

## Broere and Ors v Mourant and Company and Ors

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Deputy Bailiff
<b>Judgment Date:</b>	03 December 2003
<b>Neutral Citation:</b>	[2003] JCA 222
<b>Reported In:</b>	[2003] JCA 222
<b>Court:</b>	Court of Appeal
<b>Date:</b>	03 December 2003

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### Text

[2003] JCA 222

### COURT OF APPEAL

Before:

M.C. St.J Birt, **Esq., Single Judge**

In the Matter of an appeal by the Third Respondent/Appellant from the Judgment of the Royal Court of 22nd July, 2003, whereby by the Third Respondent/Appellant was ordered to swear a further Affidavit within twenty-one days of the said Order appending a list of documents to include those documents described in paragraphs 2 and 3 of Part II of Schedule I to the list exhibited as "CB2" to the Third Respondent/Appellant's Affidavit, sworn on 1st May, 2003.

Between  
Jacobus Broere  
Representor/Respondent  
and  
Mourant & Co (Trustees) Limited

First Respondent

and

Fusina Trust Co. Limited

Second Respondent

and

Cornelis Broere

Third Respondent/Appellant

and

Elizabeth Broere

Fourth Respondent

and

Jacoba (Jacqueline) Broere

Fifth Respondent

and

Cornelia A.K. Broere

Sixth Respondent

**Advocate M.J. Thompson for the Representor/RESPONDENT;**

**Advocate R.J. Michel for the Third Respondent/APPELLANT.**

**Authorities.**

[\*Glazebrook v Housing Committee\*](#) (13th November, 2002) Jersey Unreported; [2002/217].

[\*Re S Settlement\*](#) (24th July, 2001) Jersey Unreported; [2001/154].

**Application by the Third Respondent/APPELLANT: (1) under Article 13(e) of the Court of Appeal (Jersey) Law, 1961, for leave to appeal against the said Order of the Royal Court of 22nd July, 2003; and (2) under Rule 15 of the Court of Appeal (Civil) (Jersey) Rules, 1964, for a stay of execution of the said Order, pending the hearing of the application for leave to appeal, and if leave be granted, pending determination of the appeal itself.**

Deputy Bailiff

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**THE**

- 1 This application for leave to appeal was due to be heard by me on 8th December. The respondent's advocate has filed contentions but has indicated that he will not be appearing on 8th December in order to save costs. I have now had the opportunity of reviewing the materials supplied to me and have decided to deal with the application on the papers without the need for a hearing.
- 2 I would normally be slow to grant leave to appeal on a matter of discovery. Such matters are principally for the discretion of the court at first instance and, as Mr Thompson submitted in his contentions, leave should only be granted in such interlocutory matters where there is a clear case of something having gone wrong (see [Glazebrook v Housing Committee](#) (13th November, 2002) Jersey Unreported; [2002/217]).
- 3 However it is also appropriate to grant leave to appeal where an application raises matters of wider significance. I consider that the issues raised in the appellant's contentions fall within this category and justify the attention of the Court of Appeal. One can imagine not dissimilar situations arising again in the future and the views of the Court of Appeal, albeit no doubt that each case may ultimately turn on its own facts, would be of assistance to the profession and to the Royal Court. I therefore grant leave to appeal.
- 4 Mr Thompson has submitted that, if leave to appeal were to be granted, leave nevertheless to be refused in relation to ground 3 contained in the notice of appeal. For my own part I am not impressed with ground 3 but I think it is difficult to separate it out completely from the more general submissions of the appellant on the position of the appellant as settlor/beneficiary/director of other trusts or companies. Furthermore the same argument was made by the appellant before the Royal Court, although the Royal Court did not consider this argument in its judgment. Mr Thompson goes on to submit that, if I do not refuse leave on this ground, the respondent should be granted leave to file an affidavit dealing with the purposes of bringing the summons seeking compliance with the order for discovery. I am not entirely certain that such an affidavit would assist the Court of Appeal in its decision but if the respondent wishes to do so, I grant him leave to file such an affidavit within 21 days.