



**IN THE COURT OF APPEAL, CIVIL DIVISION
APPLICATION FOR A SECOND APPEAL**

REF: B3/2019/1611/PTA



HARRIS –v– BROWNE

Decision on an application for a second appeal. The Judge will not give permission unless he or she considers that (a) the appeal would i) have a real prospect of success; and ii) raise an important point of principle or practice; or (b) there is some other compelling reason for the Court of Appeal to hear it.

ORDER made by the Rt. Hon. Lord Justice McCombe

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal and a stay of execution

Decision:

Permission to appeal is refused.

An order granting permission may limit the issues to be heard or be made subject to conditions

Reasons

The appeal has no real prospect of success. The parties agreed that the Judge was required to apply the Overriding Objective. He did so entirely properly at paragraph 72 of the judgment onwards. That assessment of how the Overriding Objective applied in this case is not capable of successful challenge in this court. Further, the case raises no important point of law or practice. As the judge points out, the decision turned entirely upon the very particular facts of this case and gives rise to no general issue of importance. I agree with the points made in the Respondent's PD Paragraph 19 Statement.

I reach this conclusion with no regret whatsoever, so avoiding what would obviously be a monstrous injustice. I agree with the Judge (in paragraph 75) that it is the Defendant's side in this case that has engendered the "satellite litigation". It could easily have been avoided in the manner pointed out by the judge.

Information for or directions to the parties**Mediation:** Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

Pilot categories:

- | | |
|---|---|
| <ul style="list-style-type: none"> • All cases involving a litigant in person (other than immigration and family appeals) • Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. • EAT Appeals • Residential landlord and tenant appeals |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot?

Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation?

Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

Signed:

Date: 13.12.2019

Notes

(1) Permission to appeal will only be granted in respect of second appeals if the court considers that:

- (a) the proposed appeal would have a real prospect of success and would raise some important point of principle or practice; or
- (b) there is some other compelling reason for the relevant appellate court to hear the appeal.

By the Court

In respect of second appeals from the county court or High Court, see CPR 52.7.

In respect of appeals from the Upper Tribunal, see Article 2 of the Appeals from the Upper Tribunal Order 2008 (SI 2008/2834).

- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **B3/2019/1611/PTA**

DATED 13TH DECEMBER 2019
IN THE COURT OF APPEAL

ORDER

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