

JERSEY / JUDGMENT

Mubarak v Mubarik [2008]

JCA 149 (10 September 2008)

[2008] JCA 149

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COURT OF APPEAL 10 September 2008 Before : J. W. McNeill, Esq., Q. C. sitting as a single judge. Between Aaliya Mubarak Representor/ First Respondent in Substantive Appeal And Iqbal Mubarik First Respondent/Appellant in Substantive Appeal The Craven Trust Company Limited Second Respondent (Before the Royal Court and on Appeal) Salem Mubarak and Noor Mubarak Third Respondent (Before the Royal Court and on Appeal) Advocate M. P. Renouf (as guardian ad litem of the minor beneficiaries Osman Mubarak and Hamza Mubarak and representative of the unborn or unascertained beneficiaries) Fourth Respondent (Before the Royal Court and on Appeal) Advocate C. P. G. Lakeman for the Representor/First Respondent. Advocate A. P. Begg for the First Respondent/Appellant. The Second, Third and Fourth Respondents were not present and were not represented.

JUDGMENT

mcneill ja:

INTRODUCTION

1. Throughout this judgment Aaliya Mubarak will be referred to as the First Respondent and Iqbal Mubarik will be referred to as the Appellant. 2. By a summons, undated, but delivered to the Appellant's Advocate at about 17.05 on 2 nd September 2008 and e-mailed to the Judicial Greffier at about 10.11am on 3 rd September 2008, the First Respondent seeks leave to file a Respondent's Notice in accordance with an attached schedule. Whilst no schedule is attached to the summons, a draft Notice was also delivered to the Appellant's Advocate at 17.05 on 2 nd September and sent to the Judicial Greffier in the same e-mail at 10.11am on 3 rd September 2008. By that Notice the First Respondent indicated a desire to contend that the decision of the Royal Court of 17 th April 2008 should be affirmed on certain additional or alternative grounds. 3. The substantive appeal in this matter is due to be heard by this Court during week of Monday 22 nd September 2008. As part of a complex history of case management, the Assistant Judicial Greffier, under cover of a letter of 29 th August 2008, issued a revised timetable for filing of documentation by the parties. That revised timetable required the First Respondent to apply for leave to issue her application to file a Respondent's Notice out of time by 2 nd September 2008. No particular time was stipulated.

4. This issue has been dealt with by way of written submission between the parties.

OPPOSITION 5. In opposing the application for leave to apply out of time, Mr. Begg, for the Appellant, contends that, in the absence of any time being stipulated, documents should have been filed by close of business on that day. He observes that there is no definition of "close of business" in the Royal Court Rules or Court of Appeal Rules but points to rule 5/6 (5) of the Royal Court Rules 2004 which provides, among other matters, that if a Fax is transmitted on a business day before 5.00pm it shall, unless the contrary is shown, be deemed to be served on that day and, in any other case, on the business day next following.

OPINION 6. Whilst I have some sympathy with Mr. Begg's position on this matter, I take a different view. The revised timetable, on this matter, indicates dates but is unclear as to whether those dates are ones by which documents have to be in the hands of the Judicial Greffier or in the hands of the opposing party. On this particular matter it seems to me sufficient that the relevant documents be in the hands of the opposing party. Had Mr. Begg's office closed for business at 5pm on 2 nd September, the documents would not have been delivered into Mr. Begg's hands and any fax transmitted after 5pm would - it would doubtless be argued - be caught by rule 5/6 (5). Not surprisingly in the modern day and age, Mr. Begg's office was open for business after 5pm on 2 nd September and delivery was effected. In my opinion, therefore, having regard to the Revised Timetable, the First Respondent was able to comply with the revised timetable. MANNER OF SERVICE 7. In a supplementary point, Mr. Begg contends that service was not effected properly as it was not effected by an Officer of the Viscount's Department as required by Rule 17 of the Court of Appeal (Civil) (Jersey) Rules 1964 . 8. Rule 17 provides that "Unless otherwise directed by the Court, a notice or other document required to be served for the purposes of Part 2 of the Law or these Rules shall be served through the medium of the Viscount's Department." 9. It seems to me that the documents at issue are not covered by the words "a notice or other document required to be served for the purposes of Part 2 of the Law or these Rules". They are documents in respect of an application for leave to apply out of time. DECISION 10. I am therefore of the opinion that these documents reached the Appellant's Advocate by competent means and within the timeframe set out by the Revised Timetable. I therefore determine that this court grants leave to apply and directs that the First Respondent's contentions in respect of the notice be delivered both to the Appellant's Advocate and to the Judicial Greffier in electronic or hard copy form no later than 3pm on Monday 15 th September 2008. The Appellant's response should be delivered to the First Respondent's Advocate and to the Judicial Greffier either in electronic or hard copy form no later than 3pm on Friday 19 th September 2008. COSTS 11. Issues in relation to any applications for costs arising out of this particular element of the litigation are reserved for consideration by the Full Court during its sitting at the end of September 2008. 12. I order accordingly. Authorities Court of Appeal (Civil) (Jersey) Rules 1964. Royal Court Rules 2004. Page Last Updated: 17 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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