Brazil v Durant 5-Jun-2013 05-Jun-13

Jurisdiction:	Jersey
Judge:	James W. McNeill, Jonathan Crow, Sir David Calvert-Smith, Kt., McNeill, Crow and Calvert-Smith, JJ.A.
Judgment Date:	05 June 2013
Neutral Citation:	[2013] JCA 107
Reported In:	2013 (1) JLR 273
Date:	05 June 2013
Court:	Court of Appeal

vLex Document Id: VLEX-793784093

Link: https://justis.vlex.com/vid/brazil-v-durant-5-793784093

Text

[2013] JCA 107

COURT OF APPEAL

Before:

James W. McNeill, **Q.C., President** Jonathan Crow, **Q.C., and** Sir David Calvert-Smith, Kt.

Between
1) The Federal Republic of Brazil
(2) The Municipality of Sao Paulo
Respondents/Plaintiff
and
(1) Durant International Corporation
(2) Kildare Finance Limited
Applicants/Defendants

and

(1) Deutsche Bank International Limited
(2) Deutsche International Custodial Services Limited
(3) Deutsche International Corporate Services Limited
(4) Deutsche International Trustee Services (CI) Limited
Parties cited

Advocate D. S. Steenson **for the Applicants**.

Advocate E. L. Jordan **for the Respondents**.

Authorities

Leeds v Weston and Levi [2012] JCA 088.

Fraud — applications for leave to appeal to Privy Council and costs.

THE PRESIDENT:

1 We have before us applications, arising out of our substantive judgment, in respect of leave to appeal to the Privy Council and in respect of expenses.

2 Advocate Steenson, on behalf of the Applicants — as they were before us — seeks leave to appeal. The matter sought to be addressed on appeal is the issue of tracing and, in particular, what has be described as ***"backwards tracing".***

3 Advocate Steenson submits that the Plaintiffs' case was specifically put on the basis that backwards tracing applied and seeks to take issue with the approach of this Court to the effect that it was sufficient for the Plaintiffs to establish a *"link"* or nexus between, here, the funds in Chanani and the funds in Durant and that the Courts of Jersey need not adopt the concept of backwards tracing as the only evidential approach.

4 In our view the matter which is sought to be addressed on appeal here is one as to the nature of evidence appropriate to enable a court to find that a particular fact had been established. Even tracing rules are properly characterised as rules of evidence. The law of Evidence is pre-eminently one for the principal courts of this jurisdiction. The proposed issue does not raise a legal question of such general public importance that leave should be granted by this court for it to be sent for consideration by the Privy Council. We therefore refuse to grant leave to appeal.

5 Advocate Jordan on behalf of the Respondents submits that in all the circumstances

indemnity costs are the most appropriate order in relation to the compound interest appeal. She relies on the concept of unreasonableness in conduct of the action as set out in, among others, *Leeds v Weston and Levi* [2012] JCA 088, paragraphs 4–7.

6 She referred us to the fact that the appeal was served four days late, on the 21 February, two weeks prior to the substantive appeal being heard by the Court of Appeal. The Respondents therefore had to prepare submissions in response in 7 days, whilst also preparing for the substantive appeal. This necessarily diverted resources and time, causing prejudice to the Respondents and additional cost.

7 In addition, there were no reasons given to explain why the Appellants took from the 17 January to the 21 February to lodge the Notice of Appeal. No indication was provided to the Court of Appeal providing an acceptable explanation for the delay particularly when there was nothing new in the Notice of Appeal.

8 We refuse the application. The delay was minimal, and had no real impact on the hearing or the outcome. In our view it cannot be characterised as ***"unreasonable conduct"***, as that term is used in the authorities on indemnity costs.