

JERSEY / JUDGMENT

Acorn Finance Limited -v- Powell

[2016] JCA 063 (16 March 2016)

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Court of Appeal (Unknown) 16 March 2016 Before : James McNeill, QC, president George Bompas, QC David Doyle, First Deemster & Clerk of the Rolls, Isle of Man Between Acorn Finance Limited Respondent/Plaintiff And Caroline Powell Appellant/Defendant The Appellant/Defendant appeared in person. Advocate O. J. Passmore for the Respondent/Plaintiff. Advocate H. J. Heath as Amicus curiae .

judgment

bompas ja: This is the judgment of the Court. 1. Before the Court is a proposed appeal by Caroline Powell, the Appellant, concerning a judgment of the Royal Court (Commissioner Clyde-Smith with Jurats Marett-Crosby and Thomas) in favour of the Respondent, Acorn Finance Ltd, in the sum of £223,846.34 together with interest and costs. The judgment was for the amount claimed to be due under a loan agreement dated 20 December 2012. The judgment was given on 18 September 2015, when the Respondent's action came before the Royal Court in its Friday afternoon list, the Appellant being present in person. 2. The Appellant wishes to contend before us that the Royal Court should not have given judgment in favour of the Respondent, but should instead have placed the case in the pending list pursuant to Rule 6/6 of the Royal Court Rules 2004 . Further, the Appellant wishes to contend that the decision taken by the Royal Court to refuse to place the case in the pending list was vitiated for a number of reasons. 3. There are two preliminary questions. (i) The first is whether (as the Respondent submits) the appeal is one for which leave to appeal is required. As no leave has previously been sought by the Appellant, and none has been given, the Respondent submits that this appeal is not properly before us and should be dismissed. (ii) The second is whether (as the Respondent again submits) the appeal is in any event no longer live, being by Rule 10 of the Court of Appeal (Civil) Rules 1964 deemed to have been abandoned as a result of the Appellant's failure to file her contentions in the time stipulated in an order made by this Court on 25 January 2016.

Background

4. The background to the case is a loan agreement dated 20 December 2012 made between the Appellant and the Respondent. The Appellant has admitted that she entered into the loan agreement, and that she is indebted to the Respondent for the amount loaned to her

pursuant to the agreement. 5. Eventually, the loaned amount was claimed by the Respondent, and on 4 September 2015 the Respondent issued a summons starting this action. The summons was served on the Appellant. On Friday 18 September 2015 the action came before the Royal Court, as already mentioned. 6. At the hearing on 18 September 2015 the Respondent asked for judgment to be entered. The Appellant, on the other hand, who appeared in person and confirmed that she had had a copy of the Summons, asked for the action to be put in the pending list to give her time to prepare and file a defence. 7. Before us, as explained later, there have been submissions made by Advocate H Heath as *amicus curiae*. These submissions go to the matters which the Appellant wished, and wishes, to put forward if the action goes forward. Advocate Heath's written contentions summarise these matters conveniently: - they are matters which were told by the Appellant to the Royal Court on 18 September 2015, and which were repeated to the Court of Appeal by the Appellant at a hearing on 25 January 2016 and also before us. 8. The Appellant's position in relation to the Respondent's claim is, in summary (a) that the taking of the loan and the making of the loan agreement was the result of mistake "in that [the Appellant] was led to believe that her brother would give her one half of her late mother's estate (which the Appellant would use to repay ... the loan in due course)";

- (b) that the Appellant "was under duress when she entered into the ... loan in that: [she] was obliged to take out the ... loan as a result of the Divorce Proceedings; and ... [her] brother exerted undue pressure upon [her] to enter into the ... loan"; and (c) she "was the victim of a fraud by her brother who had promised [her] late mother that he would give the Appellant one half of [her] mother's estate if the whole estate was left to him in [her] mother's will". In this summary it is important to note that it has not been said that the Respondent knew of or was party to any of the mistake, duress or fraud. 9. It was and is said also that the Appellant wishes to join her brother into the Respondent's action in respect of her claims against him: - the Appellant wishes to use the Respondent's action as a platform for third party proceedings against her brother. 10. At the hearing on 18 September 2015, once the Appellant had made the request for the case to be put in the pending list, Commissioner Clyde-Smith asked "What is your defence going to be?" When the Appellant said that she had thought that all she needed to do was to ask for the case to be put into the pending list, Commissioner Clyde-Smith attempted to elicit from the Appellant "broadly what your defence is going to be". And he probed the matters summarised above. The Appellant did not say that the fraud she complained of was that of the Respondent. Indeed, she said that it was not. She did not say that any duress was placed upon her by the Respondent, or that the Respondent had induced or was aware of her mistake. What she did add, however, was that the Respondent was aware of "the circumstances in which I was signing the loan documents" and of "the mistaken belief and assurances of others effectively amounting to fraud, which led me [to] sign the documents". She also said that she wanted to join a third party. As she explained "... as [the Respondent] know[s], it has always been my intention to pay them. But there is a third party to be joined...". 11. Having heard submissions from both the Respondent and the Appellant, the Court retired briefly, before returning and

explaining: "the Court is sympathetic to your position and the problems that you've had over a long period of time, but it's quite clear to us that you have no defence to this action brought by [the Respondent] and it would be an abuse of process for this matter to be put on the pending list." 12. There is one further point to notice. During the hearing on 18 September 2016 the Respondent's Advocate submitted to the Royal Court that "there is a concern that perhaps this is a delay (sic) tactic and that my client should not really be prejudiced any further in respect the outstanding sum." He added that he had "a bundle of [a] small clip of documents just showing the sort of correspondence that's taken place between" his client and the Appellant; and this bundle was handed up. The Commissioner sought to confirm whether the Appellant had seen a copy of this bundle; and before us the Appellant said that at the time she confirmed, mistakenly, that she had. Her mistake, she told us, was that only later has she discovered that the bundle handed up contained additional material which she had not seen, and that had she known this she would have objected. 13. On 16 October 2015 the Appellant gave notice of appeal. The first group of grounds were to the effect that the Royal Court disposed of the case wrongly on the 18 September 2015 in that it should have put the case on the pending list in accordance with Rule 6/6. The second group of grounds concerned the conduct of the hearing on the 18 September 2015. 14. The first group of grounds, as developed before us, may be summarised as follows:- (i) that there is an absolute right for a defendant to have a case put in the pending list; (ii) that if the Court has a power to refuse to put a case in the pending list that power is inconsistent with, and its exercise will involve, an infringement of the rights of a defendant under Article 6 (the right to a fair trial) in Schedule 1 to the Human Rights (Jersey) Law 2000 ; (iii) that in the present case the Appellant had explained to the Court reasons for having the case put in the pending list, so that the Court could not properly have refused to do so. These reasons included that the Appellant wished to make a third party claim in this action. 15. The second group involved complaints of alleged mishandling, of one sort or another, of the hearing on 18 September 2015. These included complaints:- (i) that the Appellant, as an unrepresented litigant, should have been given more time to present her defence; (ii) that the Royal Court refused to allow her to develop her argument about her proposed third party claim; (iii) that the Royal Court "improperly placed reliance on the issues and its findings in separate proceedings to which the Appellant is a party;" (iv) that there was actual bias in the handling of the hearing; and (v) that the Commissioner and one of the Jurats should have recused themselves by reason of a conflict. This was said to arise "because of their personal knowledge of the Appellant's circumstances and family situation and/or previous dealings with the Appellant." 16. Following the giving of this notice of appeal there were exchanges between the Royal Court, the Appellant and the Respondent concerning a stay of execution of the Royal Court's judgment pending appeal. By agreement there came to be a stay of execution until after judgment on this appeal. Meanwhile the appeal itself was set down for the January 2016 sitting of the Court of Appeal, and the Appellant was supposed to have filed her documents with the Court of Appeal by 21 December 2015. This deadline was not complied with. The reasons need not be explored further because the Court of Appeal put the appeal back to the March 2016 sitting while giving directions for a fresh timetable for the filing of documents.

Specifically, on 25 January 2016 there was a directions hearing before the Court of Appeal (Sir David Calvert-Smith, President, George Bompas QC and Sir Michael Birt) at which it was ordered among other things that the Appellant was to file her contentions by 4pm on 12 February 2016, and also that an amicus curiae was to be appointed to assist the Court. 17. The hearing of the Court of Appeal on 25 January 2016 was attended by the Appellant. She was in person, as she had been at the hearing on 18 September 2015. She explained to the Court the serious difficulties, both financial and concerning her health, which are besetting her. She also explained some further detail concerning her case against her brother, and the connection of the Respondent with the alleged fraud. What she said was that she and her brother had together attended the offices of the Respondent in connection with the making of the loan, when it was told to the Respondent by her brother that she would be receiving her inheritance. She also hoped that the Respondent would produce documents she could use in proceedings against her brother, being documents to confirm what was told to the Respondent about the inheritance. She did not say that when making the loan the Respondent knew that she was being deceived by her brother, or that the Respondent knew of any mistake on her part or of any duress. 18. At the hearing on 25 January 2016, when the Court of Appeal explained the directions it was making, it was impressed upon the Appellant, and she agreed, that her contentions had to be put in by 12 February 2016 "no matter what". She was also told that an amicus would be appointed and would put in papers for the adjourned hearing, but would not do it on her behalf:- she had to put in her own papers. 19. By 12 February 2016 the Appellant had not filed her contentions. On that day she asked for further time; and this was refused by the Court. However, by then Advocate Heath had been appointed to be an amicus; and Advocate Heath had her contentions ready. These were filed in due time. 20. The events of 12 February 2016 need some further comment. Not long before 12 February 2016 the Appellant had met with Advocate Heath, and had come to understand that Advocate Heath would assist in the preparation for the appeal, including as to the preparation of contentions. It has been explained to us that Advocate Heath had prepared contentions reflecting what she understood to be arguments which the Appellant might wish to advance, and that these contentions were ready on the morning of 12 February 2016 for consideration by the Appellant whom she was expecting to attend at her offices to go through the contentions and make any amendments. However the Appellant did not attend the offices of Advocate Heath. Instead, at around midday she sent an email to Advocate Heath to say that she could not rush the putting in of contentions, as it was too important, adding "If you say you have to put in contentions along with a bundle then please make it clear I have not had time to approve them and that as you say you are not my lawyer and hopefully that will protect my position. I just cannot contribute under this sort of pressure". 21. Before us the Appellant did not seek to adopt the contentions put in by Advocate Heath as being her own contentions. Also, as pointed out by the Respondent, the Appellant has not presented to this Court any further materials to show any way in which she would add to or qualify what was in the contentions filed by Advocate Heath as amicus. 22. What the Appellant did submit to us was that we should adjourn the hearing of this case until the next sitting of the Court of Appeal so that the Appellant might take legal advice,

explaining also that she was medically unfit to conduct her appeal. Adjournment 23. We refused to adjourn the hearing. There was no evidence as to medical unfitness provided to us by the Appellant to support her application, an application which had not previously been notified to the Respondent and was only made (but made by the Appellant with coherence and persistence) at the outset of the hearing. As explained above, the Appellant had been told in no uncertain terms at the hearing on 25 January 2016 that this present hearing would not be adjourned in the absence of some "exceptional event" or "extraordinary circumstance"; and in our judgment there had been no such event or circumstance brought to our attention to justify an adjournment. 24. Following the hearing we had an email sent to us by Dr Dale Harrison, a consultant psychiatrist attending the Appellant and at present finalising a psychiatric report concerning the Appellant for consideration in another case involving the Appellant. We need say only that Dr Harrison's email did not cause us to reconsider our decision about the requested adjournment. We should add that as appears from what follows, we had the benefit not only of lucid argument from the Appellant on the substance of the appeal, but also of lengthy written contentions from Advocate Heath putting forward whatever could properly be said in support of the Appellant's grounds of appeal. The preliminary questions 25. Earlier we identified two preliminary questions. We address these in turn. 26. The Respondent points out that by Article 13(1)(e) of the Court of Appeal (Jersey) Law 1961, if the present appeal were from an "interlocutory" judgment or order it would be one which (subject to exceptions of no relevance for the present case) would require leave of the Court. The Respondent further submits that although the Royal Court gave a judgment requiring the Appellant to pay the amount claimed by the Respondent in its action, the judgment in question in the present case is interlocutory in that it was the result of a decision by the Royal Court not to place the action in the pending list but instead to require the Respondent in the absence of any defence to pay the claimed sum. 27. In the Royal Court (*Birt DB with Jurats*) held, in *Planning & Environment Committee v Lesquende*

[2003] JLR 15, that in Jersey the test for deciding whether or not a judgment or order is "interlocutory" is that summarised by Fry LJ in *Salaman v Warner*

[1891] 1 QB 734 at 736. According to that test what is material is the nature of the application which results in the judgment or order, as opposed to the nature of the judgment or order: - only if the application is one which will result in a final disposition of the case, whether it fails or succeeds, will the application give rise to a final judgment or order. Otherwise the application will result in an interlocutory judgment or order, even if the outcome has been to dispose finally of the rights of the parties. On this basis the Royal Court in *Lesquende* concluded that the relevant order it was concerned with was interlocutory and not final. 28. We have been shown a note of the decision of Southwell JA, as a single judge of the Court of Appeal, when the *Lesquende* case was sought to be appealed. The note, at

- [2003] JLR Note 8 , is succinct; but it seems clear that Southwell JA approved the reasoning and decision of the Royal Court. 29. While it might be open to us to reject the test adopted in the Lesquende case and instead to conclude that the correct test of what is "interlocutory" is rather narrower and does not include such a judgment as ordered in the present case, we do not think that we should take that course. As Birt DB (as he was) pointed out in giving judgment in that case, the requirement for obtaining leave to appeal should not work a hardship where there is a meritorious appeal, but "is consistent with the efficient case management of the business of the Court of Appeal in that, as a result of the leave requirement, unmeritorious appeals can be sifted out." 30. Advocate Heath did address argument to us with a view to supporting a submission which the Appellant might have wished to make, namely that the present case is not one in which leave is required for the proposed appeal. Ultimately, however, Advocate Heath conceded, correctly, that in Jersey the relevant test is that described above, and that applying that test the present is an appeal from an interlocutory order. 31. It is not necessarily fatal for the Appellant in the present case that she has failed to apply for leave to appeal. Had she an appeal which met any of the requirements for the giving of leave to appeal, it would be appropriate to consider whether in the unusual circumstances of the present case that leave ought now to be given. The requirements are familiar, and are that the proposed appeal should have a real prospect of success; that there is a question of general principle to be decided for the first time; or that there is an important question of law upon which further argument and a decision of the court of Appeal would be to the public advantage:- see *Crociani v Crociani*
- [2014] (1) JLR 426 at paras 50-51 per Beloff JA. 32. For reasons explained below, the first of these three requirements is not met. As for the other two, there is no novel question of general principle to be decided, and no important question of law deserving further argument and decision of the Court of Appeal. There is, in short, nothing in the proposed appeal. Therefore leave to appeal must be refused. 33. In the light of the conclusion in the previous paragraph, it is strictly unnecessary to decide whether the absence of the filing of contentions by the Appellant within the time fixed by the Court of Appeal on 25 January 2016 is fatal to her appeal. As to this, Rule 10 of the Court of Appeal (Civil) Rules, a rule headed "Abandonment of appeal by non-prosecution", provides that:- "10. Subject to Rule 16, if the appellant has not complied with Rule 8(4), the appellant's appeal shall be deemed to have been abandoned". Rule 8(4) concerns the timetable for the lodging of documents by the Appellant with the Judicial Greffier. By the directions order made by the Court of Appeal on 25 January 2016 the Appellant was required to file her contentions by 4pm on 12 February 2016; and this she had failed to do. 34. On this point the argument from the Respondent is that the words of Rule 10 of the Court of Appeal (Civil) Rules are clear, and that the appeal must now be taken to be abandoned. It is submitted that, while Rule 16 (referred to in Rule 10) gives power to extend time limits, and while this power allows for extension retrospectively, where the Court of Appeal has once refused the extension there is no longer any scope for the exercise of that power. The Respondent also submits that

Rule 16 provides the one and only qualification to the otherwise mandatory requirement of Rule 10. 35. As it seems to us, the Respondent's argument concerning the now conclusive effect of Rule 10 does not need to be decided. We agree that Rule 10 is, in principle, applicable and that, unless some other order is available to be made and is made by the Court of Appeal, the appeal must fail as being deemed to have been abandoned. When pressed in argument Advocate Passmore for the Respondent did acknowledge that there might be an avenue open to the Court of Appeal by which the Court of Appeal, in an appropriate case, could avoid Rule 10 working an injustice. But, as the present case is not one in which Rule 10 is having the effect of preventing the further pursuit of an otherwise meritorious appeal, it is unnecessary to consider what the position might have been had the appeal been one for which leave ought properly to have been given. The grounds of appeal 36. In what follows we explain briefly our reasons for concluding that the Appellant has no real prospect of success on her appeal. 37. Rule 6/6 of the Royal Court Rules provides, by paragraph (1), that: "(1) A defendant who wishes to defend an action that has come before the Court shall ask the Court to order that the action be placed on the pending list and, provided that the defendant then gives an address for service in Jersey, the Court shall so order." 38. Notwithstanding the mandatory words used by paragraph (1) of Rule 6/6, it is established that as a matter of principle the Royal Court may refuse to place an action on the pending list, and instead give judgment on the plaintiff's summons, when it is clear that there is no defence to the plaintiff's action. This is because it would be an abuse of process to prevent the plaintiff from having the judgment to which the plaintiff is unquestionably entitled and instead to insist on further cost and delay in having the action proceed further. In this regard Advocate Heath has our drawn attention, correctly we think, to the observation of the Privy Council in *Eves v Hambros Bank (Jersey) Ltd*

[1995] JLR 344 at 351, that:- "... despite the mandatory terms of r.6/6 any court must have an inherent power to protect other litigants from abuse of its process." The Privy Council indicated, further, that delaying proceedings by raising hopeless grounds of defence would be an abuse of process. 39. The power referred to in *Eves* has also more recently been recognised by this Court (differently constituted) in *Kells v Cashback*

[2012] JCA 140 . The note of that case in [2012] (2) JLR Note 16 reports that the Court of Appeal dismissed an appeal against a refusal to place a case in the pending list. According to the note, the Court of Appeal applied the principle in the *Eves* case, concluding that:- "Although r.6/6(1) of the Royal Court Rules 2004 provided that a defendant who wished to defend an action could require the Royal Court to place it on the pending list, the court could refuse such a request if it were clear that the defendant had no ground of defence and was abusing the process of the court". 40. The second ground is, in short, that the Court's inherent power, referred to in *Eves* , is cut down by Article 6 in Schedule 1 to the Human Rights (Jersey) Law 2000 (giving effect to Article 6 of the European Convention on Human Rights). This is the provision which, has been described by Sir Michael Birt as conferring a right of access to the courts, and requiring a measure limiting the right, such

as striking out, to be proportionate:- see *Canavan v Mackinnon*

[2012] (2) JLR Note 17. 41. The relevant words in Article 6 are that:- "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly." 42. Although Advocate Heath placed before us numerous authorities on the Article 6 Convention right, we are not persuaded that any of them demonstrate that the power described by the Privy Council in *Eves* is contrary to Article 6. The effect of a decision, in exercise of the Court's inherent power, to refuse to place a case on the pending list is that summary judgment is given in favour of the plaintiff. The decision can only be given because, after consideration at a hearing at which the defendant has an opportunity to be present and make submissions, the Court has concluded that the plaintiff is entitled to the judgment against the defendant. The judgment follows a public hearing before the Court, and judgment is given in public. If, in any case, the hearing is not fair or the correct procedure is not followed, the dissatisfied party may seek to appeal. Importantly, if in any case the Court fails to direct itself properly, for example failing to recognise that the defendant does have a "discernible defence", or one "which is capable of being mounted" (the expressions used by Montgomery JA in the *Kells* case) which ought to have led to the case being placed in the pending list, or that there was some other good reason for requiring a trial, the defendant may again seek to appeal. 43. In other words we see nothing in the argument that Article 6 of the European Convention is inconsistent with the Court having the inherent power described in *Eves*. This leads to the question whether, on the facts of the present case, the decision reached by the Royal Court may have been vitiated by a failure in the reasoning or approach taken. 44. The third ground of appeal goes to the question whether the Royal Court failed to see that the Appellant had a defence which would not have been an abuse of process for her to put forward, or that she had a proper reason in the form of intended third party proceedings for requiring the case to be placed in the pending list. 45. As will be apparent from what has been said above, the Appellant has no defence to the Respondent's claim. She has put forward no ground for supposing that if the Respondent's claim is placed in the pending list, there will be a different result than the judgment which has already been given. 46. The Appellant's wish to apply to bring, in these proceedings, a third party claim against her brother is in our judgment altogether insufficient as a reason for requiring the Respondent to be denied the judgment to which it is entitled once there is found to be admittedly no defence to the Respondent's claim. It is of course correct that under Rule 6/10 of the Royal Court Rules the court may give leave for the making of a third party claim in existing proceedings. But the premise on which such leave is to be given is that there is in the first place an action which ought to be allowed to continue, having been placed on the pending list. Where a defendant is admittedly liable to a money claim on which judgment ought to be given, but wishes to claim against a third party, whether the claim is for indemnity, contribution or damages, it is open to the defendant to start their own proceedings and to pursue the third party for the desired relief. The defendant's wish

is not a reason for refusing the plaintiff the judgment to which it is admittedly entitled:- there must be some other reason for placing the plaintiff's action on the pending list. 47. Sir Michael Birt as Commissioner, with Jurats Marett-Crosby and Milner, in *Investec Bank (CI) Ltd v Booth*

[2015] JRC 042, applied the principle in *Eves* in refusing to place an action on the pending list. In that judgment Sir Michael Birt pointed out that the possibility of a separate claim against a third party does not entitle a party to defend an action for a sum which the party otherwise admits owing. We agree. 48. The other grounds of appeal, those listed in paragraph 15 above, have no better prospects. The Appellant was a litigant in person at the hearing before the Royal Court. That fact cannot give rise to any criticism of the proceedings before the Royal Court. However, it was clear that she has long known of the Respondent's claim. She was given the opportunity to address the court, and (as appears from the transcript of the hearing) did so with obvious coherence. She did not then, and has not since, put forward any reason for thinking that she has a defence to the Respondent's claim. Rather she represented that she has none when she explained that it has always been her intention to pay the Respondent. 49. We have already mentioned that the Appellant was given the opportunity to explain at the hearing on 18 September 2015 what her defence to the Respondent's claim might be. She did refer to her wish to bring third party proceedings. She was not prevented from addressing the court as regards that wish; but for reasons we have indicated we do not see that her expressed wish could have had any impact on the conclusion which the Royal Court was entitled, quite properly, to arrive at once she had accepted that she had no defence to the Respondent's Claim. 50. As regards the matter of the documents handed up to the Royal Court by the Respondent's Advocate during the course of the hearing on 18 September 2015, it is impossible to see any irregularity or unfairness. The documents, copies of which are in the materials before us, were not put forward with a view to having a trial of a doubtful claim, but to negative any suggestion (if one were made) that the Respondent was being unreasonably precipitate in now suing to recover the outstanding amount of its loan or should be subjected to further delay. We cannot see how the documents could have made any difference to the outcome of the hearing, even accepting the Appellant's assertion about her not having seen all the contents of the bundle handed in. 51. The suggestion, advanced in the Appellant's notice of appeal and repeated by Advocate Heath in her contentions, that the Royal Court improperly had regard to separate proceedings, finds no support in the transcript of the hearing on 18 September 2015. The basis for the suggestion appears to be the reference, quoted above, to the Royal Court being sympathetic to problems which the Appellant had had over a long period. However at the hearing it was explained by the Appellant herself that "I'm up to my eyes in other legal things and I'm still a cancer patient"; and Advocate Pallot for the Respondent had then told the court "... the principal sum has been outstanding now for near-on two years. My client's been incredibly patient and sympathetic to [the Appellant] in her circumstances ...". 52. In any event, however, even if the Royal Court had had in mind some other proceedings to which the Appellant

was or had been party besides the present case and which had not been alluded to by her, it cannot be discerned in the transcript of the hearing how that fact might have influenced the Royal Court to find against the Respondent at the hearing on 18 September 2015. The thrust of the remark made by the Royal Court was that the "long standing problems" were a matter which would incline it to giving the Appellant whatever help could be given consistently with fairness to the Respondent. 53. The complaint of bias can be dismissed out of hand. The assertion is that on 18 September 2015, when the Appellant was present in court, a different case came up which was directed to be placed on the pending list. No detail has been given about the other case which could allow any kind of comparison with the present. Nevertheless, and quite remarkably, the different outcome in that case is said to be evidence of the fact that the Royal Court in its conduct of the present case was biased against the Appellant. What this comes to is that the Appellant objects to the decision in her case and concludes that because it was unfavourable to her the tribunal must have been biased. 54. The remaining complaint is that the Commissioner and Jurat Thomas should have recused themselves. Again this complaint is to be rejected out of hand. However, we add a little more, in the hope that the Appellant may understand the position. 55. In the case of the Commissioner the complaint asserts that the Commissioner is prejudiced against the Appellant as a result of having presided over her divorce proceedings and in those proceedings demonstrated bias. In the case of Jurat Thomas it is said that the Appellant was well-known to Jurat Thomas and her family. It is then said that the Commissioner should have recused himself by reason of actual bias, and that in the case of Jurat Thomas the suggested knowledge was a reason for recusal. 56. Advocate Heath has, quite properly, referred us to the statement of principle given by Jones JA in *Syvret v AG & Connetable of Grouville*

- [2011] JCA 130 that the test for recusal is:- "... whether a fair-minded observer, informed of all the relevant facts and circumstances, would conclude that there was a real possibility that the judge was biased." She has also referred to a passage in *Locabail (UK) Ltd v Bayfield Properties Ltd*
- [2000] QB 451 at 480, which was set out in the judgment of the Court of Appeal in *Marett v Marett & O'Brien*
- [2008] JLR 384 . In the passage the English Court of Appeal explained:- "The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection." 57. So far as concerns the complaint against the Commissioner arising from the Appellant's divorce proceedings, it has been drawn to our attention that the Court of Appeal hearing an appeal in those proceedings considered and rejected just such a complaint made on the Appellant's behalf. So, for example, we have had quoted to us an extract from the judgment of the Court of Appeal in those proceedings (In the matter of II

[2011] JCA 126 at para

43) in which Dame Heather Steel said "In our judgment there were and are no grounds upon which it can be said that the Commissioner should have recused himself"; and there were numerous further passages to like effect in which allegations of prejudice and bias were rejected. In short, nothing has been shown to us which could possibly support a case of actual or apparent bias on the part of the Commissioner. 58. As to the Appellant's criticism of Jurat Thomas, there is no evidence to explain the supposed knowledge which the Jurat may have had or why that knowledge might have made it appropriate for the Jurat to consider recusing herself. Advocate Heath has refrained from offering any comment on the criticism appearing in the Notice of Appeal. In the circumstances we think she was correct not to make any comment, as there is no basis for entertaining an appeal by reference to the criticism. 59. As a postscript, we thank Advocate Heath for drawing to our attention everything which might reasonably have been argued in support of the Appellant's appeal. Costs 60. The Respondent asks for its costs of this appeal to be awarded on a standard basis. Having heard submissions we make the order asked for. The Appellant acknowledged that generally costs follow the event and that we would probably have to award costs against her, while nevertheless asking to be excused. However nothing was explained to us to justify departing from the normal principle. Authorities Royal Court Rules 2004. Court of Appeal (Civil) Rules 1964. Human Rights (Jersey) Law 2000. Court of Appeal (Jersey) Law 1961. Planning & Environment Committee v Lesquende

[2003] JLR 15 . Salaman v Warner

[1891] 1 QB 734 . Crociani v Crociani

[2014] (1) JLR 426. Eves v Hambros Bank (Jersey) Ltd

[1995] JLR 344 . Kells v Cashback

[2012] JCA 140 . Canavan v Mackinnon

[2012] (2) JLR Note 17. Investec Bank (CI) Ltd v Booth

[2015] JRC 042 . Syvret v AG & Connétable of Grouville

[2011] JCA 130 . Locabail (UK) Ltd v Bayfield Properties Ltd

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