

JERSEY / JUDGMENT

BNP Paribas Jersey Trust Corporation Ltd v C. de Bourbon des deux Siciles

[2021] JRC 253 (18 October 2021)

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judgment

commissioner: 1. This is an application by the Respondent that the Court issue a bank guarantee to her before she transfers to the Viscount the balance of a fine due by her. 2. By way of brief background, on 7 th October 2019, the Respondent (who does not live in this jurisdiction) was found to be in contempt of Court- BNP Paribas Jersey Trust Corporation v de Bourbon des deux Siciles

[2019] JRC 199 . The finding of contempt was upheld by the Court of Appeal- Siciles C de Bourbon des Deux v BNP Paribas Jersey Trust [2020] JCA 017 . 3. On 22 nd December 2020, the Court ordered the Respondent to pay a fine in the sum of £2 million within two months and made a punitive costs order- BNP Paribas Jersey Trust Corporation v Camilla de Bourbon des Deux Siciles

[2020] JRC 267 . Save for the punitive costs order, that sanction was confirmed by the Court of Appeal on 8 th June 2020 Camilla de Bourbon des Deux Siciles v BNP Paribas Jersey Trust Corporation Limited [2021] JCA 163 . The Court of Appeal gave the Respondent an extension of time until 15 th July 2021 to pay the balance of the £2 million fine, four payments of £33,333.33 having already been paid by her to the Viscount. The Respondent is appealing the judgment of the Court of Appeal to the Privy Council but no stay has been granted. 4. At 10:38 a.m. on 15 th July 2021, Advocate Mistry wrote to the Court enclosing a summons ("the First summons") and a supporting affidavit from the Respondent asking urgently for an abridgment of time and for a date fix, given that the deadline for the payment of the balance of the fine expired at midnight that day. The summons sought an extension of time for the payment of the balance of the fine, pending the determination of the summons and sought the following substantive relief: "3 That the Court accept payment of the balance of the £2 million ordered at paragraph 105(ii) of the judgment cited as Camilla de Bourbon des Deux Siciles v BNP Paribas Jersey Trust Corporation Limited

[2021] JCA 163 (the 'Judgment') as follows) (i) The Defendant shall transfer the sum of £1,800,000.02 (one million eight hundred thousand [pounds] and two pence) (representing the balance owed for the £2 million fine) forthwith, upon the Court issuing a bank guarantee for the sum of £2,000,000 (two million pounds) in favour of the account that the bank transfer was made. The £1,800,000.02 (one million eight hundred thousand [pounds] and two pence) will be transferred to the following account upon the bank guarantee being issued: [Viscount's bank account] (ii) The bank guarantee will remain in force until the final determinations of all appeals against the Judgment, where if there are sums due back to the Defendant, they will be transferred to the originating account forthwith. 4. That upon receipt of the £1,800,000.02 (one million eight hundred thousand [pounds] and two pence) the Court will confirm by Act of Court that payment has been received by the Defendant [sic] and that the default prison sentence of twelve months has fallen away due to her compliance." 5. The Bailiff's Judicial Secretary responded at 11:43 a.m. that day as follows: "The Commissioner has considered your letter and considers the request for a Court guarantee to be wholly misconceived. Subject to your persuading him otherwise (with authority), his current view is that there are no circumstances in which the Court can issue a guarantee even if that was legally possible. If you proceed with the date fix you must do so in the ordinary way but the Commissioner is not prepared to abridge time." 6. Advocate Mistry replied later that same day, complaining that the Commissioner had made up his mind about the summons before he had heard legal argument or seen authorities and that given the views he had expressed, the Respondent believed that she would not receive a fair hearing of her summons as the Court's mind had already been made up and was closed to any arguments that she makes. 7. The Bailiff's Judicial Secretary responded on 16 th July 2021 as follows: "The Commissioner felt under a duty to give his immediate view of an application that appeared and still appears to him as wholly misconceived in order to be helpful and so that the issuing of the summons could be reconsidered. However, he made it clear that he was open to be persuaded otherwise (with authority) and that remains the position. He has not therefore prejudged the arguments that might be put forward. He noted however that your letter failed to cite any authority for the proposition that a Court can issue a bank guarantee nor can he see the need for one in that if the fine is discharged by the Privy Council on appeal any fine would be reimbursed. As to the default sentence, as far as the Commissioner is aware your client has not been detained to serve the default sentence and if the fine is paid his understanding is that the default sentence will automatically fall away. However, he has asked me to fix a date at the date fix hearing as soon as the Court diary will allow." 8. The Respondent wrote to the Bailiff by letter dated 15 th July 2021, stressing the importance to her of the bank guarantee being issued, and complaining that the Commissioner had refused to abridge time and had stated that the summons was misconceived. 9. The Bailiff responded through the Bailiff's Judicial Secretary on 17 th July 2021 as follows: "I do not think that Commissioner Clyde-Smith is conflicted nor can it be reasonably suggested that he has prejudged the issue as it is clear that he cannot see the force in the application because he cannot see that the Court can provide a guarantee but is open to persuasion if

appropriate authorities are placed before him and the application has merit. That is a perfectly tenable and appropriate position for a judge to take. Further, in neither of the letters (from you or your client) is it suggested that the Princess requires a guarantee to secure the loan that she says she has procured to pay the fine. She is asking for a guarantee but that is not the same thing. Accordingly, your client can pay the money over, remove the threat of a default sentence, and then apply for the guarantee. I can see no huge urgency on the facts as I understand them and can see no basis for disagreeing with the way that the Commissioner has said he will deal with the matter." 10. On 23rd July 2021, the Respondent issued a second summons ("the Second Summons") asking for the First Summons to be stayed pending the determination of the following relief: "2. That the Court declare that it would be incompatible with Article 6 of the European Convention on Human Rights, namely due to the lack of an independent and impartial tribunal, for Commissioner Clyde-Smith to hear the [First Summons] and any other application made in this matter thereafter." 11. On 13th September 2021, the Respondent issued a third summons ("the Third Summons") asking for the First and Second Summonses to be stayed, pending determination of the following relief: "That the Court order that it would be incompatible with Article 6 of the European Convention on Human Rights for Commissioner Clyde-Smith to sit as the Judge to determine the [Second summons], where the following declaration is being sought: 'a declaration that it would be incompatible with Article 6 of the European Convention on Human Rights, namely due to the lack of an independent and impartial tribunal for Commissioner Clyde-Smith to hear the [First Summons] and any other application made in this matter thereafter.'" 12. All three summonses were listed to be heard on the 20th September 2021 before the Commissioner, sitting with Jurats. 13. In her supporting affidavit for the First Summons, the Respondent explained that she is seeking a bank guarantee from the Court to ensure that if her appeal to the Privy Council or the European Court of Human Rights was successful, then the balance due to her would be paid back. She had at her disposal ready to transfer the sum of £1,802,365.89, which would discharge the balance of the fine due. She said this at paragraph 11:- "11 My counsel advised me that the Viscount was clear in what would happen to the fine if it was paid, in that the Viscount's Department would initially hold the funds until the appeal was determined and if the appeal was successful, I would get the money back. She also said that after a time period, the Viscount would transfer the fine from the Viscount's Bank account to the States of Jersey Treasury, where the money would be held by it pending the appeal. There was no guarantee that the money would not be mixed with other funds or held in a designated account. In this scenario, and very real concern for me, is that there is no guarantee the money once it reaches Jersey, would be returned to me." 14. On 15th September 2021, the Respondent filed a second affidavit, saying that the issuing of a bank guarantee would be something that should not be difficult to agree, as it was merely a commercial/logistical mechanism which the banks could arrange that should not require a Court hearing. Had the Court agreed to this, the balance of the fine she said would have been transferred months before. She then went on to say at paragraphs 12-14: "12 As the Court is aware, I am in worldwide litigation with BNP. I do not

trust Jersey as a jurisdiction, as so far, I have seen BNP been found to be in breach of trust for its acts/omissions over the Grand Trust, however, despite this BNP have been allowed to pursue my mother, but more so me, throughout the world, including obtaining a wrongful injunction against me. The application for stay pending appeal before the Privy Council overlaps with the application that I am making for a bank guarantee. Ground 1 of my stay application clearly sets out my repeated concerns that if the Fine becomes Jersey situs with no guarantee of return, it may be subject to attack by BNP. This is still my primary concern, and the reason for my application for a bank guarantee. The Bank Guarantee Summons aside, matters have become more complex after the judicial position taken by Commissioner Clyde-Smith upon my counsel issuing the Bank Guarantee Summons." 15. At the hearing on 20 th September 2021, the Court took the Second and Third Summonses first and this with the consent of Advocate Mistry. 16. Advocate Mistry argued that the criteria for recusal, as confirmed in the Court of Appeal decision of AB v AG (Capacity)

[2020] JCA 094 , was different to an application under Article 6 of the ECHR and should be treated separately. He referred to Articles 7(2) and ultimately 8(1)(b) of the Human Rights (Jersey) Law 2000 and to a number of cases from the European Court of Human Rights as to the criteria for assessing impartiality in the context of Article 6 including *Micallef v Malta* (Application no 17056/06), *Ramos Nunes de Carvalho e Sa v. Portugal* (Application Nos 55391/13, 55728/13, 74041/13 Para 146) *Pescador Valero v Spain* (Application no. 62435/00), *Rustavi 2 Broadcasting Company Ltd and Others v Georgia* (Application no. 16812/17) and *Mikhail Mironov v Russia* (Application No 58138/09). 17. He submitted that the Third Summons should be taken first, as that sought a declaration from the Court sitting with Jurats as to whether the Commissioner should preside over the Second Summons. If that application succeeded, then another Judge would have to be appointed to preside over the hearing of the Second Summons, which would consider whether the Commissioner should preside over the First Summons in which the bank guarantee was sought. Thus, the decision whether or not the Commissioner should preside over the First Summons, which is the substantive summons, would be removed from him, contrary to the well-established principle that the decision whether or not to recuse a judge should be taken by the Judge alone. 18. If the Commissioner had decided that there were no grounds for him to recuse himself from presiding, a decision for him alone, there was an air of unreality about the proposition put forward by Advocate Mistry that the Jurats, in a case in which the Commissioner was presiding, could find against him effectively overruling his decision. 19. The Court agreed with Advocate Redgrave that these submissions were wholly misconceived. The procedure followed in both Jersey and England is that the judge whose impartiality is called into question must determine whether he should recuse himself for real or apparent bias. He should only do so if he concludes that a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that he was biased. This is not only compatible with Article 6, which provides for the right to a trial by an impartial tribunal; it is the way in which that right is given

effect. The ECHR does not create a new separate system of law and procedure. It requires the existing legal system to be compatible with it. The cases cited by Advocate Mistry were examples of where the ECtHR had found states had breached Article 6 but none of them remotely suggested that there was a separate "Article 6 application" under which applications to remove judges could be made. In fact they all confirmed that the rationale of the ECHR is that the domestic law must be compatible with the ECHR. 20. In *JSC BTA Bank v Mukhtar Ablyazov and Others*

- [2012] EWHC 3023 (Comm) the English High Court held that: "There is no difference between the common law test of bias and the requirements of Article 6 of the ECHR of an impartial tribunal; see *Lawal v Northern Spirit*
- [2003] UKHL 25 ,
- [2003] HRLR 29 at paragraph 13". 21. In *Lawal v Northern Spirit*
- [2003] UKHL 35 the House of Lords held: "14 VII The test for bias In *Porter v Magill*
- [2002] 2 AC 347 the House of Lords approved a modification of the common law test of bias enunciated in *R v Gough*
- [1993] AC 646 . This modification was first put forward in *In re Medicaments and Related Classes of Goods (No 2)*
- [2001] 1 WLR 700 . The purpose and effect of the modification was to bring the common law rule into line with the Strasbourg jurisprudence. In *Porter v Magill* Lord Hope of Craighead explained: '102 ... The Court of Appeal took the opportunity in *In re Medicaments and Related Classes of Goods (No 2)*
- [2001] 1 WLR 700 to reconsider the whole question. Lord Phillips of Worth Maltravers MR, giving the judgment of the court, observed at p 711A-B that the precise test to be applied when determining whether a decision should be set aside on account of bias had given rise to difficulty, reflected in judicial decisions that had appeared in conflict, and that the attempt to resolve that conflict in *R v Gough* had not commanded universal approval. At p 711B-C he said that, as the alternative test had been thought to be more closely in line with Strasbourg jurisprudence which since 2 October 2000 the English courts were required to take into account, the occasion should now be taken to review *R v Gough* to see whether the test it lays down is, indeed, in conflict with Strasbourg jurisprudence. Having conducted that review he summarised the court's conclusions, at pp 726-727: '85 When the Strasbourg jurisprudence is taken into account, we believe that a modest adjustment of the test in *R v Gough* is called for, which makes it plain that it is, in effect, no different from the test applied in most of the Commonwealth and Scotland. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased.' I respectfully suggested that your Lordships should

now approve the modest adjustment of the test in *R v Gough* set out in that paragraph. It expresses in clear and simple language a test which is in harmony with the objective test which the Strasbourg court applies when it is considering whether the circumstances give rise to a reasonable apprehension of bias. It removes any possible conflict with the test which is now applied in most Commonwealth countries and in Scotland. I would however delete from it the reference to 'a real danger'. Those words no longer serve a useful purpose here, and they are not used in the jurisprudence of the Strasbourg court. The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.' The house unanimously endorsed this proposal. In the result there is now no difference between the common law test of bias and the requirements under Article 6 of the Convention of an independent and impartial tribunal, the latter being the operative requirement in the present context." 22. This has been acknowledged by the European Court of Human Rights - see paragraph 47 of *Kyprianou v Cyprus*

[2005] ECHR 15 th December. The result is that there is no separate application under Article 6. The only application is for recusal on the basis of real or apparent bias and this provides the safeguards required by Article 6. The Commissioner alone must decide, applying the established test (recently considered in *Jersey in AG v Bonney*

[2021] JRC 174 and in the Court of Appeal's judgment in *Camilla de Bourbon des Deux Siciles v BNP Paribas Jersey Trust Corporation Limited* on the Respondent's appeal against the contempt fine) whether he can hear the application for a bank guarantee. 23. As to that, in *Morel v France* ECHR th June 2000 the European Court of Human Rights said: "The mere fact that a judge has already taken pre-trial decisions cannot by itself be regarded as justifying concerns about his impartiality. What matters is the scope and nature of the measures taken by the judge before the trial. Likewise, the fact that the judge has detailed knowledge of the case file does not entail any prejudice on his part that would prevent his being regarded as impartial when the decision on the merits is taken. Nor does a preliminary analysis of the available information mean that the final analysis has been prejudged. What is important is for that analysis to be carried out when judgment is delivered and to be based on the evidence produced and argument heard at the hearing." 24. A litigant should not be able to influence the question of which court hears matters concerning him or her and judges are required to apply the test for recusal firmly to avoid the risk of this happening. In the Court of Appeal decision of *Camilla de Bourbon des deux Siciles v BNP Paribas Jersey Trust Corporation Limited* , the Court of Appeal warned of the dangers of an unduly defensive approach to recusal, citing this passage from the English Court of Appeal in *Dobbs v Triodos Bank NV*

[2005] EWCA Civ 468 at paragraph 467: "It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or

wrongly, a litigant who does not have confidence in the judge who hears his case will feel that, if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If the judges were to recuse themselves whenever a litigant - whether it be a represented litigant or a litigant in person- criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he has been criticised - whether that criticism was justified or not." 25. The Court therefore declined to make the declarations sought under the Second and Third Summonses, with the Commissioner interpreting both as an application by the Respondent that he should recuse himself from presiding over the First Summons. 26. The test for recusal as set out in *AB v AG* is as follows: "10 The Applicant submits that all litigants are entitled to enjoy a fair legal system, and this is obviously correct. All judges promise to dispense justice equally and fairly, and the starting presumption is that they will do so. However, there are circumstances where there is a 'real possibility' that a particular judge may appear biased, that he or she should not sit. Only in those circumstances of apparent bias can a judge be asked to recuse him or herself from sitting. 'Apparent bias' is disclosed if there are facts from which a fair minded and informed observer, having considered them, would conclude that there was a real possibility that the tribunal was biased. (*Porter v Magill*

[2002] 2 AC 357 at 103.) There are two elements to this test. Firstly an allegation of a real possibility of bias must be backed by facts, not mere apprehension. A tribunal considering an application for recusal for bias must identify the particular facts upon which reliance is made. Secondly, the person to whom the 'real possibility' of bias should be apparent from those facts is a hypothetical, dispassionate, fair minded and informed observer. This person was described by Sumption, Commissioner, in *Syvret v Chief Minister*

[2011] JLR 243 (quoting Lord Hope in *Helow v Home Secretary*

[2008] WLR 2416) as someone who views the matter with some detachment and reserves judgment until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, but nor will she shrink from the conclusion that there is a real possibility of bias. If this can be justified objectively by things that [impugned judge or judges] have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially. She will form her judgment on this matter only when she has taken the trouble to inform herself on all relevant matters, and put them in a fair and complete overall context, recognising that this is part of the material which she must consider before passing judgment.' 27. The Court of Appeal went on to make the following two observations at paragraph 15 and 16: "15 We make two observations on this test in the light of the Applicant's submissions. Firstly, the test is whether there are facts from which the hypothetical fair minded and informed observer

would conclude that there was a real possibility of bias, not merely facts from which such a person might reach such a conclusion. Whether or not a reasonable person would apprehend such a genuine risk is the issue for this court, and the burden of proving the facts and the conclusions a fair minded and informed observer would draw from them rests on the person making a recusal application. Secondly, we agree that it is important that the possibility of removing a judge for apparent bias exists. It is also important that the approach to considering whether any application for recusal is well-founded should be that of the fair minded external observer (in the Applicant's language 'an onlooker') rather than the perspective of a person involved - whether as a complainant or person being complained against. But it is equally important that this test is applied rigorously and carefully, and that a judge is not removed merely because one party expresses unease about him, or in circumstances where the test in *Porter v McGill* is not made out, following such scrutiny. It would be as harmful to the equal dispensation of justice if judges were to be removed from tribunals when the test for apparent bias had not been made out, as it would be if they were not removed in circumstances where it had. Whether or not alternative judges are available is irrelevant. The test is not whether it is 'necessary' for the impugned judge to sit, but whether the person making a recusal application has established facts from which an external onlooker, acting in a fair and well-informed way, would conclude that there was a real possibility of bias." 28. The Commissioner accepts that he responded through the Bailiff's Judicial Secretary to the lodging of the First Summons in the manner set out above, but as Advocate Redgrave pointed out, it is necessary to see the Commissioner's response in its proper context, namely: (i) The fine was first imposed on 22 nd December 2020 (stayed on appeal) and confirmed by the Court of Appeal on 8 th June 2021, when the Respondent was given some six weeks in order to pay. (ii) The letter and First Summons, together with the supporting affidavit of the Respondent, were sent to the Court on the last day of the deadline set by the Court of Appeal, after which the default sentence would come into force. The default sentence was not being served by the Respondent as she was not in the jurisdiction of the Court. (iii) By the First Summons, the Respondent was seeking to make her payment of the fine conditional or dependent upon the issuing by the Court of a bank guarantee. It is not open to litigants to seek to impose upon the Court conditions or requirements on the payment of a fine. (iv) As to the bank guarantee, the Court is not a legal entity which can enter into commercial transactions, as the Respondent described such a guarantee, but in any event, the suggestion that the Court should issue a bank guarantee was wholly without authority or precedent. (v) In the Commissioner's view, the First Summons was misconceived. The very notion that the Court could be asked to give a bank guarantee as a condition of or before paying a fine seemed extraordinary. The Commissioner felt under a duty to make that clear to Advocate Mistry immediately, bearing in mind the looming deadline for the payment of the fine. (vi) The Commissioner made it clear that he was open to being persuaded otherwise with authority, but none was forthcoming. Indeed, Advocate Mistry conceded at the hearing that there was no authority or precedent for the relief being sought. 29. Advocate Redgrave submitted that the letter of the 15 th July 2021 and the First

Summons merited a swift response, which they got, and that it was helpful to have the Court's immediate views. He said it was often helpful for counsel to be given an indication to how the Court was thinking, as long as the judge concerned had the ability to change his or her view and had not closed his or her mind of the issue. The Commissioner had in this case made it expressly clear that despite his initial views, he was open to persuasion with authority. 30. In the circumstances, the Commissioner concluded that a fair-minded and informed observer, having considered all the circumstances and the context, would not conclude that there was a real possibility that he would be biased, and he declined therefore to recuse himself. First Summons 31. The Court then turned to the First Summons. 32. Advocate Mistry had been in touch with the Viscount's Department on 16th July 2021, and received this response: "I have discussed the matter with the Viscount and we are not in a position to give a bank guarantee however I can confirm that when your client pays the balance of her fine to the Viscount those funds will be held in a segregated interest bearing account. Should the Royal Court order the return of those funds back to your client then those funds and the accrued interest will be returned back to her as soon as practical. I would urge your client to remit the funds to the Viscount today so as to negate the need for the Viscount to notify the Royal Court of your client's failure to comply with the Court's order." 33. Advocate Mistry accepted that, taking the literal wording of the First Summons, the Court, which is not a legal entity, could not itself issue a bank guarantee. It is also not clear how a guarantee could be issued in favour of a bank account. In discussion, it became clear that what he was seeking was an order from the Court that the Viscount, as the Court's Chief Executive Officer, should procure the issuing of a bank guarantee in favour of the Respondent secured over the sums paid by the Respondent to the Viscount pursuant to the fine. 34. There had been no further dialogue with the Viscount over the issue of the bank guarantee as far as the Court was aware, and the Viscount had not been warned by Advocate Mistry to appear. Advocate Mistry acknowledged that the Court could not order the Viscount to undertake such an unusual step without first giving her an opportunity to be heard. 35. A number of issues would arise on the procuring of such a guarantee, including: (i) As far as the Court was aware, banks usually charge between ½% and 1½% of the amount involved to issue a bank guarantee. Advocate Mistry indicated that the Respondent would meet such a fee. (ii) The wording of the guarantee would require very careful drafting, and it would be inevitable that the Viscount would need to be independently legally advised, a cost which should not be borne out of public funds. (iii) Thought would need to be given to the status of the funds in the segregated account and whether the Viscount had the power to grant security over it or whether the granting of such security ousted the jurisdiction of the Court over monies paid in by way of a fine. 36. Acknowledging that he had been unable to find any authority or precedent for the Court entering into this kind of transaction, Advocate Mistry relied upon its inherent jurisdiction to do so, citing the case of Mayo Associates SA., Troy Associates Limited and TTS International Limited v Cantrade Private Bank Switzerland (CI) Limited and Touche Ross and Company

[1998] JLR 173 , where it was held: "(4) The boundaries of the Royal Court's inherent jurisdiction could not be precisely defined, for there was no unifying principle behind the instances in which it could be invoked. It was clear, however, that it was derived solely from necessity, in that the Royal Court had to be able to exercise such powers as were needed to make it effective as a court. In the context of civil proceedings, 'necessity' referred to the need to protect or enforce the legal rights in relation only to issues raised by the parties to proceedings then before the court. The court's inherent jurisdiction could not be invoked simply on the basis of fairness or to do justice in a given situation (although fairness and justice would be major factors to take into account) nor was it available to provide new remedies at will. Rather, whether the court's inherent jurisdiction allowed it to wield any particular power was to be established using traditional legal reasoning from precedents relating to the existence, merits, consequences of and alternatives to the use of that power." 37. Noting that one of the functions of the Viscount was the collection of fines (Royal Court Rule 11/5) and the ability of the Court to order the Viscount to sign documents on behalf of others, Advocate Mistry submitted there was nothing to stop the Court ordering the Viscount to procure a bank guarantee. 38. Bearing in mind that the Court is concerned with the payment of an outstanding fine which the Respondent is obliged to pay, it is difficult to see why there is any "necessity" for the Court to order the issuing of a bank guarantee in order to protect or enforce legal rights, or why the issuing of such a guarantee would make it more effective as a Court. 39. However, the Court does not have to grapple with these issues when regard is had to the purpose for which the bank guarantee is being sought. 40. Assuming the balance of the fine is paid, then if subsequently the Privy Council were to overturn the fine in whole or in part, it is the case that monies would become repayable to the Respondent in this jurisdiction, and it would be possible therefore for a creditor to take steps to attach the same. The Respondent's particular concern is that the Representor has the benefit of a judgment against her in the Curacao Court of First Instance. As we understand it, the judgment is under appeal, and is as yet unquantified, but even so, the Respondent's concern is that should she succeed in her appeal against the fine before the Privy Council, the Representor will seek to attach any monies then found due to be repaid to her in Jersey. Advocate Mistry talked in terms of the Respondent seeking protection from the Court against her assets being "attacked". 41. Advocate Redgrave drew the Court's attention to what the Representor said in its objections to the Respondent's application to the Privy Council for a stay of execution in respect of the fine, namely: "5. Further, the concerns raised by the Appellant about the monies being subject to attack from the Respondent once within Jersey are not relevant to the question of whether a stay should be granted. The Appellant's apparent desire to evade any future, hypothetical efforts by the Respondent to enforce a judgment debt against her, is not a proper basis on which to seek a stay of a fine payable to the Jersey state for contempt of court. In any event, whilst the Curacao Court of First Instance of Curacao has found Camilla liable to the Respondent for her role in helping her mother hide assets to evade the indemnity judgment of the Royal Court, that conspiracy judgment has not been recognised in Jersey and the quantum of damages still need to be determined in separate

follow-up proceedings in Curacao." 42. The position therefore is that this Court is being asked by the Respondent to procure a bank guarantee in her favour so that she can avoid any steps that might be taken by the Representor in legitimate pursuit of its rights as a judgement creditor over her assets in Jersey, i.e. the Court is being asked to assist a judgment debtor to avoid the claims of a judgment creditor. It is being asked to indulge the Respondent's desire not to have her assets "attacked" , when any creditor of hers is entitled to take whatever action is open to it; for a creditor to do so is not an attack, but the legitimate pursuit of the creditor's rights. 43. In the circumstances, it is completely inappropriate for the Court to be asked to give the Respondent any such assistance and we decline to do so. The relief sought in the First Summons is indeed misconceived. 44. In conclusion all three summonses are dismissed. Authorities BNP Paribas Jersey Trust Corporation v de Bourbon des deux Siciles

- [2019] JRC 199 . Siciles C de Bourbon des Deux v BNP Paribas Jersey Trust [2020] JCA 017 . BNP Paribas Jersey Trust Corporation v Camilla de Bourbon des Deux Siciles [2020] JRC 267 . Camilla de Bourbon des Deux Siciles v BNP Paribas Jersey Trust Corporation Limited [2021] JCA 163 . AB v AG (Capacity)
- [2020] JCA 094 . Human Rights (Jersey) Law 2000 Micallef v Malta (Application no 17056/06). Ramos Nunes de Carvalho e Sa v. Portugal (Application Nos 55391/13, 55728/13, 74041/13). Pescador Valero v Spain (Application no. 62435/00). Rustavi 2 Broadcasting Company Ltd and Others v Georgia (Application no. 16812/17). Mikhail Mironov v Russia (Application No 58138/09). JSC BTA Bank v Mukhtar Ablyazov and Others
- [2012] EWHC 3023 (Comm) . Kyprianou v Cyprus [2005] ECHR. AG v Bonney
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