Neutral Citation Number: [2023] CA (Bda) 18 Civ

Case No: CIV/2022/045
Case No: CIV/2022/046
Case No: CIV/2022/047
Case No: CIV/2022/048

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA
SITTING IN ITS ORIGINAL CIVIL JURISDICTION
BEFORE THE HON. MR. ASSISTANT JUSTICE IAN KAWALEY
CASE NUMBER 2018: No. 44

Sessions House
Hamilton, Bermuda HM 12
Date: 21/07/2023

Before:

THE PRESIDENT, SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL, SIR ANTHONY SMELLIE, KCMG
JUSTICE OF APPEAL, DAME ELIZABETH GLOSTER
- -

Between:

WONG, WEN-YOUNG (also known as Winston Wong)

Plaintiff/Appellant in Appeal No 48

-and-

(1) GRAND VIEW PRIVATE TRUST COMPANY LIMITED
(2) TRANSGLOBE PRIVATE TRUST COMPANY LIMITED
(3) VANTURA PRIVATE TRUST COMPANY LIMITED
(4) UNIVERSAL LINK PRIVATE TRUST COMPANY LIMITED
(5) WANG, RUEY HWA SUSAN
(6) WANG, VEN-JIAO
(7) WANG, HSUEH-MIN

Defendants/Respondents to Appeal No 47 and 48

(8) THE ESTATE OF HUNG WEN HSIUNG, DECEASED
(9) OCEAN VIEW PRIVATE TRUST COMPANY LIMITED

Defendants/Appellants in Appeals No 45 & 46

Mrs Elspeth Talbot Rice KC and Mr Dakis Hagen KC of counsel and Mr Rod S. Attride-Stirling, ASW Law Limited, for the Appellant in No. 48/the First Respondents in No. 45, 46 and 47.
Mr Richard Wilson KC of counsel and Mrs Fozeia Rana-Fahy MJM Limited ("MJM"), for the Sixth Respondent in No. 48/the Appellant in No. 47.
Mr Mark Howard KC and Mr Jonathan Adkin KC of counsel and Mr Paul Smith and Mr Scott Pearman, Conyers Dill & Pearman Limited ("Conyers"), for the First to Fourth and the Sixth Respondents in No. 47/the Appellant in No. 45/ the First to Fourth Respondents in No. 48/ the Second Respondent in No. 46.
Mr Paul Smith and Mr Scott Pearman, Conyers, also for the Seventh Respondent in No. 47/the Fifth Respondent in No. 48
Ms Lusia Olander and Ms Tildesley, Appleby (Bermuda) Limited, for the Appellant in No. 46/the Second Respondents in No. 45/the Fifth Respondent in No. 47

Hearing date: 16 June 2023

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APPROVED RULING

CLARKE P:

1. This is our ruling following the hearing on 16 June 2023 at which the parties by their counsel made submissions as to when, where and for how long the hearing in these appeals should last.

2. We have carefully considered the submissions made to us in relation to how long a hearing was either necessary or appropriate - the submissions put it between 10 and 25 days. We appreciate why, in a case of this magnitude, involving billions of dollars' worth of assets, the so far unsuccessful parties should want as much time as possible to persuade us that the

judgment below was wrong; and why they submit that it is always the winners who say that the matter can be disposed of more swiftly than the losers do.

3. In deciding what course to take we bear in mind a number of factors. First and foremost, we need to ensure that the arrangements which are made ensure that all parties have a fair hearing. Second, this is an appeal. We do not ignore the fact that the hearing at first instance took some 79 days. But the issues properly raised on any appeal are necessarily restricted. An appeal hearing lasting 15 days or more would be wholly exceptional. Third, we are not persuaded that the best course is to allot a relatively short time (4-5 days) for the Court to read in to the hearing on the basis that Counsel will then take the Court through the documents and the authorities more fully. In our view it is much better that the Court should have read the documents extensively before the commencement of the hearing, having been directed to those that are relevant; and also the authorities, having had identified to it the relevant passages. Fourth, the Court, and its members, have limited time available, The Court does not sit in permanent session. The hearing of these appeals cannot take place at any of the three regular sessions of the Court since that would unacceptably prejudice the litigants, both criminal and civil, whose cases are in the curial pipeline. Fifth, this case cannot, in the light of the commitments of counsel and the Court be heard before 2025, so that there is a long time in which the case can be prepared.

4. In the light of those considerations, the Court intends to adopt a new approach. It proposes to proceed on the following basis:

   (a) the hearing of these appeals will be set down for 10 days beginning on January 13 2025;

   (b) the court will sit from Monday to Friday in each week;

   (c) the Justices of Appeal will sit in London – we suggest at the International Disputes Resolution Centre; counsel should attend there;

(d) the Court will be convened in Bermuda in that the hearing will be broadcast to the public at a room in Bermuda which the public can attend (and they will be able to have access to the hearing on line);

(e) well prior to the hearing the appellants in each appeal will have filed their submissions; the respondents will then file theirs; the appellants will then reply to the submissions of the respondents and the respondents will reply to the submissions of the appellants;

(f) the appellants will also need to produce (hopefully by agreement) the following:

 (i) a list of the issues arising in each appeal;
 (ii) a chronology;

(iii) a family tree identifying the relationship between different members of the Wang family.

(f) in addition the parties in each appeal will have compiled an appeal bundle of documents needed for the appeal; there will, also, need to be a bundle of core documents

(g) the appeal documents and authorities will be put on line, preferably on Opus;

(h) references in the submissions to the documents and to the authorities should be hyperlinked;

(i) the passages in the documents and the authorities which are relied on should be identified;

(j) the entire documentation should be available no later than 1 November 2024.

5. In the Court's view the course which it proposes to take will be fair to all parties and will afford them more than adequate ability to present their case fully. The Court may, itself, prior to the hearing, invite further submissions on matters with which it is concerned. At the hearing (where particular days will need to be allocated to particular appeals) the parties will be at liberty to concentrate on those matters which the exchange of submissions has highlighted as crucial.

6. There are a number of other matters that need to be addressed. The Court will consist of the President and Justices Smellie and Gloster. Justice Smellie will come to stay in London. We believe that this is an expense which Bermuda should bear (as it does when non-Bermudians come to sit in Bermuda). The Court will probably require a Clerk or Assistant to be with them in London. Subject to what we say in [9] below, the expense of his or her accommodation in London and flight to London should be borne in the first instance by the parties since this is not an expense which would normally be borne by Bermuda. Similarly, the expense of arranging a hearing place in London should be borne in the first instance by the parties. The Court will decide who ultimately bears these two sets of costs when it decides on the incidence of costs of the appeal.

7. The Court is of the view that a sitting of this nature does not offend Bermuda law since the Court will in effect be in Bermuda even if the judges are participating in it from outside Bermuda. The Court draws support for that view from the observations of Mr Justice Goepel in delivering the judgment of the Court of Appeal in *Endean v British Columbia* [2014] BCCA 61 and the decision of the Canadian Supreme Court at [2016] SCC 42 – to the effect that a hearing could take place in British Columbia although the judge was present only by telephone, video conference or other communication medium. This was considered by the Privy Council in *AG of the Turks & Caicos Islands v Misick* [2020] UKPC 30. The Board did not find it necessary to reach a decision on that issue but held that the reasoning of Mr Justice Goepel "*has considerable force given evolving technology*". In our view the common law is a developing structure. We would regard it as wholly unacceptable to determine that a hearing of the type that we envisage could not take place.

8. Nevertheless, if we are to hold a hearing of that type we require the parties to undertake to the other parties in their appeal, and to the Court, that they will not hereafter seek to contend that the proceedings in the appeal were invalid because the Justices were physically in England.

9. This sitting will be a special sitting of the Court. The parties should note that the fees system may hereafter be amended to require the payment of a special fee for sittings of this nature. If that occurs, and dependent on its timing, it may be that the Bermuda will shoulder the costs to which we refer in [6] above, to be recouped from the fee for the special sitting. In that event any undertaking of the parties to bear those costs in the first instance will not need to be honoured.

10. This ruling indicates the course which the Court proposes to take. It is not yet a ruling as to what the Court **will** do. The making of that ruling will depend, inter alia, on:

(a) the parties giving the undertaking referred to in [8] above;

(b) the parties agreeing to finance, in the first instance, the journey to London of a clerk of/assistant to the court and his/her accommodation in London for the purpose of the hearing;

(c) the booking of a room (from which the hearing can be broadcast to Bermuda) – preferable at the IDRC, for the fortnight beginning January 13 2025, and the parties agreeing to bear the costs thereof in the first instance;

(d) making the necessary arrangements with Opus.

(e) confirmation that a hearing room can be made available in Hamilton which the public may attend and view the proceedings. We do not anticipate any difficulty in this respect.

11. The Court does not think it necessary now to set down a timetable for submissions and the production of appeal bundles – documents and authorities - because it expects the parties to agree a sensible sequence. If there is no agreement the Court will have to specify timeline. Similarly, the Court expects the parties to agree among themselves arrangements for the booking of, and payment for, a room, the payments of the travel an accommodation of a clerk, and the production of documents. The Court hopes that it will be possible to compile a bundle of documents which can be treated as common to all four appeals, although it appreciates that each appeal will obviously also have its own documentations (pleadings, submissions etc).

12. The Court expects the parties to be sensible in identifying what documents need to be read and what parts of them. Sometimes it may be the whole document. But the court does not want the default positon to be the whole document, or a whole day's transcript, when in truth only three paragraphs or five pages are relevant**.**

13. Similarly, the Court leaves it to the parties to decide what is the most appropriate method of identifying relevant sections – which may vary from giving the page number, highlighting a passage, or drawing a line at the side (as is often done with authorities).

14. The Court, therefore, invites the parties to confirm that they will each give the undertaking referred to in paragraph [8] above, and will, between them, be responsible for payment in the first instance of the costs referred to in [6] above.

15. On the assumption that such confirmation is given it will be necessary for the Court to make an order giving effect to what is proposed. Thereafter the parties will need to agree, if possible, a timeline for preparation of bundles and submissions. Further consideration will need to be given hereafter as to the extent to which hard copies are needed.

SMELLIE JA

16. I agree.

GLOSTER JA

17. I, also, agree.