Neutral Citation Number [2025] CIGC (Civ) 5

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: G0136/2016

BETWEEN:

(1) ERIC BRADLEY
(2) JACQUELINE CHUANG

Plaintiffs

-and-

LINDA FRYE-CHAIKIN

Defendant

Appearances: **Mr Michael Wingrave of Dentons for the Plaintiffs**

Ms Linda Frye in person

Before: **The Honourable Justice Jalil Asif KC**

Heard: **28 October 2024**

Judgment: **28 January 2025**

Civil procedure—whether to grant leave to appeal—whether to order stay pending appeal

Use of AI tools to produce submissions—submissions including significant hallucinations—obligation on litigant to verify accuracy of any material produced using AI tools—obligation on attorneys to identify and act upon apparent hallucinations in materials produced by opponents

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JUDGMENT

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A. Introduction

1. This action concerns a claim that the Defendant is in breach of an agreement made on 27 May 2014 to sell her condo unit at Villas of the Galleon, Seven Mile Beach, Grand Cayman to the Plaintiffs for US $625,000. The Plaintiffs are represented by Mr Michael Wingrave of Dentons and the Defendant is representing herself. She informed me during the hearing that she prefers to be known as Ms Frye. At earlier times in the history of this matter, Ms Frye has been represented by HSM Chambers and by Nelsons, as well as by attorneys in Michigan, where the parties are based.

2. On 4 September 2024, I gave summary judgment on the Plaintiffs' claim for reasons set out in detail in that judgment. Ms Frye now applies for a stay of my order pending the hearing of her appeal against that decision.

B. Background facts

3. I can summarise the background facts very briefly as set out in the following sub-paragraphs. I refer to my judgment dated 4 September 2024 for a more detailed chronology of the dispute and of the proceedings in Michigan and in the Cayman Islands that it has generated.

   3.1 On 27 May 2014, Ms Frye signed an agreement to sell her condo unit at Villas of the Galleon, Seven Mile Beach, Grand Cayman to the Plaintiffs for US $625,000. She does not dispute that she did so and did so without reading the document, which she clearly regrets. Ms Frye asserts that the First Plaintiff obtained her signature by misrepresenting the nature of the document and by assuring her that it was not legally binding; that it did not contain the terms that she had agreed with the First Plaintiff; that it was backdated and the purported witnesses were not present when it was signed; and she was forced to sign due to economic duress. Amongst other complaints, she argues that the contract was voidable and expired, and that she was justified in not completing the sale.

   3.2 The Plaintiffs issued their writ on 22 July 2016. On 17 August 2016, McMillan J gave leave to serve Ms Frye in Michigan, USA. On 16 December 2016, Ms Frye filed an Acknowledgement

of Service indicating that she intended to defend the claim. Following a contested hearing on 29 August 2017, on 25 April 2018 Carter J (Ag) stayed the Cayman action on Ms Frye's application that Michigan was the more appropriate forum.

3.3 The Plaintiffs therefore commenced proceedings in Michigan and, on 8 August 2019, obtained summary judgment against Ms Frye. The Michigan court ordered specific performance of the agreement. On 28 January 2021, the Michigan Court of Appeals dismissed Ms Frye's appeal. On 1 June 2021, the Michigan Supreme Court refused Ms Frye's application for leave to appeal.

3.4 In the meantime, following the first instance decision in Michigan, on 25 March 2020 Carter J (Ag) gave directions to allow the Cayman action to proceed, subject to the determination of Ms Frye's then outstanding appeal in Michigan.

3.5 In August 2021, Ms Frye filed her Defence in the Cayman proceedings, the Plaintiffs filed a Reply and Ms Frye filed an Addendum to Defence.

3.6 On 21 January 2022, the Michigan court ordered Ms Frye to sign certain documents regarding her strata account. On 3 March 2022, the judge refused Ms Frye's application for reconsideration of that order.

3.7 On 24 August 2023, the Michigan court ordered Ms Frye to sign a formal sale agreement to complete the sale of the condo unit to the Plaintiffs and ordered that the court would sign the document on her behalf. The judge signed the sale agreement on Ms Frye's behalf the same day.

3.8 On 26 October 2023, the Plaintiffs applied in the Cayman proceedings for summary judgment. I heard argument on 30 April 2024 and, as mentioned earlier in this judgment, acceded to the Plaintiffs' application and gave summary judgment on 4 September 2024. In my judgment, I summarised, considered and rejected the various complaints that Ms Frye has about the conduct of the proceedings in Cayman and in Michigan, and her belief that there was pervasive corruption endemic in the Michigan judicial system that enabled the Plaintiffs to succeed on their claims in Michigan.

4. On 13 September 2024, Ms Frye indicated that she intends to appeal and to seek a stay of my order in the meantime. On 17 September 2027 she filed a summons for a stay pending an appeal. Following some back and forth regarding the time estimate and availability, the hearing of Ms Frye's application was listed for 28 October 2024.

C. The parties' contentions

5. Mr Wingrave reminds me that Ms Frye requires leave to appeal because an order for summary judgment is treated by the Court of Appeal Rules as an interlocutory order. Mr Wingrave notes that Ms Frye's summons is formally limited to seeking a stay pending appeal. He says that Ms Frye has not filed any Notice of Appeal but he advances the Plaintiffs' arguments on the basis that Ms Frye should be taken to be seeking leave to appeal from me. Upon checking the court file, it appears that Ms Frye did in fact file a Notice of Appeal before the Court of Appeal on 17 September 2024. Therefore, I will treat her summons as including an application for leave to appeal as well as seeking a stay pending appeal.

6. The Plaintiffs' position is that I should refuse leave to appeal because Ms Frye's intended appeal has no realistic prospect of success. On that footing, the Plaintiff argues that there is no basis for me to order a stay and, in any event, Ms Frye has not satisfied the good cause or good reason test for a stay. Further, the Plaintiffs respond to Ms Frye's complaint that she would suffer irreparable harm if the Plaintiffs are allowed to enforce the order for summary judgment by arguing that they could transfer title to the condo unit back to Ms Frye and pay any appropriate compensation if her appeal were ultimately to be successful. Yet further, the Plaintiffs argue that the possibility that Ms Frye's appeal would be rendered nugatory without a stay is not determinative and is only one factor in the overall balance to be struck. The Plaintiffs argue that the merits of Ms Frye's appeal are very weak, that Ms Frye has successfully delayed the resolution of the Plaintiffs' claims for nearly 10 years and that it would be wrong to deprive them of the fruits of their efforts after so long.

7. At the hearing, Ms Frye handed up some written submissions entitled *"application for appeal"* and a second document entitled *"flaws in judgment"* and read the majority of the first document to me, taking up the majority of the time estimated for the hearing. As a result, Ms Frye was not able to complete everything that she wished to say within the time set aside for the hearing. I therefore indicated that I would read Ms Frye's *"flaws in judgment"* after the hearing and before preparing my judgment.

8. Following the hearing, Ms Frye then sent a number of further emails and documents to the Court repeating arguments that she has previously made on the merits of the Plaintiff's claim or seeking to advance further points in support of her position. I have read those materials before preparing this judgment.

D. Decision on summons

9. Ms Frye's submissions do not engage with the reasons why I concluded that I should grant summary judgment, she simply repeats again the same arguments that she has previously advanced before me that go to the merits of the underlying dispute between Ms Frye and the Plaintiffs. She does not deal with the crucial question of issue estoppel, which was the basis for my decision to grant summary judgment. Ms Frye has not put forward any material or arguments to persuade me that her intended appeal has a realistic prospect of success. I therefore refuse leave for Ms Frye to pursue an appeal.

10. As far as the question of a stay of execution pending appeal is concerned, I bear in mind the lack of merit in Ms Frye's position, with the result that, in my judgment, her appeal is extremely unlikely to succeed. I also take into account that the Plaintiffs have effectively been kept out of the benefit of the bargain that they struck with Ms Frye for the last 10 years or so. On the other hand, I understand from correspondence from Ms Frye that there is a possibility that her appeal, or application for leave to appeal, may be heard in May 2025 so that if I order a stay then the further delay for the Plaintiffs may be relatively short in duration.

11. Finally, it seems to me that the only situation in which Ms Frye could possibly be irretrievably prejudiced, if I refuse a stay and if she succeeds on her intended appeal, would be if the Plaintiffs were to sell the condo unit in question before the appeal were to be determined. Mr Wingrave indicated in argument that that is not the Plaintiffs' intention.

12. Weighing all these factors, my decision is that, on the basis that the Plaintiffs will not take any steps to sell the condo unit until determination of Ms Frye's intended appeal, there should not be any stay of my substantive judgment.

E. The use of an AI tool to prepare the Defendant's submissions

13. Finally, it is necessary that I address an important aspect of the submissions that Ms Frye sought to put before the Court and to rely upon.

14. One of the post-hearing emails from Ms Frye dated 8 November 2024 includes a section headed *"Submission in Support of Appeal"*. This text contains a number of apparent errors or misunderstandings. For example, it refers repeatedly to GCR O.59, which it says is applicable to

appeals, but there is no such Order within the Grand Court Rules; it purports to cite reported cases from the Cayman Islands Law Reports that simply do not exist; and it characterises my judgment on the Plaintiffs' application for summary judgment as being an order to enforce the judgment of the Michigan court, which it is not, and makes arguments on that erroneous basis.

15. The Plaintiffs have not engaged with the content of Ms Frye's *"Submission in Support of Appeal"*. They simply argue that Ms Frye's emails repeat what she has already said in response to the application for summary judgment and in support of her application for a stay pending appeal, and should not make any difference to the Court's determination of the application.

16. When I read Ms Frye's document, I considered that the errors in it were of a kind that suggested they were hallucinations created as the result of Ms Frye using an AI tool to help her prepare the submissions. The Court was therefore obliged to follow up with Ms Frye to try to identify by whom and how this text had been prepared. In particular, the Court wished to know whether an AI tool had been used and, if so, what steps had been taken to verify the accuracy of what was submitted.

17. Ms Frye did not promptly respond to the Court's enquiries, saying that she was busy with preparations for the Christmas holidays. This required the Court to follow-up with her on several occasions. On 20 December 2024, Ms Frye provided her first substantive response to the Court's queries. She wrote that because she does not have funds to pay an attorney, she sometimes uses the law library at the University of Michigan Law School. She continued:

> *"... I did not use any Chat Gdp or AI. I have no idea what that is or how to use it. However, I did get some help from a student who I explained my case to, read my letter, and she quickly generated some info for me. I don't know if law students use AI or not; Possibly, since they are young and know all the new technologies available."*

18. In response to a further query from the Court, and after further delays on her part, Ms Frye responded on 17 January 2025 that she did not know the identity of the law student who had helped her and had not seen her again in the law library. Ms Frye said that she assumed that the lady was a graduate student but she could have been a young lawyer. Ms Frye said that the lady had typed something into the computer and had generated the text but Ms Frye does not know whether the lady used an AI tool:

> *"I read the statements which were all correct, but I have no idea where the examples of Cases came from. I didn't see her looking up case examples. The computer must have referenced them. I don't know if she used any AI or not. I didn't ask her. ... I don't know what Chat GPS is, I thought what she wrote was good; I changed & deleted a couple mistakes & submitted it. ..."*

19. Given that the *"Submission in Support of Appeal"* refers to GCR O.59, which does not exist, and to cases purportedly reported in the CILR, that also do not exist, I have no hesitation in concluding that whoever it was who assisted Ms Frye with preparing that document used an AI tool to do so and failed to check the accuracy of what was produced. Ms Frye's statement that the statements were *"all correct"* is clearly wrong, and I conclude that Ms Frye did not check its accuracy either. As a result, the *"Submission in Support of Appeal"* contains a number of hallucinations and erroneous material that does not assist the Court and risks leading it astray.

20. The potential issues caused by using AI tools are not new. Most attorneys are well aware of the case in June 2023 before Judge Kevin Castel in the Southern District of New York, where he sanctioned two attorneys for submitting a brief drafted by ChatGPT which contained references to a number of non-existent case law authorities. Judge Castel explained that *"there is nothing inherently improper about using a reliable artificial intelligence tool for assistance,"* but considered that the attorneys had not complied with their responsibilities by failing to check the brief for accuracy and had then sought to hide their failings.

21. In the recent English case of *Harber v HMRC* [2023] UKFTT 1007 (TC) the applicant submitted a document to the tribunal referring to 9 purported authorities that did not exist. The tribunal dismissed her appeal on the merits. Judge Redston, referring to Judge Castel's opinion, included the following passages in the tribunal's judgment:

> *"5. In coming to that decision, we did not take into account her reliance on the AI cases. In other words, our decision would have been the same if Mrs Harber had not provided the cases in the Response. Nevertheless, providing authorities which are not genuine and asking a court or tribunal to rely on them is a serious and important issue. …*
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> *…*
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> *23. Although we have accepted that Mrs Harber did not know the AI cases were not genuine, we reject her submission that this did not matter because the Tribunal had decided other reasonable excuse cases on the basis of ignorance of the law and/or mental health issues. We instead agree with Judge Kastel, who said on the first page of his judgment (where the term 'opinion' is synonymous with 'judgment') that:*
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> > *'Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the … judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.'*
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> *24. We acknowledge that providing fictitious cases in reasonable excuse tax appeals is likely to have less impact on the outcome than in many other types of litigation, both because the law*

> *on reasonable excuse is well-settled, and because the task of a Tribunal is to consider how that law applies to the particular facts of each appellant's case. But that does not mean that citing invented judgments is harmless. It causes the Tribunal and HMRC to waste time and public money, and this reduces the resources available to progress the cases of other court users who are waiting for their appeals to be determined. As Judge Kastel said, the practice also 'promotes cynicism' about judicial precedents, and this is important, because the use of precedent is 'a cornerstone of our legal system' and 'an indispensable foundation upon which to decide what is the law and its application to individual cases', as Lord Bingham said in* Kay v LB of Lambeth *[2006] UKHL 10 at [42]. …"*

22. I echo those sentiments insofar as the Cayman Islands are concerned. There is nothing inherently wrong about using technology to make the conduct of legal disputes more efficient and their resolution speedier, including using AI tools. However, it is vital that anyone who uses such an AI tool verifies that the material generated is correct and ensures that it does not contain hallucinations – in other words that statutes, procedural rules and case law authorities that are referred to exist and say what they are asserted to say, and that principles of law are accurately stated. Users of AI tools must take personal responsibility for the accuracy of the material produced, and be prepared to face personal consequences, including the possibility of wasted costs orders, if the work product that they put forward to the Court is not accurate.

23. This is because failing to take these obvious precautions gives rise to the kinds of harms identified by Judge Castel and Judge Redston, namely wasting the time of the opponents and the court; wasting public funds and causing the opponent to incur unnecessary costs; delaying the determination of other cases; failing to put forward other correct lines of argument; tarnishing the reputations of judges to whom non-existent judgments are attributed; and impacting the reputation of the courts and legal profession more generally.

24. In this case, the Court has had to spend many hours considering Ms Frye's *"Submission in Support of Appeal"*; seeking to identify whether the cases referred to are real but incorrectly cited or are hallucinations; corresponding with Ms Frye to get to the bottom of how her submission was produced, and whether or not it is accurate and reliable; and addressing this issue in this judgment. None of this time has advanced the determination of the underlying issues in this case. To the contrary, it has delayed the finalisation of this judgment by at least two months. Moreover, it has diverted the Court from giving attention to other cases and has delayed preparation of other judgments as a result. In short, this entire episode has generated significant wasted effort by Ms Frye and has wasted significant amounts of Court time, with a knock-on effect on other litigants.

25. As the use of AI tools in the conduct of litigation increases, it is vital that all counsel involved in the conduct of cases before the courts are alive to the risk that material generated by AI may include errors and hallucinations. Attorneys who rely on such material must check it carefully before presenting it to the court. But equally, opponents should be astute to challenge material that appears to be erroneous, as was the case here. As officers of the Court, in my view, an attorney's duty to assist the Court includes the duty to point out when their opponent is at risk of misleading the Court, including by reference to non-existent law or cases.

26. I will hear the parties further on the question of the costs of Ms Frye's summons.

Dated 28 January 2025

THE HONOURABLE JUSTICE JALIL ASIF KC

JUDGE OF THE GRAND COURT