

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2015/CLE/gen/00341

BETWEEN:

ASHLEY DAWSON-DAMER

Plaintiff

AND

(1) GRAMPIAN TRUST COMPANY LIMITED

(2) LYNDHURST LIMITED

Defendants

Before Hon. Mr Justice Ian R. Winder

Appearances: Richard Wilson QC with John Minns for the Plaintiff
Simon Taube, QC with Sean Moree and Vanessa Smith for the
First Defendant

11 February 2020

WINDER, J

1. This is my brief decision on the application by the plaintiff (Ashley) for leave to appeal the decision of this court dated 24 October 2019. In that written ruling this court found that the nature of the engagement of the Trust or Family Advisors, including Messrs. Morrison and Burns was that of professional men and that their internal working papers were theirs and not the property of Grampian. I found, *inter alia*, that such of these documents not in the custody or power of Grampian could not be ordered to be produced.
2. Ashley challenges the decision on two grounds asserting that I erred in law in coming to these findings. The test for granting leave to appeal was recently expressed in the case of *Rt. Hon Perry G. Christie and others v The Queen; The Coalition to Protect Clifton Bay and others*. According to *Isaacs JA* giving the decision of the Court:

The Court has considered this issue of leave to appeal before. The principles involved ought not to be controversial. An applicant seeking leave to appeal must show that he has a "realistic prospect of succeeding on the appeal.... the use of the word 'realistic' makes it clear that a fanciful prospect or an unrealistic argument is not sufficient." (Per Lord Woolfe MR) in *Smith v. Cosworth Casting Processes Ltd.* [1997] 4 All ER 840.

3. I have read and heard the detailed submissions of Ashley and Grampian on the leave application. Whilst, not surprisingly, I do not agree with Ashley's submissions as to an error of law, I readily accept that the test for granting leave is not so high. The test, as expressed by *Isaacs JA*, provides that I should grant leave where Ashley persuades me that her proposed arguments in the appeal are not fanciful or unrealistic. I must also accept that my view of Ashley's prospects of success on her appeal, in respect of the two grounds, is not fanciful or unrealistic.

4. Grampian argues however that I nonetheless ought to refuse leave to appeal on the basis that the appeal would serve no reasonable purpose in the context of the pleaded issues in this litigation. Grampian says:

17. At trial, the issue for the court will concern the validity of the two decisions by Grampian to make the 2006 and 2009 Appointments of trust funds in the Glenfinnan Settlement. ...

18. The issues will therefore turn on what the directors of Grampian thought and did. The documents and e-mails in the possession of Mr. Morrison and Mr. Burns are irrelevant, save to the extent that Mr Morrison and Mr. Burns sent them to the directors of Grampian.

In response, Ashley has pointed to the allegation made in paragraph 49(f) of the Amended Statement of Claim to demonstrate, what she says are, the relevance of the documents in the hands of the Trust Advisors to the pleaded claim. Section 49 (f) avers that Grampian:

took into account the personal views of its directors and the Trust Advisors towards the plaintiff (which were hostile) and allowed itself to be influenced thereby.

5. There is some merit to Grampian's argument. The pleaded claim of Ashley is for breach of duty by Grampian as trustee with respect to failures as set out in paragraph 49 of the Amended Statement of Claim. The documents in contention are the internal documents in the hands of professionals acting on behalf of Grampian. Admittedly the documents may express personal animus of the Trust Advisors to Ashley. In fact Ashley has identified documents, already in her possession, received in proceedings in the UK, which she says demonstrates the Trust Advisors' hostility. But the existence of the hostility is not Ashley's complaint in 49(f). The complaint, such as it is, relates to the actions (or inactions) of Grampian. I am not persuaded that documents or emails, for which Grampian was not a party, and which were not in (nor has been) in their custody, could be relevant

to support the pleaded claim of Grampian *taking into account these alleged personal views or allowing itself to be influenced thereby.*

6. I am reminded of the views of Lord Woolf, in his *Access to Justice Report, 1996*, which ushered in the civil procedure reforms in the UK. Lord Woolf reckoned that “two of the major generators of unnecessary cost in civil litigation were uncontrolled discovery and expert evidence”. I am constrained to maintain the position which was held at paragraph 11 of my ruling that, *if the family advisors have provided information in a document or email to Grampian, then the document will be in Grampian’s possession and if it is relevant then it will have to be disclosed to Ashley.*
7. I therefore accept the submission of Grampian that the appeal would serve no reasonable purpose in the context of the pleaded issues in this litigation. The scope of discovery ought to be relevant and connected to the issues in dispute in the litigation.
8. In the circumstances therefore leave to Appeal is refused. Ashley is well aware of the opportunity to seek leave directly from the Court of Appeal.

Dated the 13th day of February 2020

A handwritten signature in black ink, appearing to be 'I. Winder', written in a cursive style.

Ian Winder
Justice