



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**G 184 of 2019**

**MCGRATH TONNER (A FIRM)**

**Plaintiff**

**AND**

**KHATIDJA MCLEAN**

**Defendant**

**IN CHAMBERS**

**Appearances:** Mr Ben Tonner QC and Mr Jonathan Casey of McGrath Tonner for the Plaintiff  
Ms Khatidja McLean, Defendant in person.

**Heard:** 31 May 2022

**Decision:** 31 May 2022

**Written Reasons  
Delivered:** 8 June 2022

**HEADNOTE**

**Leave to appeal, factors to take into consideration.**

**REASONS FOR DECISION**

1. At a hearing on 18 January 2022, I gave oral judgment declining to set aside the default judgment against the Defendant and indicating that, in the exercise of my discretion pursuant to GCR O19 r.9, I was going to vary the judgment to provide a mechanism for what in effect would be an indemnity taxation of the Plaintiff's unpaid professional fees which form the basis of the claim against the Defendant. At the request of the parties, on 1 February 2022 I provided written reasons for that decision.



2. The Plaintiff now seeks leave to appeal against that decision. At a hearing on 31 May 2022, having read the submissions of Mr Tonner QC on behalf of the Plaintiff and heard from him briefly, I indicated that I did not think that this is an appropriate case in which to give leave to appeal and these are my detailed reasons for that decision.
3. Pursuant to Section 6 (f) of the Court of Appeal Act (2011 Revision) leave is required to appeal against an interlocutory judgment or order. Section 12 (6) of the Court of Appeal Rules (2014 Revision) sets out what judgments and orders shall be treated as interlocutory for the purposes of an application for leave to appeal including “*an order setting aside or refusing to set aside another judgment or order (whether such other judgment or order is final or interlocutory)*”<sup>1</sup>.
4. The Plaintiff seeks leave to appeal on the basis that:
  - 4.1 Having found inter alia that it would be unfair to set aside the default judgment, the decision to order a taxation of the judgment debt was wrong in principle and/or a decision to which no judge properly directing himself to the law and relevant procedure could have come.
  - 4.2 That I wrongly ordered a procedure which the Court is not empowered to do.
  - 4.3 That I failed to apply the relevant principles to the extent that the exercise of my discretion miscarried.
5. The Plaintiff says that the debt owed by the Defendant is a contractual debt owed between a creditor and a debtor. Consequently, they say that the judgment debt was not susceptible to the process of taxation and the fact that the underlying debt relates to the provision of legal services does not invoke the Court’s jurisdiction to order taxation of the quantum of the debt.
6. During the course of this hearing it was confirmed by Mr Tonner that, as provided for in the judgment as varied, on 28 January 2022 the Defendant wrote to his firm with comments on the time for which she had been charged and offered to pay the sum of CI\$19,000 against a total of CI\$32,348.50. This amounts to approximately 60% of what she was billed, leaving a disputed balance of CI\$13,348.50.
7. When dismissing the Defendant’s application to set aside the judgment, I did so pursuant to GCR O19, r 9 which provides the court with a discretion to set aside or vary default judgments. I

---

<sup>1</sup> S12 (6) (aa)



exercised my discretion on the basis that the Defendant accepted that she owed the Plaintiff some money but disputed the amount that it was reasonable for her to have to pay. In my view, in the circumstances of this case, the order that I made was the fairest approach to the resolution of that issue with the intention of avoiding the continuation of what could be time consuming and expensive litigation, whilst still allowing the Plaintiff the benefit of a judgment for an amount that was ultimately agreed or assessed as reasonably due to them.

8. It must be the case that a Cayman Islands attorney at law accepts that their fees should be reasonable<sup>2</sup>. In this case, in the face of genuine complaints about sums charged to the Defendant, the fairest way to ensure that the standard of reasonableness is achieved is to order as I did. That is not that the costs are taxed pursuant to GCR O. 62 but rather that they are assessed on the same basis as if they were being taxed using the same procedure provided for in that Order, taking advantage of the experience of the court taxing officer in that regard. On the basis of the facts in this case, in my view that decision gives effect to the overriding objective of the Grand Court Rules which is to enable the Court to deal with every cause or matter in a just, expeditious and economical way.
9. The principles that the Court should apply when considering an application for leave to appeal have been helpfully set out by Doyle J in a recent group of matters<sup>3</sup>. The judge referred to the case of *Telesystem International Wireless Incorporated v CVC/Opportunity Equity Partners L.P.*<sup>4</sup> which set out the test to be applied”

*“The general test if whether leave to appeal should be granted is: Does the appeal have a real (i.e. realistic, not fanciful) prospect of success? .... In exceptional circumstances leave will be granted even where no such prospect exists if the appeal involved an issue which should be examined by the Court of Appeal in the public interest, e.g. when a public policy issue arises or a binding authority requires reconsideration. The relative significance of the issues and costs necessary to examine them will be a relevant factor.*

*In an appeal on a point of law (including on the ground that a finding or the lower court is unsupported by evidence), leave should not be granted unless the court considers there is a real prospect that the Court of Appeal will come to a different conclusion that will materially affect the outcome of the case...*

---

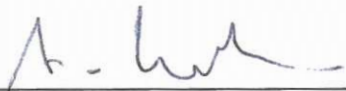
<sup>2</sup> Code of Conduct for Cayman Islands Attorneys- at-law introduced by the Cayman Islands Legal Practitioners Association Chapter 3 - Relations: Attorneys and Clients, Rule 3.01.

<sup>3</sup> Abbreviated *Chia Hsing Wang v Credit Suisse AG and Credit Suisse London Nominees Ltd* FSD 262 of 2021, 10 May 2022

<sup>4</sup> 2001 CILR N-21.

*If the court is unsure whether leave should be granted, it should then refuse leave and allow the Court of Appeal to decide the matter.”*

10. My reasons for judgment were circulated to the parties in draft on 26 January 2022. The parties were given 7 days in which to provide any comments and neither party did so. On the 1 February 2022 the reasons for judgment were then signed, sealed and published. On 22 February 2022, the Plaintiff wrote to the court raising the issues which form the basis of its appeal and inviting me to revisit my decision, which I declined to do.
11. I should add that the judgment that I gave was not based on relief sought by Ms McLean who was acting in person. Although Ms McLean appears at this hearing she did not have any submissions to make about the application for leave.
12. Following the principles as confirmed in *Chia* and being sensitive to the fact that the application for leave to appeal is against my own reasons for judgment, my views are as follows:
  - 12.1 I am not of the view that the appeal against the exercise of my discretion has a real prospect of success;
  - 12.2 I am not of the view that the issues in this case warrant the scrutiny of the Court of Appeal;
  - 12.3 The costs being incurred in pursuing the appeal are disproportionate when set against what is the disputed balance of the legal fees (some CI\$13,348.50) and this is certainly not a case in which, in my view, Ms McLean should be put at any costs risk arising on an appeal as a result of my judgment.
  - 12.4 I do not think that there is a point of law at issue in this case in relation to which the Court of Appeal is likely to come to a different conclusion that will materially affect the outcome of the case.
13. For the reasons given, I do not grant leave to appeal.



**Hon Justice Alistair Walters (Actg.)  
Judge of the Grand Court**