

JERSEY / JUDGMENT

Pitman and Pitman -v- JEP Ltd and 1st Jersey Ltd [2013]

JCA 218 (12 November 2013)

[2013] JCA 218

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Court of Appeal 12 November 2013 Before : James. W. McNeill, Q. C., sitting as a single judge.
Between Mrs Shona Pitman First Applicant Mr Trevor Mark Pitman Second Applicant And Jersey Evening Post Limited First Respondent st Jersey Limited Second Respondent The Applicants on their own behalf. Advocate D. P. Le Maistre for the First Respondent. Advocate D. S. Steenson for the Second Respondent.

JUDGMENT

mcneill ja:

INTRODUCTION

1. This matter comes before me as an application to a single judge of the Court of Appeal. 2. The Applicants, Mrs Shona Pitman and Mr Trevor Mark Pitman raised proceedings in the Royal Court seeking damages for defamation against the First and Second Respondents. Those proceedings resulted in a determination of the Royal Court (Commissioner Sir Charles Gray and Jurats Le Breton and Sylvia Milner) on 4 April, 2012 whereby the claim was dismissed. 3. The Applicants wish to appeal that decision. In a Notice of Appeal dated 9 July, 2013, amended by a Notice of Appeal dated 4 September, 2013, the Grounds of Appeal are set out as (i) an alleged conflict of interest for Jurat Le Breton, said to have been discovered after the conclusion of proceedings below, in respect of his friendship with the longest serving director of the parent company of the first defender, (ii) the alleged unfitness of the same Jurat to hold office, (iii) an alleged conflict of interest for the same Jurat said to arise out of his participation in matters associated with decisions on a political matter in respect of which the Applicants were campaigning politicians, (iv) failure of the single judge who heard the application for leave to appeal to give appropriate weight to certain contentions of the Applicants and (v) that the decision below that the subject matter of the claim was not defamatory was a wholly unreasonable decision. 4. The Applicants require leave for their proposed appeal as they failed to appeal within the one month time limit set in Rule 3 of the Court of Appeal (Civil) Rules 1964 . They seek an extension of that time limit to allow them to appeal. An application was considered by a single judge of the Court of Appeal (Beloff, JA)

and dismissed in a reasoned decision dated 30 July 2013. They will renew their application before a full Court of Appeal in November 2013. 5. By an Affidavit dated 24 October 2013, the Second Applicant set out the supporting contentions for the application by the Applicants to be allowed to adduce new evidence, call further witnesses and have disclosure of further information. Those applications have been opposed on behalf of each of the Respondents in written contentions by Advocate Le Maistre and Advocate Steenson. I take each contention in the order set out in the Affidavit. 6. First, the Applicants wish to call Mr Le Breton so that evidence may be taken from him in respect of two matters. The first is as to an alleged failure on the part of Mr Le Breton, in another matter prior to his being elected a Jurat, properly to consider evidence. When properly understood, the Applicants contend, there could be no assurance as to Mr Le Breton's judgement or commitment to justice and he was unsuitable to sit as a Jurat. In consequence there could be no guarantee of a fair trial as enshrined in Article 6 of the European Convention on Human Rights . In their submission the learned single judge failed to recognise "the staggering implications of the Jurat's failings here" and so wish to have him called to give evidence on his part in this matter. 7. Their second reason for wishing to call Mr Le Breton to give evidence is their contention that he "must be put on the stand, to be questioned as to his failure to recuse himself, given his longstanding social and working relationship with [the relevant person]" . 8. The Applicants also seek to be allowed to call the Bailiff, Sir Michael Birt, "in order for the court [of Appeal] to understand the full seriousness of the failings that have been allowed to go on...in John le Breton being allowed to sit as a Jurat at all." In my opinion these applications are misconceived. The purpose of the first is to question a judge either as to his own suitability to be a judge in general or to sit without recusing himself. The purpose of the second is to question the head of the Judiciary as to the appropriateness of the appointment of the judge. It is anticipated, therefore, that each is to be questioned as to his judicial activity either in sitting as a judge or as allowing an appointment to continue. Although not so expressed in words, the implication of the request is that this court make some sort of compulsory order for attendance and, in the event of non-attendance, reach some form of adverse

conclusion.

9. Applications to have a judge examined as to his or her conduct as a judge are such as the law will not countenance. An exception applies to the judge being required to give evidence of those matters of which he became aware relating to and as a result of his performance of his judicial functions; for example where a murder is committed in the face of the court: *Duke of Buccleuch*

v. Metropolitan Board of Works

- (1872) L. R. 5 H. L. 418, 433, *Cleasby B*; and *Warren v Warren* 1997 QB 488, 496-7, Lord Woolf MR. In my opinion the principle applies in each case, that is as to the appropriateness of Mr Le Breton to hold office, the appropriateness of his not recusing himself and the appropriateness of his appointment and continuance in office under the Judiciary of the

Island. These first applications are therefore refused. 10. The second application is for disclosure of information. There is no specification as to what documentation is required and why. Indeed upon the only point raised by them in this section the Applicants appear to have access to appropriate documentation. They wish to emphasise a matter relating to the failure of Jurat Le Breton to recuse himself. That matter is that the other person with whom the conflict of interest is said to arise remained a director of the company in question until after the conclusion of the proceedings below. They have evidence that the individual was still listed as on the board of directors in 2013. Having that evidence it is not clear what else the Applicants would need in order to establish their point. This application is therefore refused. 11. The third application is for new documents to be adduced in support of the application. They are listed at the end of the Affidavit, said to be self-explanatory upon examination and "to bring clarification to the true process by which we have sought to achieve justice; or further shed important light on the realities underlying the contended failings within the judicial process that we have experienced." It is clear therefore that it is being suggested that these documents relate to the merits of the appeal itself and not to the application for leave. 12. Upon my reading of the documents, for the most part they would indeed fall into the category of clarification of process. As such they are irrelevant to the legal issues which the appeal would consider. The exceptions to that category are documents 44, 47, 48 and 52 which relate to the matter by reference to which it is said to be shown that Jurat Le Breton displayed bias towards a friend, that there could not be any assurance as to Mr Le Breton's judgement or commitment to justice, and that he was unsuitable to sit as a Jurat. The documents may or may not be relevant to the issues to be dealt with on appeal if leave is granted. For example, they may or may not be relevant on the question of suitability to sit as a Jurat, if that issue is, in the view of the full court, one upon which this court has competence to pronounce. 13. It seems to me, however, that in the whole circumstances it would be premature for me to rule that these particular documents may be adduced. As I have said, they do not fall into the general category and the only special reason put forward for document 44 is that it highlights the failings of Jurat Le Breton. In my view it is likely that the full court would wish to have cogent reasoning as to how a proposed new document would have relevance on the issues on appeal. 14. Under this third head, therefore, I refuse the application insofar as it relates to the documents other than 44, 47, 48 and 52. As regards the latter documents I decline to make an order on the grounds of prematurity. Authorities Court of Appeal (Civil) Rules 1964. European Convention on Human Rights. Duke of Buccleuch

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