

JERSEY / JUDGMENT

Triton Administration (Jersey) Limited v Jersey Competent Authority [2024] JCA 280 (13 December 2024)

[2024] JCA 280

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

Court of Appeal 13 December 2024 Before : Sir William Bailhache JA sitting as a single judge
Between Triton Administration (Jersey) Limited Appellant/Applicant And Jersey Competent
Authority Respondent Advocate M. W. Cook for the Appellant/Applicant. Advocate S. A.
Meiklejohn for the Respondent.

judgment

BAILHACHE JA:

Introduction

1. This was an application by the Applicant for an extension of a stay ordered by Commissioner Sir Michael Birt on 10 December 2024, to expire at midday on Friday 13 December 2024 in respect of an order (the "Transmission Order") made under Regulation 14(3)(b)(iii) of the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 ("the Regulations"). As will be apparent, the application came before me as a single judge of the Court of Appeal at extremely short notice and I am indebted to counsel for both parties in their measured and helpful contributions, both orally and in writing. 2. On 19 October 2023, the Applicant brought an application seeking leave from the Royal Court for judicial review of two Notices issued on 5 October 2023 by the Respondent directed towards the Applicant pursuant to the Regulations as applied by Regulation 2 of the Taxation (Implementation) (Convention on Mutual Administrative Assistance in Tax Matters) (Jersey) Regulations 2014, for the collection and transmission of information foreseeably relevant to the assessment of tax in Sweden. The question of leave to bring judicial review was due to be heard at an oral inter partes hearing on 4 March 2024, but for administrative reasons that had to be adjourned, and the parties agreed that the leave application be dealt with on the papers. Commissioner Sir Michael Birt gave leave on 14 March with a judgment giving his reasons for that purpose. In doing so, the Commissioner gave leave to amend the grounds for judicial review by adding what is in short hand described as the Article 6 ground, following the decision of this Court in *Imperium Trustees (Jersey) Limited v Jersey Competent Authority*

[2024] JCA 014 (the "Imperium Costs Judgment")

- the ground is to the effect that the costs rule in the International Co-operation (Protection from Liability) (Jersey) Law 2018 ("the 2018 Law"), which protects the Respondent from an order for costs concerning legal proceedings in respect of a Notice, absent bad faith, amounts to a restriction on the right of access to the Court and accordingly the whole mechanism for challenging a Notice by way of judicial review is inconsistent with Article 6 of the European Convention on Human Rights and consequently the issue of a Notice by the Respondent is unlawful as a breach of Article 7(1) of the Human Rights (Jersey) Law 2000 . 3. There have been earlier proceedings in this Court in relation to Notices relevant to this case issued by the Respondent in 2020 - see *Prahl and Triton Administration (Jersey) Limited v Comptroller of Revenue*

[2022] (1) JLR 100. This case involved Notices in relation to the First Applicant's tax affairs, given that the Swedish tax authorities were starting a new investigation into whether he was resident in Sweden for the tax years 2015 - 2018, a matter which he disputed and, as I understand, continues to dispute. The Notices were quashed for the reasons given in the Court's judgment referred to above. 4. Although the Notices issued in 2020 had been in respect of the tax years 2015 to 2018 inclusive, the Notices issued in the present case covered only the years 2017 and 2018. The delay in proceeding to a hearing of judicial review has meant that the Notices are no longer current in relation to the tax year 2017. I am informed this is because the statute of limitation for a tax re-assessment of the taxpayer, Mr Prahl, for the tax period 1 January 2017 to 31 December 2017 in Sweden, is 31 December 2023. Information received after that date would not be available for use in any Swedish tax re-assessment, and because the information would not be so available, there is no basis upon which the Respondent contended the information should be forwarded to the requesting authority. In a concession made before the Commissioner on 10 December, on behalf of the Respondent, Advocate Meiklejohn conceded that this was the case as the material could not be introduced on appeal. All that is left is the request for material foreseeably relevant to the 2018 assessment. 5. Of course it follows that in relation to the 2018 assessment, which, so I was informed, has been raised on material from other jurisdictions, the Jersey information could not be used to assist in any tax re-assessment for that year if made available to the Swedish Competent Authority after 31 December 2024. 6. There was therefore some urgency in the hearing of the application for judicial review. Unfortunately, as Advocate Meiklejohn very fairly accepted, neither the Applicant nor the Respondent took sufficient steps to bring the application on for hearing very speedily. The Commissioner was therefore faced with an application on 10 December for judicial review on the substantive grounds, the Article 6 ground having been left over for hearing at some point in the summer of next year, a date not having yet been fixed. The reason that it has been so deferred is that there are two other cases where the same point is being raised, and as I understand it all three will be heard together. The decision below 7. The Commissioner has yet to give full and detailed reasons for his decisions on 10 December but he has helpfully given the basic rationale in two *ex tempore* judgments on

that date. In relation to what I describe as the substantive judicial review grounds (i.e. not including the Article 6 ground) the Commissioner applied the test explained by this Court in *Imperium Trustees (Jersey) Limited v Jersey Competent Authority*

[2023] JCA 057, and, in broad summary, concluded that there was: (i) a reasonable possibility that Mr Prahll would be found ultimately to be tax resident in Sweden, and therefore the information was relevant; (ii) no basis for deciding at this stage that Mr Prahll was resident for tax purposes in the UK, and that therefore the UK had exclusive taxing rights in respect of his non-Swedish income and gains, including those arising in Jersey, because no decision had been reached by HMRC on Mr Prahll's application in that respect. The Commissioner therefore did not find that there was a reasonable possibility that because of the UK / Sweden double taxation agreement, Mr Prahll would not be subject to Swedish tax on his Jersey income or gains; (iii) no ground for concluding that the Notices were ultra vires because the information sought could not be relevant to Mr Prahll's tax liability in Sweden; (iv) no basis for a conclusion that the decision to issue the Notices was irrational; (v) no basis for the allegation that the Respondent had acted in breach of Article 8 of the European Convention on Human Rights in as much as it was alleged it had acted in a disproportionate manner. The Commissioner referred to the Convention on Mutual Assistance which specifically envisages that assistance should be given by one jurisdiction to another in relation to tax information, i.e. information that is foreseeably relevant. There was accordingly nothing disproportionate or in breach of Article 8 in the Respondent fulfilling its obligations under the Convention and giving the assistance requested. Accordingly, all the non-Article 6 grounds for judicial review were dismissed. 8. As the Commissioner said in his ex tempore judgment, the general principle is that where there is an application for judicial review, there is an obligation for the information provided to the Jersey Competent Authority pursuant to the challenged Notice to be held here and not remitted to the requesting country until the conclusion of the proceedings. However, Regulation 14(3)(b)(iii) of the Regulations contains provision enabling the Respondent to release the information earlier "if permitted to do so by the Royal Court". Before the Commissioner, Advocate Cook apparently submitted that no such order should be made for two reasons: (i) a person served with a Notice has the right to apply for leave to appeal to the Judicial Committee of the Privy Council within fourteen days of the decision. Granting the application for immediate transmission of the information would render any such appeal nugatory; (ii) in any event, there remained the Article 6 ground to be argued. It was submitted by Advocate Cook that the documentation should not be released before that argument was heard and determined, because again it would render nugatory any successful outcome of that application or any appeal to the Judicial Committee. 9. The Commissioner decided that the prospect of the Judicial Committee granting leave to appeal the existing decision was remote, albeit it was naturally a matter for the Judicial Committee and not for him. However, he could not identify any point of law of general public importance which ought to be considered at this time. He had applied the well-established law to the facts of the case and, in his judgment, this was

therefore not the sort of case in which the Judicial Committee would usually grant leave. As to the second ground relied upon, the Commissioner took the view that whether there has been a breach of a European Convention human right is fact specific. The Court would always look at the individual facts in order to determine whether the Convention rights had actually been infringed. In the present case, no question of a costs order being made in favour of the Applicant arose because it had failed in its application on the non-Article 6 grounds, but in any event the Applicant had not been restricted in any way in its access to the Court. It had put forward detailed arguments and been represented by a firm of advocates and by Advocate Cook before the Court. Accordingly the Commissioner found that the prospects of the Respondent having infringed the Applicant's Article 6 rights were remote. 10. When it came to balancing the various factors relevant to the exercise of his discretion, the Commissioner took into account that the right of appeal to the Judicial Committee, if leave were granted, would be rendered nugatory, and, on the other hand, that a failure to transmit the documents at this stage would mean that the information gathered by the Respondent would never be transmitted because it would be of no use to the requesting authority if received after 31 December 2024. Accordingly the Commissioner granted the application under Regulation 14(3)(b)(iii) but allowed a stay until midday on Friday 13 December to enable an application to be made to a single judge of the Court of Appeal against his decision. 11. Having heard counsel on 12 December, I refused the application made by Advocate Cook, with reasons reserved and this judgment contains those reasons. Discussion 12. Before me, Advocate Cook submitted that it was not entirely clear that the Court of Appeal had any discretion in the matter in any event. To conclude that it was a matter for a single judge involved accepting that an appeal against the Royal Court's order under Regulation 14(3)(b)(iii) would lie to the Court of Appeal because it was an interlocutory decision which did not fall within the limited "leapfrog" appeal provisions contained in the Regulations which required appeals from the Royal Court's decision on judicial review to go directly to the Judicial Committee. Advocate Cook was in the intellectually challenging position therefore of asserting on the one hand that the Court of Appeal might not have jurisdiction to deal with the appeal against the Transmission Order, but on the other hand that nonetheless an order should be made to extend the stay on transmission of the documents until the appeal was heard. He found himself able to support this seemingly contradictory position by contending that this was what the Royal Court had envisaged in the order that it made. 13. It is correct that the learned Commissioner clearly did consider that an appeal might lie to the Court of Appeal against the Transmission Order. Nonetheless, the fact that he did so could not create a jurisdiction if none existed under the relevant legislation. Accordingly, it seemed to me that there were two issues for me to consider: (i) whether an appeal against the Transmission Order lay to the Court of Appeal; and (ii) if it did, whether the stay should be extended as Advocate Cook submitted. The jurisdiction point 14. If the present application failed on its merits, as it has, it is strictly unnecessary to determine whether the Court of Appeal has jurisdiction to hear the substantive appeal against the grant of the Transmission Order. Indeed, given the fact that the application came before me at very

short notice and of course had to be dealt with in similar fashion, it would be undesirable for me to express any concluded view on it, and I leave it open for the full Court of Appeal to determine at some future date should it be appropriate to do so. However, it may be helpful if I express some provisional views. 15. The possibility that the Court of Appeal does have jurisdiction is raised by its decision in *Imperium Trustees (Jersey) Limited v Jersey Competent Authority* reported at [2022] JCA 196. In that case, the Court of Appeal decided that, notwithstanding the provisions of Article 14A of the Regulations, which provides for leapfrog appeals to the Judicial Committee, an application could be made to the Court of Appeal in respect of a decision by the Royal Court to refuse leave to apply for judicial review. This was because the words "a judicial review to which Regulation 14 applies" could permissibly be read narrowly as referring only to a judicial review strictly so called - i.e. one where the application for leave to apply for judicial review had been granted (see paragraph 8 of the Court of Appeal's judgment). 16. The rationale for that conclusion was that on a linguistic analysis, Regulation 14A could be read in more than one way, but if it were the case that applications to appeal a refusal of leave to apply for judicial review could only be heard by the Judicial Committee, that would threaten to introduce untoward delay in the process, since the process for granting special leave is likely itself to result in significant delay; and if special leave were to be granted, the appeal to the Judicial Committee would be likely to take even longer. In the absence of clear legislative language depriving the Court of Appeal of its general jurisdiction under Article 12 of the Court of Appeal (Jersey) Law 1961, the narrow construction of Regulation 14A was appropriate. 17. The decision is not conclusive in respect of the present application because at the conclusion of paragraph 12 of its judgment, the Court of Appeal indicated that: "In the circumstances we consider that Regulation 14A does not prohibit interlocutory appeals to the Court of Appeal in respect of applications for leave and was not intended to do so." [Emphasis added] 18. It seems therefore that the jurisdiction decision in *Imperium* to which I have referred leaves over the question as to whether other interlocutory appeals require one to follow the leapfrog appeal process to the Judicial Committee. 19. As I have said, on a provisional basis, I would regard the Court of Appeal's reasoning that "a judicial review to which Regulation 14 applies" should be construed narrowly extends also to applications under Regulation 14(3). I have reached this conclusion for these

reasons:

- (i) The basic structure of the Regulations is that once applications for leave for judicial review have been dismissed, or if granted the substantive applications have been dismissed, information is then transmitted to the requesting state. The ability in the Court to authorise transmission under Regulation 14(3)(b)(iii) therefore only arises in the context of applications for judicial review which are still outstanding, because an order under that subparagraph would otherwise be unnecessary. It follows that such orders ought to be regarded as interlocutory as a matter of principle. (ii) If circumstances should arise when information

is imminently to be transmitted to the foreign competent authority (either because the proceedings have been concluded or because an order has been made under sub-paragraph (iii)), it may be necessary for an urgent process to be found for such a decision to be reviewed. Where the proceedings have come to an end because the leave application has been dismissed, the applicant can appeal to this court against that decision and apply, if necessary, for a stay pending appeal. Where an order is sought under Regulation 14(3)(b) (iii), the Royal Court has a discretion to exercise as to whether the relevant order for transmission should be made, and likewise whether, if it is made, there should be a stay pending appeal. 20. Where the judicial review application has been given leave but dismissed or an order made under sub-paragraph 14(3)(b)(iii), there is a real risk if applications for a stay have to be made to the Judicial Committee. In practice it may be very difficult to get the matter before the Judicial Committee in sufficient time for the application in question to be effective. This will either lead the information to be retained by the Jersey Competent Authority for longer than is appropriate, or for the relevant appeal right to be rendered nugatory. In my judgment, there are therefore good practical reasons why the Court of Appeal should be able to exercise its appellate jurisdiction, whether in respect of an order in the court below refusing a stay on its decision dismissing the application for judicial review or on a transmission order under Regulation 14(3)(b)(iii); and correspondingly good reason why the narrower construction of Regulation 14A as adopted by this Court in *Imperium* should be applied also to applications of the current nature. 21. My provisional view is therefore that the Court does have jurisdiction in the present instance both to hear the substantive appeal (in the unlikely event it comes on) and to extend the stay pending appeal if that should be thought appropriate. The Merits 22. The decision to grant a stay only for a long enough period to get the matter before a single judge of the Court of Appeal was an exercise of discretion by the Royal Court. It follows that the usual rules for an appellate court in reviewing the exercise of an interlocutory discretion by the Court below. In *Chase Bank (CI) Trust Company Limited*

[1984] JJ 127, the Court adopted the approach that it would interfere in the decision below if: (i) The Royal Court misdirected itself with regard to the principles in accordance with which the discretion has been exercised; or (ii) The Royal Court in exercising its discretion had taken into account matters which ought not to have been taken into account or failed to take into account matters which ought to have been taken into account; or (iii) Where the decision is plainly wrong; or (iv) Where there has been a change of circumstances after the Royal Court made its order that would justify acceding to an application to vary it. This ground for interfering in the decision of the Court below would naturally apply only if the case continued, such as where interim injunctions had been imposed pending trial. 23. This established test has been applied on many occasions - see, for example, *United Capital Corporation Limited v Bender and Others*

[2006] JLR 269 , and, more recently, *HRCKY v Hard Rock Limited and Another*

[2019] JCA 123 . 24. Advocate Cook submitted, in summary, that the learned Commissioner had erred in law in his approach to the Article 6 ground, which, Advocate Cook contended, had a broader reach than that allowed by the Commissioner. In effect, he had decided the Article 6 ground without full argument on it notwithstanding that it was down to be heard in detail in the middle of next year. This was unfortunate, particularly given the comments of the majority in the Court of Appeal in *Imperium Trustees (Jersey) Limited v Jersey Competent Authority*

[2024] JCA 084 at paragraph 18, in connection with the application for leave to appeal to the Judicial Committee, that Article 2 of the 2018 Law, which prevented the Court making a costs order adverse to the Competent Authority, was incompatible with Article 6 because it inevitably involved an inequality of arms. 25. The way that the Commissioner dealt with this in his *ex tempore* remarks was to accept the submissions of Advocate Meiklejohn - this had been that where a breach of a European Convention human right was asserted, the Court would look at that allegation in a very fact-specific way. In this case, the Commissioner took the view that the Article 6 rights of the Applicant had not been infringed because, firstly, no costs order could possibly be made in its favour and secondly, because it had not in fact been restricted in any way in its access to the Court. He took the view therefore that the prospects of the Applicant's Article 6 rights having been infringed must be regarded as remote. 26. This was said by Advocate Cook to be inconsistent with the *Imperium* authority to which I have referred. 27. I am not willing to say on this interlocutory application that this was an error of law. The matter is arguable. On the one hand, it is correct that the Court of Appeal had said in the *Imperium* leave judgment

[2024] JCA 084 at

[18] that " every pound the Appellant spends is dead money " and that such a provision therefore always resulted in an inequality of arms. I simply note at this stage that there is room for the argument that the statutory provision against an award of costs in favour of an applicant for judicial review, while not ECHR compatible, does not necessarily involve a conclusion that the whole structure for giving of mutual assistance in tax matters is also incompatible. It is also correct that the majority in the Court of Appeal indicated in the same passage that this " did not always impact upon the right of access to a Court ". These are specifically the arguments which will be ventilated in the hearing in the Royal Court in the middle of next year, or possibly indeed in the submissions to the Judicial Committee in February next year when, as I am informed, an appeal against the substantive incompatibility judgment of the Court of Appeal in *Imperium* will be heard, leave being imminent. It is not appropriate that I express any concluded view on them given those future hearings. 28. If it had been clear that the Commissioner had made an error of law, I would approach this issue differently. However, I do not think that the alleged error of law has been plainly made out, and in those circumstances, I do not regard this as an appropriate basis for interfering with the exercise of discretion on this interlocutory appeal. 29. I am informed that an application by the

Applicant for permission to appeal the dismissal of the judicial review application on the non-Article 6 grounds and/or the Transmission Order to the Judicial Committee is expected to be registered by noon on 13 December, perhaps indeed by close of business on 12 December. It is expected that that application will include an application for a stay, and of course it remains possible that the Judicial Committee will consider that question in time to prevent the transmission of the documents which the Royal Court has permitted under Regulation 14(3). Be that as it may, I am not willing to say that there has been an obvious error of law which requires me to intervene at this stage. 30. The second basis upon which Advocate Cook contended that the exercise of discretion below was plainly wrong was that once the documents had been transmitted, the damage has been done and the existence of any other remedies under the Human Rights Law was irrelevant. The executive decision which had interfered with the Applicant's human rights was no longer capable of challenge. 31. I am not persuaded by that submission for two

reasons.

First of all, the nature of the power conferred on the Court under Regulation 14(3)(b)(iii) is that the documents may be transmitted despite the fact that the decision of the competent authority to issue the Notice in question might be set aside and might therefore be unlawful. The power to make such an order exists notwithstanding that the lawfulness of the Notice has yet to be determined. In conferring that power, in my judgment, the legislature must have had in mind the underlying assumption that the Notice might be unlawful. It matters not for these purposes whether it might be unlawful on judicial review because the Notice has been issued in respect of information which is not foreseeably relevant, or because there is some other ground in judicial review why that should be so, including grounds such as the Article 6 ground in this case. 32. Secondly, it is clear from the way in which the information in relation to the 2017 tax year has been treated that if the information which the Respondent has in its position in relation to the 2018 year is not transmitted in good time before 31 December 2024, it will not be capable of being used by the requesting authority in respect of any tax re-assessment for that year. I therefore face the position that if I grant the application extending a stay on the transmission of documents before 31 December, I am effectively not just allowing the appeal against the Transmission Order but in effect allowing the appeal which would go to the Judicial Committee, if leave were granted, and would bring the entire proceedings to an immediate halt because the information would no longer be of any use to the requesting authority. The result of that course of action would be that the requesting authority would not get the information requested in accordance with the Convention on Mutual Assistance in Tax Matters which is binding on Jersey despite the fact that the Respondent wished to give it the information and the Royal Court, as of now, had endorsed that decision as being lawful. 33. On the other hand I do accept that the result of finding against the submissions of the Applicant is in effect to refuse the appeal. The documents will have been transmitted and there will be no purpose in an appeal either to the Judicial Committee or in the argument on Article 6 which is to follow later next year - no purpose other than the theoretical purpose of establishing what the law is. 34. Essentially, albeit not in the context of an appeal, this

was the problem which faced the Commissioner. In his discretion, he considered that it was right to allow the documents to be transmitted. I cannot say that was a decision at which he could not reasonably have arrived. Indeed, although I do not have to go so far, it is one at which I would have arrived myself. 35. Although it is not directly germane to this issue, I also note that the disclosure of the information does not create a tax liability where there is none. The measure of the tax liability will be a matter for the Swedish tax authorities, with such protections in Sweden which the taxpayer has under the relevant legislation. Furthermore, the fact that the documents have been transmitted does not in theory prevent a decision being taken at a later stage that the Article 6 rights of the Applicant have been transgressed: if the Applicant were to continue and be successful, that could give rise to a declaration of unlawfulness and arguably to an order for damages in just satisfaction for breach of those rights. 36. For these reasons, conscious that whatever decision is made is capable of disposing, in effect, of the substantive appeal, I refuse the application for an extension of the stay on transmission of the documents. Authorities Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008. Taxation (Implementation) (Convention on Mutual Administrative Assistance in Tax Matters) (Jersey) Regulations 2014. Imperium Trustees (Jersey) Limited v Jersey Competent Authority

[2024] JCA 014 . International Co-operation (Protection from Liability) (Jersey) Law 2018. Human Rights (Jersey) Law 2000. Prah! and Triton Administration (Jersey) Limited v Comptroller of Revenue [2022]

(1) JLR 100. Imperium Trustees (Jersey) Limited v Jersey Competent Authority

[2023] JCA 057 . Imperium Trustees (Jersey) Limited v Jersey Competent Authority

[2022] JCA 196. Court of Appeal (Jersey) Law 1961. Chase Bank (CI) Trust Company Limited

[1984] JJ 127. United Capital Corporation Limited v Bender and Others

[2006] JLR 269 . HRCKY v Hard Rock Limited and Another

[2019] JCA 123 Imperium Trustees (Jersey) Limited v Jersey Competent Authority

[2024] JCA 084 Page Last Updated: 16 Dec 2024 Back to top About JLIB Accessibility Contacts Copyright Disclaimer Feedback Privacy policy Site map BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2024/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/triton-administration-jersey-limited-v-jersey-competent-authority-2024-jca-280-13-december-2024>

Prepared on 28 October 2026 · Esheria