

JERSEY / JUDGMENT

Cochrane v Harbour Fund II LLP and The Viscount

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Court of Appeal - application for an adjournment. [2020]JCA140A Court of Appeal 20 July 2020
Before : George Bompas, Q.C., President; Lord Anderson of Ipswich, KBE, Q.C., and Sir Michael Birt
Between Dr Gail Alison Cochrane Applicant And

- (1) Harbour Fund II LLP
- (2) The Viscount Respondents The Applicant in person. Advocate E. B. Drummond for the First Respondent. The Viscount in person

judgment

bompas JA: 1. We have today refused the Applicant's request for an adjournment of her application for an extension of time for appealing against an order made long ago. These are the Court's reasons for refusing the request, which we considered and decided on the papers. 2. The Applicant's adjournment request was made by letter received by the Court at 16:18 hours on Thursday 16th July, 2020, supported with a further letter dated 18th July, 2020. Her application for an extension of time is listed for hearing during the afternoon of Tuesday 28th July, 2020 starting at 2pm. 3. The context in which the adjournment request is being made is, briefly, as follows: (i) On 24th November, 2016 the Royal Court (Commissioner Clyde-Smith OBE with Jurats Grime and Liston) declared the Applicant en désastre, at the same time making a like declaration in relation to a company called ORB a.r.l. (ii) The Applicant's time for appealing expired at the latest on 9th February, 2017. (iii) The application for an extension of time was made on 31st December, 2019, when the Applicant applied for an extension of time in which to appeal against the declaration of désastre in her case. (iv) The application was due to be heard at the Court of Appeal's March 2020 sitting; but the coronavirus pandemic led to the cancellation of the sitting and the relisting of the application for the July sitting. However, the application was ready to be heard at the March 2020 sitting, with the documents and contentions for the application uploaded on the Court's "ecourt" electronic judicial portal and available to the judges and the parties' advocates.

- (v) From at least the time when the application was first made on 31st December, 2019 until about 1st July, 2020 Advocate Blakeley and his firm, Blakeleys, were acting for the Applicant on the extension of time application. Indeed, the application was filed by Advocate Blakeley.
- (vi) On 6th July, 2020 the Applicant wrote to the Court to say that she had dismissed Advocate Blakeley and was in the process of instructing a different firm; and she gave the name of the

proposed firm, said that the firm was not yet fully instructed but said also that hopefully that would be remedied in the next few days. On the same day she was reminded by the Court that the application was to be heard in the week commencing Monday 26th July, 2020; and her response was that she was just completing the appointment paperwork for the different firm and had told them of the proposed date. (vii) The request for the adjournment was then made, as explained above. 4. The Respondents to the application for leave to appeal are Harbour Fund II LLP (“Harbour”) and the Viscount. Harbour was the creditor which applied to have ORB and the Applicant declared en désastre: it claimed (and was found by the Royal Court when making the declaration) to have a liquidated debt due from ORB, and hence the Applicant as ORB’s guarantor, of some £10 million. The Viscount has of course since the end of 2016 been endeavouring to get in assets comprised in the Applicant’s estate. 5. The background to the application to have ORB and the Applicant declared en désastre was extensive litigation over many years, with various funding arrangements, that litigation having arisen from theft and misappropriation of many valuable assets. Litigation continues in England, with Harbour and the Viscount among the parties, this litigation (as it would appear) concerning the ownership of assets recovered in the litigation. Although the Applicant is named as a party to the current English proceedings, the conduct of those proceedings rests entirely with the Viscount as administrator of her desastre. 6. The interval between the expiry of the time for appealing the order of 24th November, 2016 and the application for an extension of time on 30th December, 2019 would by itself point to the need for extreme urgency on the part of the Applicant in getting on with the application for an extension: ordinarily an application made so late would itself call for the greatest expedition in its pursuit. In the present case the need for expedition is further underlined by the fact that considerable cost and effort has been devoted to the administration of the Applicant’s désastre by the Viscount. 7. Both Harbour and the Viscount oppose the Applicant’s adjournment request. 8. The Applicant has based her request on two grounds. The first concerns proceedings pending before the High Court in England. The second concerns her representation at the hearing of her application later this month, and the availability of materials to allow for the representation. 9. As regards the English proceedings, the Applicant makes two submissions. (i) Her first is that in the English proceedings Harbour is due to serve a “consolidated pleading” which “may well impact on the submission in my appeal”. (ii) The second submission is that she is intent on attending a case management conference in the English proceedings which is due to be heard over 2 days from Monday 27th July, 2020.

10. In our judgment the two submissions made concerning the English proceedings cannot reasonably found any basis for adjourning an application for an extension of time years after time has expired. As to the first, the Applicant has not explained how anything in the consolidated pleading could assist the merits of her challenge to Harbour’s claimed liquidated debt, and thus impact on the substance of her proposed appeal (always assuming she had been given the extension of time needed for her now to bring the appeal). She has shown us a statement of case recently served in the English proceedings; but that document

does not make it self-evident that the Harbour debt is in question. To say that the consolidated pleading may well impact the submission in her appeal is simply speculation. But, even if that is not correct, and the progress of the English proceedings may in fact be relevant to the Applicant's proposed appeal, that is no reason for putting off the hearing of the application for the extension of time: it is at that hearing that the issue should be canvassed. The issue is not a reason for adjourning the hearing of the application so that the application's hearing is postponed to some indeterminate time in the future.

11. The second of the two points is even less substantial. The Applicant has not stated why she is intent on attending a case management conference in English proceedings. Further, one might suppose that the case management conference will be held remotely in the light of the coronavirus pandemic, so that travel to and from England would not be needed for the Applicant to attend the case management conference while not occupied with her application to this Court. But the Applicant has not said. Further, she has not explained whether her intent to attend is driven by anything more than her wishing to know what transpires as it is happening rather than later and by report: if she had a part to play in the case management conference, so that her attendance was genuinely required, she has not explained why she has not been able to arrange with the English Court for her the hearing to be re-arranged so as to allow her to deal with her application to this Court on the afternoon of Tuesday 28th July while also taking part in the case management conference.
12. The second ground on which the Applicant has based her request is that she has difficulties with representation at, and the conduct of, her extension of time application before this Court. (i) She explains that for various reasons she had been for some little time dissatisfied with the conduct of her case by Advocate Blakeley and his firm; so that, when she had had notice of the listing of her application for the July sitting of the Court of Appeal, she "took the difficult decision to dismiss Blakeley's some short time ago having arranged in principle for new advocates to take up the matter on my behalf" (para 12 of her letter of 16th July 2020). (ii) She then explains that she had asked, indeed as recently as 9th July, 2020, Blakeleys to confirm that they would place all the materials and files in their possession on a memory stick and in a file box, suggesting that once ready they could notify her and prior to collection she "would ensure settlement of any balance of fees".
13. It would seem from what we have been told that Advocate Blakeley and his firm must have been asserting a lien over the Applicant's documents for unpaid fees. However that may be, as soon as practicable after the Court and the Respondents were made aware of the Applicant's difficulties with the documents for the hearing of her application, she was given access to the electronic copies of all the documents for her appeal on ecourt.

14. The Applicant explains that her proposed new advocates have indicated that they will in principle act for her once the engagement formalities are concluded. She has not explained what further formalities are needed. However, in our judgment, and having considered the materials lodged for the Applicant's application, there is sufficient time for a competent advocate to prepare for the hearing of the application on Tuesday 28th July 2020.
15. If, on the other hand, for any reason the Applicant is unable to engage an advocate to represent her at the hearing, it is open to her to present her case as a litigant in person. We note, in this regard, that the Applicant has said that she has a full week of clinical commitments during this coming week. We appreciate that the Applicant may have appointments which she cannot change. That said, we already have before us the written submissions made on the Applicant's behalf by Advocate Blakeley in support of her application, and so have an understanding of her case. We do not accept that after all this time which she has given to her proposed appeal, and to her application for an extension, the Applicant will be unable to prepare herself sufficiently to present her arguments to us on Tuesday 28th July, 2020, if appearing in person. Furthermore, it was her decision to dismiss her advocate so close to the date of the hearing before this Court and without having made secure arrangements for alternative representation. She has to accept the consequences of that decision.
16. In the circumstances the adjournment request is to be refused, the extension application remaining in the list for the afternoon of Tuesday 28th July, 2020. No Authorities.

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