

UPDATE

Guernsey parties have the right to appeal a judgment of the Guernsey Court of Appeal as long as the claim is worth at least £500

Update prepared by Tim Richards (Counsel, Guernsey)

In a judgment dated 5 March 2018, the Privy Council has confirmed that a party seeking to appeal a decision of the Guernsey Court of Appeal has the right to appeal to the Privy Council as long as the monetary value of the claim is at least £500 (*A (Appellant) v R (Respondent) (Guernsey)* [2018] UKPC 4).

Background

The underlying application concerned the appeal of an interim award made against a father to pay maintenance for his son made by the Court of Seneschal of Sark on 14 August 2013. The father appealed the relevant order to the Royal Court of Guernsey and subsequently the Guernsey Court of Appeal. The Guernsey Court of Appeal refused the father leave to appeal to the Privy Council. The application before the Privy Council was for special leave to appeal to the Privy Council (the **Application**).

Issue for the Privy Council to determine

The Application raised an important issue of general application, namely the circumstances in which an applicant needs permission to appeal to the Privy Council from a judgment of the Guernsey Court of Appeal.

Appeals from the Court of Appeal of Guernsey to the Privy Council

The Privy Council noted in their judgment (per Lord Hodge, paragraph 3), that 'there appears to be uncertainty in Guernsey about when an appellant needs leave to appeal to the Board from the Court of Appeal of Guernsey in civil matters'. As a result the Board invited written and oral submissions on whether special leave was required and whether it should be granted.

The relevant legislation is set out at section 16 of the Court of Appeal (Guernsey) Law 1961 (the **1961 Law**) in the following terms:

'No appeal shall lie from a decision of the Court of Appeal under this Part of this Law without the special leave of Her Majesty in Council or the leave of the Court of Appeal except where the value of the matter in dispute is equal to, or exceeds, the sum of five hundred pounds sterling.' [our emphasis]

The Privy Council held that the highlighted words were clear in their exclusion of the need for leave when the monetary value of the claim is or exceeds £500 (judgment, paragraph 4). The Privy Council further highlighted that fact that the Guernsey Court of Appeal had twice '*understandably*' sought to reform this provision for permission to appeal by refusing to grant permission unless the appeal raised an arguable point of law of general public importance, thereby bringing appeals from Guernsey into line with the practice of the jurisdictions of the United Kingdom: [*Emerald Bay Worldwide Ltd v Barclays Wealth Directors \(Guernsey\) Ltd* \(judgment 2/2014 \(unreported\) \(Emerald Bay\)\)](#) and [*Investec Trust \(Guernsey\) Ltd v Glenalla Properties Ltd* \(judgment 55/20150 \(unreported\) \(Investec\)\)](#).

The Privy Council, however, held that it did not consider that the wording of the exception in section 16 of the 1961 Law (reproduced above) could support the introduction of a test of an arguable point of law of general public importance. Section 16 of the 1961 Law, subject to the low financial test, rather provides for

an appeal as of right and the Privy Council held that '*...it is beyond the power of the courts to contradict that legislation*' (judgment, paragraph 7). The Privy Council therefore concluded that the Emerald Bay and Investec decisions had been wrongly decided.

The Privy Council also set out the limited control the Guernsey Court of Appeal and the Privy Council currently have in relation to whether or not to hear appeals from Guernsey (when the amount in issue is at least £500):

1. Leave to appeal may be refused by the Guernsey Court of Appeal or the Privy Council if the appeal is an abuse of process (judgment, paragraphs 10 and 12).
2. Leave to appeal may be refused by the Privy Council where it is clear that the appeal is wholly devoid of merit and bound to fail (judgment, paragraphs 11 and 12).

Conclusion

The Privy Council expressly stated in their judgment that there was '*merit in achieving what the [Guernsey] Court of Appeal sought to do in Emerald Bay and Investec*' (paragraph 13). The Privy Council further highlighted that the States of Jersey by the Court of Appeal (Amendment No 8) (Jersey) Law 2008 repealed similar words of exception (with a higher monetary limit) in section 14 of the Court of Appeal (Jersey) Law 1961. Such an amendment would allow the Guernsey Court of Appeal to address the appropriate test for the granting of leave to appeal.

Following the Privy Council expressly flagging how a similar issue has been successfully dealt with by the Jersey States, it seems likely that the Guernsey States will now move to amend the 1961 Law to remove the exclusion of the need for leave when the monetary value of a claim is or exceeds £500. Until this amendment, this judgment has confirmed that any party seeking to appeal a judgment of the Guernsey Court of Appeal to the Privy Council need only show that their claim has a value of £500 or over (subject to the very limited hurdles identified above). As and when any amendment to the 1961 Law is put forward we will provide a further legal update considering the implications.

Contacts

Tim Richards

Counsel, Guernsey
+44 1481 739 386
tim.richards@mourant.com

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