements (the "Loans"). Each Loan was secured by way of a bond in favour of the Respondent. No repayment has been made on any of the principal sums owing under the Loans.

6. On 14 January 2021, the Appellant was struck off the Register of Companies (the "Register") pursuant to compulsory strike-off by the Registrar under section 355 of the Companies (Guernsey) Law, 2007 ("the Companies Law"). Pursuant to an application made by the Respondent on 5 April 2024, the Respondent applied to restore the Appellant to the Register pursuant to section 370 of the Companies Law with the intention that, if so granted, the Appellant would be wound up and joint liquidators appointed expressly in order to pursue repayment of the sums owed under the Loans ("the Debt"). This intention had been set out in a letter from the Respondent's advocates to Mr Karim on 17 November 2023. Notice of the application was given to the Appellant and Mr Karim confirmed in an open email to the Respondent's advocate on 29 April 2024 that he consented to resume his role as sole director and to be the resident agent for the Appellant upon its restoration to the Register. As a consequence, the Respondent did not pursue the winding up application and the Royal Court ordered on 30 April 2024 that the Appellant be restored to the Register, and that any property vested in the Crown on the dissolution of the Appellant (which includes the Property) be restored to the Appellant on its restoration to the Register. The Appellant was restored to the Register on or around 23 October 2024. It would appear that the delay was due to the failure by Mr Karim to submit the annual validations. It was specifically brought to Mr Karim's attention in an email from the Respondent's advocate dated 23 June 2024, that:-

> *"it is a matter for you as a director to consider whether you can indeed resume your role as resident agent or whether you will need to add a second director resident in Guernsey who can replace you as resident agent if you are no longer resident in Guernsey."*

7. On 25 October 2024, the Respondent, by its advocates, sent a letter before action to the Appellant at its registered office address. The letter before action set out that in the absence of acceptable repayment proposals for the Debt before the date indicated, the Respondent's advocates had been instructed to commence legal proceedings without further notice and that if that happened the Appellant was likely to lose ownership of the Property. A copy of that letter was emailed on the same day to Mr. Karim with a covering email which specifically referred to

the letter before action being delivered to the registered office of the Appellant and advising Mr Karim:

> *"We have copied this letter to you for the purpose of giving Clarona Limited the best chance to meaningfully engage with the letter. Please consider the contents of the attached very carefully and note the deadline for response of 31 October 2024.*
> *Please use best endeavours to ensure that Clarona Limited responds to the letter by the above time, otherwise we have been instructed to serve proceedings on Clarona Limited to recover the debt as specified in the attached.*

No response was received.

8. On 4 November 2024, a summons was served by His Majesty's Sergeant at the registered office of the Appellant (the "Summons"). A service was obtained. As set out above on 8 November 2024, the Royal Court granted the Judgment and that included the granting of a preliminary vesting order in favour of the Respondent (the "PVO").

9. On 2 December 2024, relying on the PVO, a further summons was served at the registered office of the Appellant to appear before a Commissioner of the Court on 9 December 2024 to review and confirm the sums claimed by the Respondent in the saisie (the "9 December Summons"). The 9 December Summons also achieved A service. On 9 December 2024, the Commissioner confirmed the sums claimed by the Respondent in the saisie. The Appellant did not appear at the hearing.

10. On 24 December 2024, a summons was served at the registered office of the Appellant notifying the Appellant of the Respondent's intention to seek an interim vesting order ("IVO") on 7 January 2025, and the Appellant was notified of its right to seek a postponement of the making of an IVO. Again, A service was achieved (the "7 January Summons"). On 3 January 2025, Mr. Karim emailed the Royal Court requesting that the Appellant be allowed to appeal the Judgment out of time. The Appellant, through Mr Karim provided submissions to the Royal Court on 6 January 2025 and Mr. Karim asked to appear by video link at the IVO hearing. On 7 January 2025, the Royal Court, having heard Mr. Karim on behalf of the Appellant and the Respondent's advocate, adjourned the IVO hearing to 4 February 2025 on condition that the Appellant filed its application for leave to appeal the Judgment out of time with the Registrar of the Court of Appeal by Tuesday the 14 day of January 2025 at 4.00pm. The Appellant filed the application for leave to appeal out of time on 14 January 2025 with further submissions being filed by him on 15 January 2025 and 23 January 2025. In response, the Respondent has filed an affidavit of Mr Smith dated 31 January 2025 with extensive exhibits and submissions opposing the Appellant's application in all aspects. The IVO was further adjourned by consent to the 4 March 2025.

**Test for leave to appeal out of time**

11. Rule 17(1) of the Rules provide:

> *"The Court or a judge thereof may, on such terms as the Court or judge thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any order or direction, to do any act and may extend any such period although the application for extension is not made until after the expiration of that period.*

10. At paragraph 10 of *Sherborne Corporate Services Ltd v The Public Trustee [2021] GCA50* the Court of Appeal confirmed the test identified in *Gaudion v Weardale (1997) 24 GLJ 83* namely:

> *"requiring the court to consider both the question whether the appellant has a sufficiently arguable appeal and also whether as a matter of discretion an extension of time ought to*

*be granted in light of the reasons for the delay and any prejudice suffered by the respondent."*

11. In terms of assessing the apparent strength of the proposed appeal, the Court of Appeal held at paragraph 28:

> *"In our judgment, this issue should be addressed in essentially the same way as an application for permission to appeal. In other words, the court should not attempt a mini-trial of the proposed appeal on the merits. Rather, the court should simply consider whether there is a real prospect of success.*

**The Appellant's reasons for delay and grounds for Appeal**

12. Mr Karim, on behalf of the Appellant, says that the reason why the Appellant was unable to file an appeal within the time limit was that he has been off the island for a few years and has been unwell. In support of this, he has filed a medical certificate which is dated 12 November 2024. He says he was not in Guernsey when the Summons was delivered. It was delivered to a post box while he was off the island and not to any person in particular. He said he only became aware of the Summons when the appeal period had already expired.

13. Mr Karim says that the relationship with Mr. Smith and the Respondent, extended significantly beyond a simple capital lending arrangement and he has a substantial counterclaim against the Respondent. He says that it was a comprehensive business partnership and amounted to a joint venture along with a Mr Jamie Harkness. The failings of Mr Smith and/or the Respondent and/or Mr Harkness, which he sets out in his submissions, have caused him and/or the Appellant, severe financial hardship and loss, which in the submission made before the hearing on 7 January 2025 amounts to damages which he says exceed £2,760,000. He says that the claim by the Respondent is inequitable given its conduct. Attached to the various submissions were documents filed in support of the application for leave to appeal out of time and the notice of appeal, including plans of the Property and Whatsapp messages, (although some of these are headed "Reda Karim vs the Respondent").

**Discussion**

14. I do not consider that the Appellant has provided a reasonable explanation for the delay in initiating these appeal proceedings. In relation to his medical condition, the medical certificate dated 12 November 2024 describes Mr. Karim as suffering from a back pain condition requiring *"medical treatment, bed rest and then when inflammation subsides, he need (sic) a course of physiotherapy for about 6 weeks*". However, the Appellant provides no further information as to why this has prevented the Appellant from taking steps to respond to the Summons (or the 9 December Summons) to deal with the appeal in time. It also appears to be at odds with the email attached to Mr Smith's affidavit from Principal Deputy Greffier Hill-Tout dated 15 January 2025 to the Respondent's advocate which says "*From memory however I can tell you that I have had a number of calls from Mr Karim over the last month. He had been in touch with the Court prior to 9th December but this was in relation to the hearing on 8th November, that I think he also failed to attend*."

15. Further, the issue of the Summons had been foreshadowed in the letter before action, as well as there being extensive email correspondence between Mr Karim (using the same email address now used by Mr Karim in correspondence with the court) and the advocates acting on behalf of the Respondent, leading up to the Appellant being restored to the Register and afterwards, up to the issue of proceedings against it. The seriousness of the consequences of a judgment being obtained against the Appellant was made very clear. Thus, Mr Karim was absent from the Island knowing that the Respondent had warned him that proceedings would be commenced,

and the ownership of the property would be at risk. I take into account that in the messages that the Appellant exhibits in support of this application, he has previously made arrangements for someone to be at the Property when required but has not provided any explanation about why he could not take the same steps again to ensure that the Summons was notified to him and also he has produced photographs of the Summons but there is no explanation of when or by whom these were taken. There is no evidence as to the exact date of when Mr Karim became aware of the Summons or 9 December Summons. The Royal Court Civil Rules 2007 make clear at Rules 3-6, service within the jurisdiction of a document on a body corporate effected by the Sergeant by leaving a document at the registered office will achieve A service and this will enable the matter to proceed in all respects. Further, the loan agreements also provide for notice at the same address. It is the responsibility of a company's officers to ensure that the company has, at all times, a registered office in Guernsey to which all communications and notices may be addressed and to notify the Registrar of Companies of any change of the company's registered office (see Section 30 of the Companies Law). I also take into account that in April 2024, Mr Karim agreed to be reappointed as director and resident agent of the Appellant (a role which requires him to be resident in Guernsey (see Section 484 of the Companies Law)) and did so in circumstances where he was aware of the reason why the Respondent was seeking the Appellant's restoration to the Register. I also take into account the length of delay between the Judgment and the application for leave to appeal out of time. The 28 day time limit under rule 3 of the Rules was exceeded by approximately 5 weeks which, even though I take into account that the Appellant is not legally represented, is not reasonable in all the circumstances. I must also take into account the prejudice to the Respondent (which is set out in Mr Smith's affidavit) and whilst in the overall circumstances of this matter I do not consider that the degree of prejudice to the Respondent if the time is extended would on its own be a factor that would prevent the granting of the Application, this does not undermine my conclusion that the Appellant has not provided a reasonable explanation for the delay. Nevertheless, I will go onto consider the proposed grounds of appeal.

16. Although broken down into a number of submissions, it would appear that the Appellant's substantive ground of appeal is that it has a sizeable counterclaim against the Respondent that renders the Respondent's claim for monies due under the Loans as "inequitable". However, the Appellant does not assert anywhere in his submission that the Loans were not payable by it. Indeed, as recently as the 23 June 2024, Mr Karim emailed the Respondent's advocate asking: "*Could you please let me know how long before the saisie completes so I know how much time may be available for me to find alternative financing*." Nor is there any evidence that the terms of the Loans (which have been professionally prepared) had any relationship to a business partnership or joint venture. In relation to the Appellant's assertions of a counterclaim, I do not consider that on the basis of the documents provided by the Appellant including the evidence filed in support (which is unsworn but no point is taken on this) that the Appellant has demonstrated that it has a cause of action against the Respondent on the basis of a partnership or joint venture as alleged. Whilst I recognise that at this stage it is only necessary for the Appellant to have articulated its grounds of appeal and am mindful of the warning about conducting a mini-trial, nevertheless, the Appellant has failed to show when or how it is alleged to have been agreed, nor the alleged terms which are said to bind the parties of such an agreement, nor what legally enforceable terms or duties owed to the Appellant that it says the Respondent breached (or when) which entitles it to claim the losses it says it has suffered, nor is it consistently set out in the submissions who is said to be a party to this joint venture or partnership, nor, importantly, why on a proper basis this would mean that the Judgment should be overturned on appeal. I take into account that the Appellant is not legally represented when considering the documents that it has submitted in support of its application for leave to appeal out of time, all of which I have carefully considered, nevertheless, the test is the same regardless of representation. I have come to the conclusion that the Appellant has failed to show that it has a real prospect of success.

**Conclusion**

17. In all the circumstances, having reached the clear conclusion that it is not appropriate to extend the time for serving the notice of appeal against the Judgment, I dismiss the application for such an extension.