Civil Registry

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

Cause No.: G 65 of 2018

BETWEEN

PHILLIP BRADLEY HINDS

Plaintiff

AND

CONYERS DILL & PEARMAN (A Firm)

Defendant

CHAMBERS

Appearances: Mr. Robert Ham QC instructed by Ms. Sarah Dobbyn of Sinclairs for the Plaintiff
Mr. Graham Chapman QC instructed by Mr. Paul Smith and Mr. Erik Bodden of Conyers Dill & Pearman for the Defendant

Before: **The Hon. Justice Ingrid Mangatal**

Heard: **30 and 31 January 2019**

Draft Judgment Circulated: **6 August 2019**

Judgment Delivered: 14 August 2019

GRAND COURT · CAYMAN ISLANDS GOVERNMENT · 18/17

HEADNOTE

Civil Practice and Procedure - Striking Out - Order 18, Rule 19(1) of the GCR - whether claim an abuse of process - whether frivolous or vexatious - whether collateral attack on judgment - whether manifest unfairness to party to litigation - whether claim would bring the administration of justice into disrepute

JUDGMENT

Introduction

1. On 30 and 31 January 2019 two summonses came before me for hearing. The first was that of the Plaintiff, Phillip Bradley Hinds (**"Mr. Hinds"**). This summons dated 2 May

2018 (the "**May 2018 Summons**") sought the determination of preliminary issues of law pursuant to the ***Grand Court Rules*** 1995 (Revised Edition) (**"*the GCR*"**), O.14A. The first paragraph of the May 2018 Summons originally asked this Court to say what, on a true construction, a Cayman Islands Court of Appeal (**"CICA"**) judgment dated 20 November 2015 meant in relation to certain issues. The second was the Defendant, Conyers Dill & Pearman (A Firm)'s ("**Conyers"**) summons, (the "**Strike out Summons**") dated 18 September 2018 seeking to strike out the Writ and Statement of Claim.

2. After one day of hearing submissions in respect of the May 2018 Summons from Mr. Ham QC on behalf of Mr. Hinds, and after Mr. Chapman QC had already begun his submissions in response on behalf of Conyers, the proceedings were adjourned to continue the next day. Extraordinarily, at the start of the second day Mr. Hinds' attorneys produced to the court a draft amended summons, seeking to amend the May 2018 Summons in very substantial terms. Conyers understandably objected very strenuously, and accordingly, following hearing submissions from both sides, on the morning of 31st January 2019 I ruled as follows:-

> "*The Plaintiff's summons dated 2 May 2018 and draft Amended Summons "filed" 31 January 2019, seeking leave to amend summons dated 2nd May 2018, are adjourned pending the determination of the Defendant's summons to strike out dated 18th September 2018;*
>
> *Costs thrown away in respect of the adjournment are awarded to the Defendant to be taxed if not agreed.*"

3. Accordingly, this resulted in only one application being properly before the Court for hearing; the Strike out Summons. I proceeded to hear this application and at the conclusion I reserved judgment. This is my judgment in relation to the Strike out Summons.

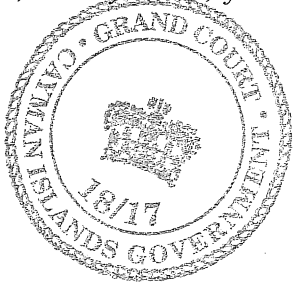
The Strike Out Summons

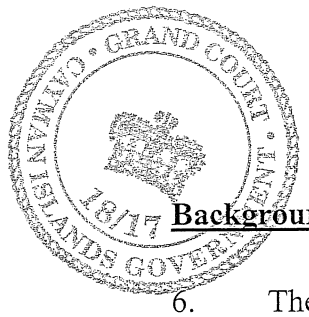
Conyers' Arguments

4. The Strike out Summons seeks an order, pursuant to ***GCR*** Order 18, Rule 19(1) and/or the inherent jurisdiction of the Court, striking out the Writ and Statement of Claim in whole or in part on the grounds that they are (a) frivolous and vexations and/or (b) an abuse of process. It is Conyers' position that Mr. Hinds' claims in the present proceedings represent an impermissible attack on the findings, judgment ("**the GC Judgment**") and order of Foster J in Cause No. FSD 104 of 2011 (AJEF), such that these proceedings should be struck out.

5. While the Original Action has a long and complex history and gives rise to a number of issues of fact and law, Mr. Chapman QC submits that the correct analysis of the present proceedings is relatively straight-forward and can be summarised as follows:

> "*(a) The Plaintiff ("**Mr. Hinds**") claims that the Defendant ("**Conyers**") negligently failed to advise him of the true limitation position in relation to one of the many claims that he brought in the Original Action and that, properly advised, he would have brought that claim in time and that claim would have succeeded.*
>
> *(b) The fundamental difficulty with this claim which renders it an abuse is that the claim failed in the Original Action on multiple grounds <u>in addition</u> to limitation such that the claim in the present proceedings relies on showing that the claim in the underlying proceedings would have succeeded even though (limitation aside) it was found by Foster J to be bad in law and on the facts.*
>
> *(c) In other words, the claim in the present proceedings necessarily depends on the contention that the findings and judgment of Foster J were wrong. Accordingly, the present claim is a clear attack on the undisturbed findings of Foster J and is an abuse of process. In such circumstances, it is not only hopeless but, in any event, falls to be struck out."*





Background to the Claim Against Conyers

6. The Writ of Summons and Statement of Claim (together the "**Claim**") concerns Conyers' pre-action advice and actions in respect of the relevant limitation period to be applied to Mr. Hinds' claim to recover 5.8 acres of land registered as Block 15C Parcel 63 ("**Parcel 63**"), which was transferred in breach of trust on 26 February 1999.

7. The Claim had also related to another claim in the Original Action in respect of a further and separate parcel of land known as Block 5C Parcel 191 ("**Parcel 191**"). However, it appears from Mr. Hind's Reply that this claim is now only pursued in respect of allegedly wasted costs/liability costs.

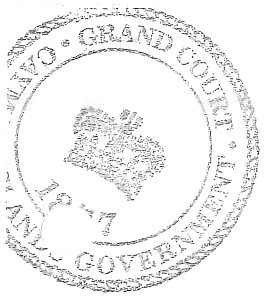
8. Mr. Hinds instructed Conyers on around 4 August 2010, shortly after the death of his mother, Esther Rosalind Hinds ("**Esther**").

9. Esther was the executrix of the estate of Mr. Hinds' father, John Samuel Hinds ("**John Samuel"),** who was Esther's second husband. John Samuel died intestate on 4 April 1978. After his death, Esther held various parcels of land in Grand Cayman, including Parcel 63 and Parcel 191 on the statutory trusts arising on intestacy, for the benefit of John Samuel's heirs, namely Esther herself and Mr. Hinds. Mr. Hinds was John Samuel's only child.

10. Esther had three children from an earlier marriage known as John III, Clive and Thomas Hinds. She had previously been married to John Samuel's first cousin John Leverette Hinds Jnr (**"John Jnr"**).

11. These three children disputed the capacity in which Esther held Parcel 63 and Parcel 191 and also the land defined as the "*Retained Parcels*" in the GC Judgment. The Grand Court and Court of Appeal of the Cayman Islands found that Esther held these parcels only as executrix of John Samuel.

12. Esther had in her lifetime disposed of Parcel 63 and Parcel 191. She transferred Parcel 63 to John III, Clive and Thomas on 26 February 1999. She sold Parcel 191 on 16 February 2005 for $940,000 and transferred the proceeds of sale to Clive and his wife



Sharon on the same day. The Grand Court and Court of Appeal held that these transfers were in breach of trust.

13. Mr. Hinds instructed Conyers to advise about the Retained Parcels, Parcel 63 and the proceeds of sale of Parcel 191.

14. When Conyers were instructed in August 2010, (a) the twelve year period from 26 February 1999 (Parcel 63) and (b) the 6 year period from 16 February 2005 (proceeds of Parcel 191) had not yet expired.

15. The originating summons in the Original Action was issued by Conyers on Mr. Hinds' behalf on 17 June 2011 claiming recovery of the Retained land, Parcel 63 and the proceeds of sale of Parcel 191.

16. In 2012, Conyers' retainer was terminated by Conyers which they say followed Mr Hinds' slow payment of fees and a breakdown in relations. Mr. Hinds instructed the Cayman law firm Appleby to continue the litigation on his behalf and Conyers had no further involvement in the Original Action.

17. The litigation came on for trial in the Grand Court of the Cayman Islands before Foster J in February 2014, resulting in the GC Judgment handed down on 14 July 2014. The trial lasted 7 days. Foster J held that Mr. Hinds' claim to Parcel 63 was barred by limitation, either the 6 year period under section 27(3) of the ***Limitation Law (1996 Revision)*** (***"the Limitation Law"***), or the 12 year period under section 19, dealing with actions to recover land. Foster J further held that in any event, Mr. Hinds' claim to Parcel 63 was barred by acquiescence and by laches. Foster J also held that Mr. Hinds' claim to the proceeds of sale of Parcel 191 was time barred, and in any event barred by acquiescence and by laches.

18. The GC Judgment of Foster J was appealed by Mr. Hinds to the CICA in 2015. In the CICA Judgment, that Court also held that Mr. Hind's claim to Parcel 63 was time barred, holding that the relevant time period was 12 years from 26 February 1999. The relevant sections of the ***Limitation Law*** are complex. Having concluded that the claim to Parcel

63 was time barred, the CICA dismissed the appeal on that ground alone, considering it unnecessary to consider the other challenges to the decision of Foster J.

19. In respect of Parcel 191, the CICA overturned Foster J's finding on limitation and held that the relevant 6 year limitation period for breach of trust did not start to run until Esther's death on 11 July 2010. However, the CICA nevertheless dismissed the appeal because it found that Mr. Hinds had acquiesced in Esther spending the proceeds of sale and was therefore barred from asserting a claim in respect of them.

20. The findings of the CICA both as to limitation and acquiescence were further appealed to the Judicial Committee of the Privy Council in London but that appeal was abandoned by Mr. Hinds in late 2017.

21. Around the time of the abandonment of his appeal to the Privy Council, Mr Hinds changed lawyers from Appleby to his present lawyers, Sinclairs.

22. However, prior to the change of attorneys, Appleby sent Conyers a letter before action on behalf of Mr. Hinds dated 9 January 2017, which threatened to bring a claim. In that letter and subsequently in this Claim, reference is specifically made to written advice given by Conyers on 7 December 2010, which advice reads:

> "5. *Limitation of action*
>
> *We understand that it has been suggested that your entitlements under your father's estate may have lapsed due to passage of time by virtue of a statutory limitation period. We do not agree with this suggestion as, in our view, it incorrectly characterizes the nature of your interest. Your interest is a proprietary interest as the beneficiary of trusts which arose by operation of law at the time of your father's death; as such, it is not in the nature of a claim or a right of action to which the provisions of the Limitation Law (as revised) would apply. The mere fact that legal title to trust property was not transferred to you by your mother at the time at which you became absolutely entitled will not serve to defeat your beneficial interest in that property."*

23. It is now alleged by Mr. Hinds that, among other things, the GC Judgment and the CICA Judgment show that Conyers' advice, was incorrect as regards Parcel 63. Further, he alleges that Conyers were negligent in failing to properly advise him in respect of the limitation period applicable to Parcel 63. As set out in its Defence, Conyers denies the Claim.

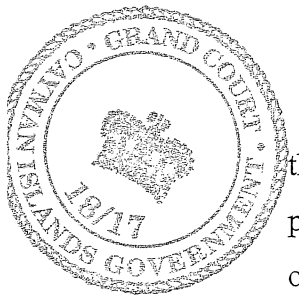
Abuse of Process Argument

24. Mr. Chapman submitted that the Court may strike out proceedings as an abuse of process both pursuant to GCR, Order 18 and in its inherent jurisdiction.

25. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and depend on all the circumstances of the case – See note 18/9/18 to the Supreme Court Practice 1999. It was argued that the modern approach, following ***Johnson v Gore Wood & Co*** [2002] 2 AC 1 per Lord Bingham at 31A-F, is to judge the issue of whether the proceedings are an abuse broadly on the merits, taking account of all the public and private interests involved and the facts of the case. It is not necessary to identify an additional element such as a collateral attack on a previous decision or some dishonestly to found an abuse of process. However, plainly, where an additional element such as a collateral attack on an earlier decision of the court is present then the proceedings will much more obviously be abusive and the court will be all the more ready to strike them out.

26. Proceedings will be an abuse of process of the Court if they seek to re-litigate an issue which has in substance been determined already in other proceedings, even if the earlier proceedings were between different parties. In such circumstances, the later proceedings will amount to a collateral attack on the earlier judgment and will necessarily be an abuse of process.

27. The argument continued that in the professional liability context, a plaintiff may contend that, but for his former lawyer's negligence, the outcome of the earlier civil proceedings would have been different. The element of abuse is missing in such a case because there is no direct challenge to the findings made in the earlier proceedings precisely because



the Claim relies upon a contention that the original claim would and should have been presented differently. In such a case a plaintiff is only contending that an earlier decision of the court would have been different because the earlier proceedings would have been conducted differently, such that different arguments and/or evidence would have been presented. But where a plaintiff's claim does depend upon a contention (express or implied) that an earlier decision of the court in earlier proceedings was wrong without more (that is, without identifying some argument or evidence that should have been before the court but was not, and which would have led to the court reaching a different conclusion), then the later claim will be an abuse. In such a case, the later claim will be a clear collateral attack on the earlier decision of the court. Reference was made to *Jackson & Powell on Professional Liability,* 8th Ed. At paragraphs 11-114, 11-119 and especially, 11-118.

28. It was further submitted that, proceedings will be frivolous or vexatious if they are abusive or obviously unsustainable. It was argued that Mr. Hinds' claims are obviously unsustainable because:

(a) the claim in respect of Parcel 63 must fail for want of causation as, if not permitted to challenge the findings of Foster J in the Original Action (which he is not), then it would always have failed in any event; and

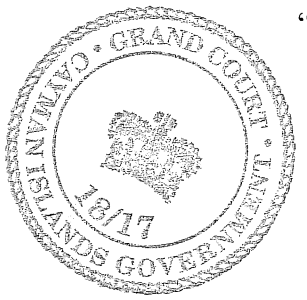
(b) the claim in respect of the alleged additional and/or adverse costs incurred in relation to the claims in respect of Parcel 63 and Parcel 191 is completely unparticularised but also hopeless; these costs were incurred once other advisers had been retained to conduct the Original Action and were not caused by any breach of duty on the part of Conyers.

(c) there has been no failure of consideration in respect of the services provided by Conyers, not least because of Mr. Hinds' success in relation to the Retained Parcels.

Abuse of Process – Analysis

29. Applying the foregoing principles and approach to the facts here, it was submitted that it is plain that the present proceedings are an abuse of process of the court.

30. Paragraph 29 of the Statement of Claim pleads Mr. Hinds' case on causation in respect of the Parcel 63 claim in the following terms:



> *"If the Defendant had correctly advised the Plaintiff and taken prompt action to prevent his claim to Parcel 63 from becoming time-barred by progressing with such claim diligently, he would have commenced proceedings against the three brothers before 25 February 2011 (or alternatively entered into a standstill agreement with them prior to such date) and would have been entitled to recover Parcel 63"*

31. At paragraph 32(i) it is then alleged that:

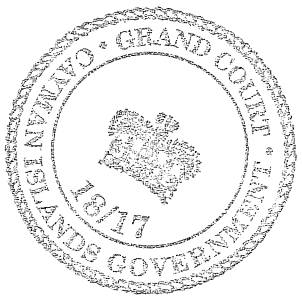
> *"It is averred that the Plaintiff would have recovered Parcel 63 in light of his success in the Court of Appeal Proceedings in recovering other non-time barred property in Esther's name transferred by her to the three brothers in breach of trust"*

32. Learned Counsel says that what these pleas fail to mention, and completely ignore, is that Mr. Hinds' claim to recover Parcel 63 was dismissed by Foster J on grounds other than limitation, and that those other grounds were not addressed, still less over-turned by the CICA. Accordingly, he submits that the findings that the claim to recover Parcel 63 fails on the grounds of acquiescence and laches stand. The pleaded claim in respect of the Parcel 63 claim in these proceedings as identified in paragraph 30 above, necessarily seeks to challenge those findings, and as a result, is an abusive collateral attack on those findings.

The First Instance Decision

33. Mr. Hinds' claim in the Original Action was dismissed by Foster J in the GC Judgment on the grounds of lack of standing, limitation, and laches and acquiescence. However,

the Judge, Learned Counsel opines, was at pains to deal with all claims and defences that had been advanced before him. As the learned Judge explains:



> *"It also seemed to me particularly desirable in this particular case, having regard to the family nature of the proceedings, that there should not be any loose ends left and that all points being made should be, and should be seen to be, before the court, fully canvassed at the trial and determined by the Court without unduly strict reliance on procedural rules. I also had particular regard to the overall objective and desirability of finality in such a domestic case."*

34. Foster J then addressed each claim and defence in turn so that, it was submitted, it is clear what findings he was making in respect of each.

35. Turning first to Foster J's findings on limitation with respect to the claim to Parcel 63, these are set out at GC Judgment paragraph 12 in the following terms;

> *"12.8 On the other hand, in my view the claim against John III, Clive and Tom regarding the parcel 15C/63 and the claim against Sharon and the Company regarding the proceeds of sale of parcel 15C/191 are different in this respect. Although they both relate to property originally transferred to Esther by Sir Vassel they were subsequently disposed of by Esther. She gave parcel 15C/63 to John III, Clive and Tom and she sold 15C/191 and gave the proceeds of sale to Sharon. On the basis of Phillip's case it seems to me that in respect of parcel 15C/63, John III, Clive and Tom and in respect of the proceeds of sale, Sharon and/or the Company, are respectively constructive trustees of the class 2 type. Accordingly, in so far as directed against them in these respects the action does not fall within paragraph (b) and would be subject to the usual 6 year limitation period.*
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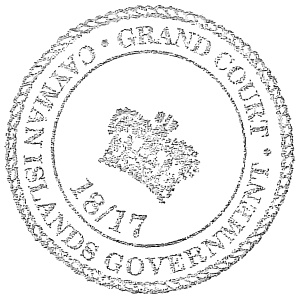
> .....



12.18 It was argued for Phillip that his claim against John II, Clive and Tom in respect of parcel 15C/63 in particular is a claim to recover land but as their counsel submitted, and as has already been discussed above, in order to make a claim to recover that parcel of land Phillip would need to have a proprietary interest in it, which he did not and the Limitation Law cannot create such an interest. Even if Phillip did have such a proprietary interest, on his case that would have arisen on the transfer of the parcel by Sir Vassel to Esther as administratrix in October 1983 almost 28 years before he commenced these proceedings, which is obviously well outside the 12 year limitation period if it is applicable. Even the transfer of parcel 15C/63 by Esther to John III, Clive and Tom was more than 12 years before the date when this action was initiated.

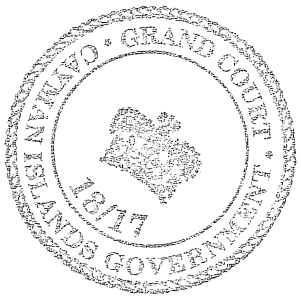
12.19 It was submitted by counsel for John III, Clive and Tom that even if this analysis in relation to parcel 15C/63 is wrong and Phillip's claim is to be considered as one to recover land for limitation purposes, the claim is still time-barred under the Limitation Law. ...

12.20...

The position of John III, Clive and Tom as paper owners of parcel 15C/63 is fortiori and Phillip's claim to the parcel is accordingly time-barred."

36. Having determined that Mr. Hinds' claim to Parcel 63 failed on Limitation, Foster J then went on to consider the defences of acquiescence and laches. He states at Judgment GC paragraph 13.1 as follows:

"13.1 I think it fair to say that acquiescence and laches are principal defences to Phillip's claims in these proceedings which are relied on by the Defendants and Sharon and the Company, even if none of the other defences to Phillip's claim which they have put forward are upheld, they contend that nonetheless in all the circumstances Phillip acquiesced in what he now contends were breaches of his rights and that it would



therefore be inequitable to allow him to now assert those rights. They also contend, on the grounds of laches, that it would anyway, in the whole circumstances of the case, by unconscionable for the court to grant Phillip the relief which he seeks in these proceedings."

37. Importantly, Mr. Chapman points out, and as Foster J notes, the defences of acquiescence and laches were advanced independently to and in addition to the limitation defences.

38. It was submitted that paragraphs 14 and 15 of the GC Judgment are of particular import as they set out Foster J's findings of fact as to Mr Hind's knowledge and conduct for the purposes of these defences. In addition, the Court found that Mr Hinds' lacked credibility and was not fully frank, open and honest. Foster J was critical of the delay in the bringing of the Original Action, based on the Court's findings as to what Mr. Hinds had known about his claims and his failure to take steps to bring those claims so as to enforce his rights.

39. In summary, Foster J found that Mr. Hinds knew about the implications of being his father's only biological son from the age of 18, and in particular he had knowledge of the situation regarding Parcel 63 and Parcel 191 by 1999 and 2004 respectively. Indeed Mr. Hinds admitted as much in his evidence (GC Judgment Paragraph 14.5). However, Foster J commented that "*the extent and time-frame of his actual knowledge and understanding was considerably greater over a longer period than he was willing to admit.*"

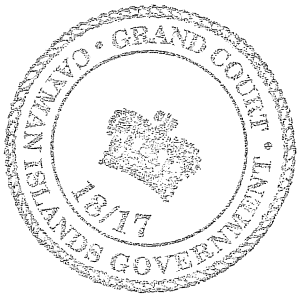
40. Foster J's findings on Mr. Hinds conduct and his conclusion on the defence of acquiescence are found at GC Judgment paragraph 15:

> *"15.1 Notwithstanding the knowledge and understanding which he had, Phillip stood by and did nothing. As I have mentioned, there was unchallenged evidence that he was unhappy about Esther's transfer of parcel 15C/63 to John III, Clive and Tom but he did nothing to challenge it. He did challenge the evidence of Sharon that he showed unhappiness and disquiet when, according to her, he was told that Esther had given the*

proceeds of sale of Parcel 15C/191 to her but, for the reasons already explained, I preferred the evidence of Sharon and John III in particular on this issue. Nonetheless, once again Phillip did nothing to challenge what his mother did with the proceeds of sale or to demand his share. In both these cases Phillip knew that the parcels concerned had been previously transferred to Esther by Sir Vassel and were assets of his father's estate. In fact Phillip took no steps to challenge anything his mother did as administratrix. Nor did he do anything to challenge or object to what he knew she and his half-brothers obviously thought, namely that the properties in issue which Esther did not otherwise deal with were to be shared equally between her four sons.

15.2 I have already explained my conclusions that the probability is that Phillip deliberately did nothing because he did not want to distress his mother by taking steps to assert his entitlement contrary to her wishes for all of her sons. I have found that Phillip knew that what his mother was doing or proposed should be done in relation to the parcels comprising his father's estate was or would be in breach by her of her obligations and duties as administratrix but he chose not to challenge his mother. He stood by for many years, notwithstanding his knowledge and understanding. He did so for his own reasons.

15.3 For many years, at least since the time of Esther's letter to all 4 of her sons in June 1987, if not sooner, John III, Clive and Tom had reasonably understood and expected that the Cayman properties held by their mother would be shared equally between all 4 of them. Phillip knew of this long-standing expectation and understanding on the part of his half-brothers but he did nothing to challenge it. Neither they, nor Esther, were given any indication that Phillip intended to challenge that expectation and he did not do so until after Esther's death many years later. It was consistent with and pursuant to that concept of equal division that Ester transferred parcel 15C/63 to John III, Clive and Tom in equal

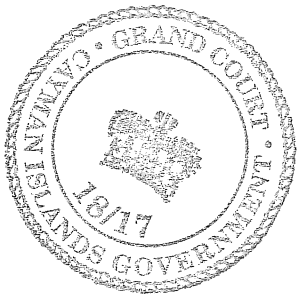


shares in light of her earlier transfer of parcel 15C/152 just to Phillip, in order to more or less equalize matters between the 4 of them at that time. The evidence was that all of her sons, including Phillip, understood that was her intention and why. As I have already mentioned, the evidence was that Phillip was clearly not happy at the time about the transfer by Esther but he did nothing about it. It would, in my opinion, have been reasonable inference for Esther, John III, Clive and Tom to make from Phillip's conduct that he had accepted the position. In my view John III, Clive and Tom were entitled to and did rely on that.

15.4 In my opinion, in all the circumstances Phillip is to be taken as have acquiesced or concurred in his mother's intended and actual breaches of her obligations and duties. He acquiesced in the maladministration of his father's estate by his mother and he allowed his mother and his half-brothers to reasonably assume that he was going along with what was happening. I found his statement in evidence that if he had known of his rights sooner he would have sued his mother to be wholly unconvincing and I simply did not believe it and nor did his half-brothers, whose evidence I did find credible and which I accepted. In my judgment it would be unjust and inequitable to permit Phillip to now assert those rights."

41. Foster J also found that the defence of laches applied to defeat Mr. Hinds' claim. At paragraphs 19.1- 19.3, he found as follows:

> *"19.1 While there is, of course, more to laches than "mere delay", it may nonetheless be of assistance to put matters into perspective chronologically. Phillip became 18 years old and an adult on 4th September 1982. He was almost 47 years old when he commenced these proceedings on 17th June 2011.....*
>
> *19.2. By any measure there has been very significant lapse of time and extraordinary delay in bringing these proceedings by Phillip against his 3*



half-brothers and his sister-in-law in respect of matters which I am quite satisfied he had known about for many years but which he did not want to raise in his mother's lifetime. In my opinion the delay is inexcusable.

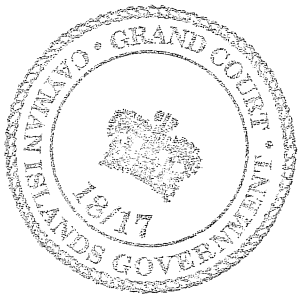
19.3 In light of the legal principles to which I have referred above and having taken a broad approach to all the facts and circumstances of this case as I have found them to be, I am of the opinion that it would be unreasonable, unfair and unjust to the defendants and to Sharon and the Company to now allow Phillip to assert the relief which he claims. In my judgment it would be unconscionable to permit him to do so."

42. In the final paragraph of his judgment, Foster J concludes as follows:

> *"Even if Phillip's claims in these proceedings are not defective as a matter of law or are not time-barred under the Limitation Law, in my judgment, in all the circumstances and for the reasons above, they should anyway be refused on the ground of acquiescence and/ or of laches."*

43. It is also not without significance, Mr. Chapman submits, that Foster J found Mr. Hinds not to have been a truthful, or full and frank witness. Foster J gave a ruling on costs, following the GC Judgment. At paragraph 6.3 of the former, he stated thus:

> *"More significant, however, in the context of improper and unreasonable conduct in particular, is the fact that Phillip was not truthful, full or frank (see e.g. Judgment para.9.1). The central issue in the case was the extent, nature and timing of Phillip's knowledge of the facts on which his claims were founded. He was compelled in cross-examination to make significant and relevant admissions about this. If he had disclosed this knowledge in his witness statements, or even before, which he could and should have done, it would have had a significant impact on the case and, it is possible that it would not have been pursued at all (see generally judgment para. 14). Those admissions, once made in cross-examination during the trial,*



in my view, called into question whether Phillip should properly and reasonably have persisted in continuing with his claims as he did."

The decision of the Court of Appeal

44. Mr. Chapman gave his synopsis on the effect of the decision of the CICA. He submitted that the Court of Appeal dismissed Mr. Hinds' appeal insofar as it related to his claims in respect of Parcel 63 and Parcel 191 on the basis that the claim regarding Parcel 63 was time barred and the claim in relation to Parcel 191 was barred by acquiescence. The CICA overturned Foster J's decision on standing in respect of all of the claims and allowed the appeal generally in respect of Mr. Hinds' claims to the Retained Parcels. In so deciding, the CICA overturned the findings of acquiescence and laches it was submitted, only in so far as they related to the claims to the Retained Parcels. Further, that the equivalent findings in respect to the claim to the proceeds of Parcel 191 (in respect of which the CICA had overturned Foster J's finding on limitation), were expressly upheld and the appeal dismissed in relation to that claim on that basis.

45. The Court of Appeal made no express finding in relation to the defences of acquiescence and laches in so far as they applied to Parcel 63. Accordingly, submitted Mr. Chapman, the CICA Judgment left Foster J's determination on laches and acquiescence undisturbed in respect of Parcel 63. Further, that that being the case, those findings continue to bind Mr. Hinds and, having not been set aside, represent findings of a court of competent jurisdiction.

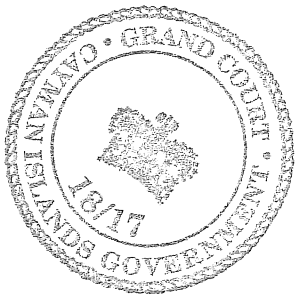
46. It was therefore submitted that the present proceedings amount to an abuse of process and are also frivolous and vexatious because they are obviously unsustainable.

The Arguments Advanced on Behalf of Mr. Hinds

47. Mr. Ham QC, on behalf of Mr. Hinds, submitted that Conyers' Strike Out Application should be dismissed.

48. Reference was made to the advice given to Mr. Hinds by Conyers, by letter dated 7 December 2010 set out in paragraph 22 above.

49. After a 7 day trial in 2014, Foster J gave the GC Judgment, and this was followed by the Costs Ruling/Judgment. Foster J himself summarised in the Costs judgment, at paragraph 2.2, as follows (as have Mr. Hinds' Attorneys, I too have omitted references to the paragraphs of the main judgment):



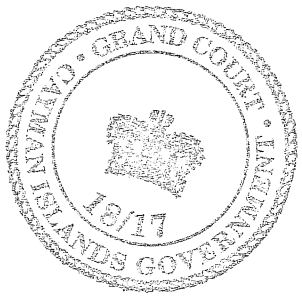
"the Judgment concluded not only that Phillip's claims were both [i] misconceived and [ii] barred by limitation but perhaps more significantly, concluded, after a lengthy analysis of his knowledge, that [iii] he had acquiesced in matters of which he complained and that it would be unjust and inequitable in the circumstances to permit him to assert the rights he sought to enforce by his claims. Furthermore... the Judgment concluded too that [iv] it would be unconscionable to permit Phillip to assert relief which she claimed due to laches The relief referred to clearly included all the relief claimed by Philip in the originating summons (as amended)..

(Numbering and underlining added by Counsel)

50. Mr. Ham made the following points about the effect of Foster J's Judgment:

(1) If (as the judge found) Mr. Hinds' claims were misconceived, i.e. that he had no standing to bring those claims, then neither limitation nor laches and acquiescence arose for decision. And if the claims were (as the judge found) barred by a statutory limitation period, then questions of laches and acquiescence did not arise for decision.

(2) It is clear, therefore, he submits, that even if there had been no appeal, that Judgment would not have given rise to any *res judicata* in relation to laches and acquiescence between the parties to the original claim. Only decisions which are necessary to the decision, and fundamental, create an issue estoppel. Reference was made to ***Spencer Bower and Handley*** on *Res Judicata* (4th Edition) 8-23. The judge's conclusions on standing and limitation, which were logically prior to any question of laches and acquiescence, meant that his conclusions on laches and acquiescence were not determinative and, consequently, that there was no issue estoppel.



(3) It is also clear that the judge's findings are not admissible as evidence in subsequent proceedings under the rule in ***Hollington v F Hewthorn & Co Ltd.*** [1943] KB 587, considered by the English Court of Appeal in ***Secretary of State and Industry v Bairstow*** [2003] EWCA Civ 321 [2004] Ch 1 at [15] to [27]).

(4) It was submitted that it would be very strange if the judge's findings conclusively determined the question of laches and acquiescence in favour of Conyers for the purposes of this action even though (a) they would not have been binding as between the parties to the original action and (b) they could not be adduced in evidence by Conyers on this action.

The Appeal

51. Mr. Hinds appealed to the CICA, which Court delivered its judgment on 20 November 2015. Learned Counsel summarised the judgment as follows:

(1) Mr. Hinds had standing to bring his claims and the judge had been wrong to find otherwise.

(2) The CICA dismissed the appeal against the judge's decision that Parcel 1 (the Cayman House) was held on a common intention constructive trust for the deceased and Esther as beneficial joint tenants, with the consequence that the entirety of the equitable interest accrued to Esther by survivorship on the deceased's death.

(3) The titles of both the deceased's estate and Mr. Hinds, as beneficiary of the estate, to Parcel 63 were extinguished by limitation, more than 12 years having elapsed since Parcel 63 was transferred to the three brothers. It was, therefore, necessary to consider laches and acquiescence only in relation to the proceeds of sale of Parcel 191 and the Retained Parcels and the CICA did not make any decision about laches and acquiescence in relation to Parcel 63.

(4) As regards the Retained Parcels the judge was plainly wrong:

(a) Acquiescence and laches come into play only when a right has been infringed and Esther did nothing that amounted to an infringement of P's rights in relation to the Retained Parcels during her lifetime.

(b) The House of Lords had stated in ***Fisher v Brooker*** [2009] 1 WLR 1764 at [64] that detrimental reliance was usually an essential ingredient of laches and there was no finding of detrimental reliance by any of Esther or the three brothers in relation to the Retained Parcels.

(5) In relation to the proceeds of sale of Parcel 191 however, Mr. Hinds' claim was found to be barred by acquiescence because a substantial part of the proceeds of sale was used to fund a cruise to Alaska for the whole extended family, in which Mr. Hinds participated, thereby impliedly representing that he did not object to Esther's use of the money not only for the cruise but as a whole.

52. It was submitted that the CICA did not consider the part of Mr. Hinds' appeal relating to laches and acquiescence in relation to Parcel 63 because, as a result of its decision on limitation, the judge's findings in that regard were of no significance. If the CICA had considered this part of Mr. Hinds' appeal, consistently with the rest of its judgment, it was submitted that it is however overwhelmingly likely that it would have allowed the appeal:

(i) it was not pleaded or found that Mr Hinds had done anything that could be construed as an implied representation that he did not object to the transfer of Parcel 63 to the three brothers. Quite the reverse: the unchallenged evidence was that Mr Hinds was unhappy about it.

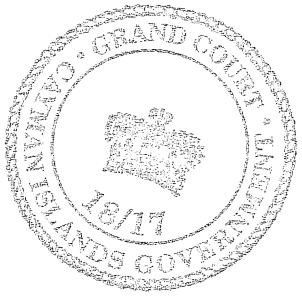
(ii) nor was it pleaded or found that there was any detrimental reliance by Esther or the three brothers in relation to Parcel 63.

53. Mr. Ham suggests that the fact that the CICA did not need to consider laches and acquiescence reinforces the conclusion that the judge's conclusions on this topic were in no sense determinative.

54. Reference was made to ***Lake v Lake*** [1955] P 336 quoted in paragraph 22 of Mr. Hinds' July submissions, as authority for the proposition that appeals are against orders and not against findings or statements in judgments.

Collateral Attack

55. Reference was made to ***Secretary of State and Industry v Bairstow*** [2003] EWCA Civ 321 [2004] Ch 1 Sir Andrew Morritt VC (with whom Potter and Hale LJJ agreed) after a review of the case law gave the following summary at [38] (substituting references to the Cayman Evidence Law for references to the corresponding English Act) is:



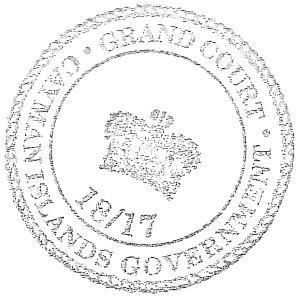
"In my view these cases establish the following propositions:

(a) A collateral attack on an earlier decision of a court of competent jurisdiction may be but is not necessarily an abuse of the process of the court.

(b) If the earlier decision is that of a court exercising a criminal jurisdiction then, because of the terms of section 52 and 54 of the Evidence Law, the conviction will be conclusive in the case of later defamation proceedings but will constitute prima facie evidence only in the case of other civil proceedings.....

(c) If the earlier decision is that of a court exercising a civil jurisdiction then it is binding on the parties to that action and their privies in any later civil proceedings.

(d) If the parties to the later civil proceedings were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of the process of the court to challenge the



factual findings and conclusions of the judge or jury in the earlier action if

(i) it would be manifestly unfair to a party to the later proceedings that the same issues should be re-litigated or

(ii) to permit such re-litigation would bring the administration of justice into disrepute."

56. Mr. Ham submits that Proposition (d) is derived from the speech of Lord Diplock in the leading case of ***Hunter v Chief Constable of West Midlands Police*** [1982] AC 529 – a case where the whole purpose of the proceedings which were struck out was to mount a collateral attack in civil proceedings on decisions made in previous criminal proceedings.

57. In ***Bairstow*** itself, a company director had been found guilty of grave misconduct in previous wrongful dismissal proceedings brought by him. The CA held that the findings of the judge in those proceedings were inadmissible as evidence in directors' disqualification proceedings (under the rule in ***Hollington v Hewthorn***) and allowed the director to require the Secretary of State to prove his case by admissible evidence. This did not involve any abuse of process.

58. Vice-Chancellor Morritt's propositions (a) and (d), it was submitted, make it clear that there is no general rule that re-litigation of points decided against a party in previous proceedings is treated as an abuse of process: a collateral attack on an earlier decision of a court of competent jurisdiction "*may be but is not necessarily*" an abuse of process. It will be an abuse of process only in cases where (a) it would be manifestly unfair to a party to the later proceedings, or (b) it would bring the administration of justice into disrepute.

Manifest unfairness

59. It was submitted that it would not be manifestly unfair to Conyers to require it to establish that Mr. Hinds' claim to Parcel 63 would have been barred by laches and

acquiescence even if it had not been extinguished by limitation. Conyers was not a party to the original action, and none of its partners or employees gave evidence. It was submitted that Conyers is in the same position as any other defendant who has to defend a claim against himself.

60. On the contrary, says Learned Counsel, it would be unfair to debar Mr. Hinds from defending himself against the pleas of laches and acquiescence which he appealed to the CICA but which that court did not have to decide because it upheld the limitation defence in relation to Parcel 63. But for the negligence of Conyers, he asserts, there would have been no limitation defence.

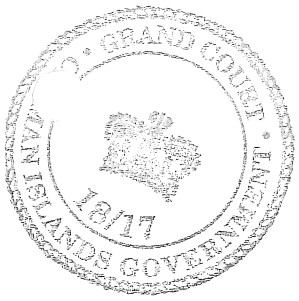
Bringing the administration of justice into disrepute

61. Reference was made to ***Arthur JS Hall & Co v Symons*** [2002] 1 AC 615, 706H Lord Hoffman (with whose speech Lord Browne-Wilkinson and Millett agreed), after considering the position with regard to earlier criminal proceedings, said

> *"On the other hand, in civil cases (including matrimonial) it will seldom be possible to say that an action for negligence against a legal adviser or representative would bring the administration of justice into disrepute. Whether the original decision was right or wrong is usually a matter of concern only to the parties and has no wider implications. There is no public interest objection to a subsequent finding that, but for the negligence of his lawyers, the losing party would have won."*

62. Lord Hope of Craighead said at 723E that *"The Hunter principle, if it is applied too widely to deny the client a remedy in damages, seems to me to be vulnerable to attack on the ground that it is inconsistent with the client's fundamental right of access to a court for the determination of his civil rights." Lord Hobhouse said at 724D*

> *"The ability to stay or strike out an action as an abuse of the procedure of the court is a long-standing remedy, an inherent power of the court, and is reflected in the Civil Procedure Rules and their predecessors. Its essence is the use of civil litigation for an improper purpose, ie, without a*



legitimate purpose. Where a client is seeking to recover damages from his former advocate for some breach of duty, this is clearly a proper purpose... "collateral attack" only comes into the picture when it discloses an abuse of process. It is a distinct concept and challenging a previous decision does not necessarily connote an abuse of process."

And at 743C:

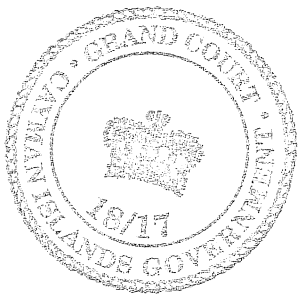
> *"The "collateral attack" point is a species (or subset") of abuse of process. There is no general rule preventing a party inviting a court to arrive at a decision inconsistent with that arrived at in another case. The law of estoppel per rem judicatam (and issue estoppel) define when a party is entitled to do this. Generally, there must be an identification of the parties in the instant case with those in the previous case and there are exceptions. So far as questions of law are concerned, absent a decision specifically binding upon the relevant litigant, the doctrine of precedent governs when an earlier legal decision may be challenged in a later case.*
>
> *A party is not in general bound by a previous decision unless he has been a party or privy to it or has been expressly or implicitly covered by some order for the marshalling of litigation (**Ashmore v British Coal Corpn** [1990] 2 QB 338). This overlaps with the concept of vexation where the same person is faced with successive actions making the same allegations which have already been fully investigated in a previous case in which the later claimant had an opportunity to take part. This reasoning does not apply to an action against a lawyer alleging that he has mishandled a previous case."*

63. Those passages show, it was submitted, that, in general, professional negligence proceedings against a legal adviser will not be regarded as bringing the administration of justice into disrepute on the ground that they involve a collateral attack on a decision in earlier proceedings.

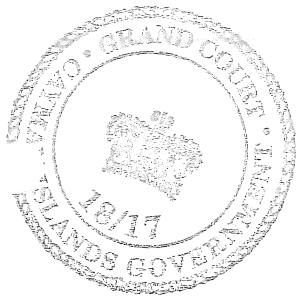
64. It was submitted that the present case is a particularly strong one. It would be extremely unfair to debar Mr. Hinds from defending himself against the pleas of laches and acquiescence which he appealed to the CICA but which the court did not have to decide because it upheld the limitation defence in relation to Parcel 63. But for the negligence of Conyers, it was argued, there would have been no limitation defence, and the CICA would, as submitted previously, been overwhelmingly likely to reject the pleas of laches and acquiescence.

Perry v Raleys Solicitors [2019] UKSC 5.

65. After I had reserved judgment, Mr. Ham QC, with no objection from Mr. Chapman, kindly referred me to the recent decision of the UK Supreme Court in ***Perry v Raleys Solicitors***. The case in my view is quite complex. The Supreme Court allowed an appeal from the Court of Appeal's decision and ordered the Judge's order restored. Lord Briggs JSC (with whom Baroness Hale, Lord Wilson, Lord Hodge and Lord Lloyd-Jones agreed), delivered the judgment. In my view, the Headnote correctly captures one of the main points of the Judgment, as follows:



"Held, allowing the appeal, that to the extent that the question whether negligent advice had caused a claimant's loss depended on what the claimant would have done upon receipt of competent advice, this had to be proved by the claimant upon the balance of probabilities, but to the extent that the question depended on what others would have done it would be determined on a loss of chance evaluation: that therefore, where negligent professional advice had caused the loss of an opportunity to institute a legal claim, the claimant would have to prove that, if competently advised, he would have taken any necessary steps required of him to convert the receipt of competent advice into some financial advantage to him, which was an essential element in the chain of causation; that, in such circumstances, there was no reason in principle or justice why either party should be deprived of the full benefit of an adversarial trial of that issue; that it followed that in the present case it had been for the claimant to



prove on the balance of probabilities that, properly advised by the defendants, he would have made an honest claim to a services award under the scheme in time and it had not been wrong in law or principle for the judge to have conducted a trial of that question..."

66. Neither party felt it necessary to make any formal submissions. Nor did I consider it necessary. Whilst useful for considering claims against legal advisors generally, ***Perry*** does not involve consideration of allegations of collateral attack on an earlier judgment, and it is not therefore of great assistance in resolving the instant case.

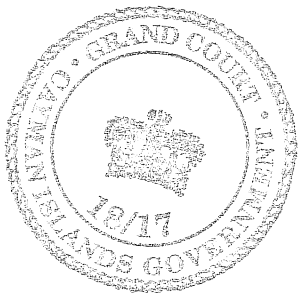
67. There has also been a recent local judgment by Chief Justice Smellie in his unreported decision (released in final form on 24 July 2019), in Cause No. FSD 0105 of 2014 (ASCJ) ***Arnage Holdings Ltd. et al v Walkers (A Firm)***, which concerned a lawsuit brought by persons who claimed to be clients of a law firm. There were applications by the plaintiffs for Summary Judgment, and an application by the defendant law firm seeking a strike out of the plaintiffs' claims on the basis that the claims had no prospect of success and were an abuse of the process of the Court. The plaintiffs' summary judgment application was granted, and the defendant's strike out application was dismissed. However, the facts in that case bear no relevance to those in the instant case, and thus, I have not considered it necessary to invite submissions from the parties in respect of the Learned Chief Justice's decision. Nor have they approached me seeking to make submissions.

DISCUSSION AND ANALYSIS

68. As I remarked to Learned Counsel at the time of hearing this matter, I find myself having to rule on issues where no authority with similar facts has been cited to me. No case has been cited to me where attorneys are being sued after the client has appealed the decision at first instance. No decision has been cited to me that involved a Court of first instance being asked (by Mr. Hinds) to decipher/ rule on what a higher Court's judgment means or what they would likely have decided. In my judgment, that is not appropriate, and I am not permitted to speculate about what the CICA would have decided, regarding Parcel 63 in relation to laches and acquiescence. Indeed, as I asked Mr. Ham QC, had his client had

an eye to these proceedings, could Mr. Hinds' legal team not have specifically asked the CICA to rule on those issues, instead of this query now being posed to the Grand Court? That was not done. In my view, the only thing I can say, without the benefit of any legal precedent, is that the CICA appear to have left Foster J's findings as to laches and acquiescence undisturbed in relation to Parcel 63.

69. Put another way, those findings exist. I agree with Mr. Chapman, that whilst Foster J's judgment was not the last judgment in the original proceedings, it was nevertheless a final one. The Certificate of the Order of the Court of Appeal, in so far as Parcel 63 is concerned, reads as follows:



"1.....

2. The appeal brought by the Appellant against the July Order is dismissed insofar as it relates to Block 7C Parcel 1, Block 15C Parcel 63 and the proceeds of sale of Block 15C Parcel 191."

70. I also note that there is not, and could not be, any allegation of negligence on the part of Conyers, that Conyers caused the CICA not to address the issues of laches or acquiescence, and nor indeed is there any allegation of negligence against Conyers in relation to issues of laches or acquiescence at the first instance stage. I note in any event, that Conyers was also not the law firm that conducted the trial on behalf of Mr. Hinds.

71. The point also needs to be made about the issue of the standard of care owed by Conyers to Mr. Hinds regarding the subject of advice on time-bar. As can readily be seen from the judgments of Foster J and the CICA, time bar and limitation are not always straightforward issues, especially in complex factual scenarios, such as were involved in the Original Action. It therefore cannot be assumed that because the Court of Appeal decides a point differently to a lawyer's advice and the client loses on that point, that the client, (to borrow a basketball analogy), has a *"slam-dunk"* case of negligence. It has to be established that the client received negligently wrong advice.

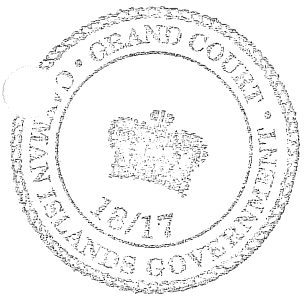
72. The facts in the leading case of ***Johnson v Gorewood (a Firm)*** are quite distinguishable because it was the defendant firm of solicitors who were to be *"twice vexed"* with suits

for professional negligence. Here, Conyers, the defendant in this suit, were not a party to the first set of proceedings. However, the reasoning in the case is extremely important because it emphasizes that whether an action is an abuse of process as offending against the public interest in the finality of litigation has to be viewed broadly, on the merits, taking account of all the public and private interests involved and all the facts of the case.

73. The crux of the matter is whether that merits based broad, informed, view reveals that the plaintiff is in all the circumstances abusing or misusing the process of the Court.

74. In ***Arthur J S Hall v Simons***, from which Mr. Ham quoted extensively, the headnote accurately summarized why the public interest no longer required that advocates enjoy immunity from suit for alleged negligence in the conduct of civil proceedings, as follows (at page 616):

> *"... the principles of res judicata, issue estoppel and abuse of process were sufficient to prevent any action being maintained which would be unfair or bring the administration of justice into disrepute; that the obstacle of proving that a better standard of advocacy would have produced a different outcome and the ability of the court to strike out unsustainable claims under CPR r.24.2 would restrict the ability of clients to bring unmeritorious and vexatious claims against advocates should the immunity be removed..."*

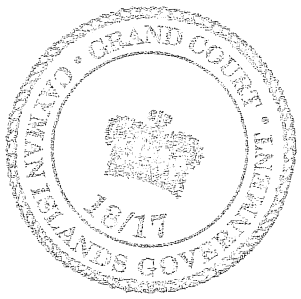


75. I note that CPR Rule 24.2 deals with summary judgment (GCR Order 14 deals with Summary Judgment), whereas the application before me is a Strike Out application. However, the point is nevertheless well-made, i.e. that the Court has power to strike out unsustainable claims, and in certain other circumstances.

76. I have found extremely useful, the decision of the UK Court of Appeal in ***Laing v Taylor Walton (A Firm)***, cited by Mr. Chapman QC. The Headnote usefully sets out the facts and background as follows:

> *"In 1999 the claimant property developer L, operating through his company NFI Ltd., secured a £500,000 loan from B, a company owned by*

W, to develop a site at High Wycombe. The agreement was drafted by the defendant firm of solicitors. A dispute later arose concerning the terms on which the loan had been made which resulted in litigation. L there contended that the loan was secured by a charge in favour of B over12.5 % of the issued shares of NFI, whereas W asserted that there were two separate agreements whereby B was entitled both to a 12.5 % share of the profits of the development and a beneficial interest in 12.5% of the issued shares of NFI. L had executed a transfer of the shares to B beneficially, not expressed to be by way of charge or security. At the trial of the first action in 2005, H.H. Judge Thornton Q.C. held that W's construction of the agreement was correct. That determination was not appealed by L.



In the second action L sued the present defendant firm of solicitors for negligence, alleging that (a) in preparing the written agreement between L and W in 1999 they had failed to make it accurately reflect the actual agreement between L and W, and had failed to advise L to make it clear that the shares registered in B's name were held by way of security only; and (b) they had failed to draft a subsequent 2002 agreement in accordance with instructions that it should entirely abrogate and replace the 1999 written agreement, and thus relieve L from any obligation to pay over a 12.5 % share in the profits of the venture to W or B.

The defendant applied to strike out the second action as an abuse of process on the basis that it was an attempt to relitigate the findings of H.H. Judge Thornton Q.C. in the first action between L and W. On February 20, 2007 Langley J dismissed the application on the basis that the defendants accepted they had acted for both L and NFI in drafting the relevant documents, and supported L's case concerning the agreements reached with W. Further, L had advanced a reasonably compelling case that the judge's decision on the terms of the agreements was open to serious challenge, and his case had a real prospect of success before

another court. In the circumstances, it would not be appropriate to accede T's application..."

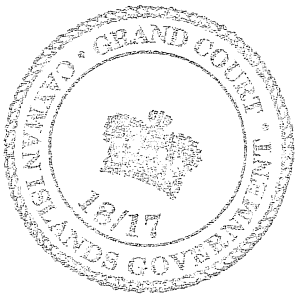
77. An appeal to the Court of Appeal (Buxton, Laws and Moses L.JJ.) was allowed, and the action was struck out as being an abuse of the process of the court, because it represented an impermissible attempt to impeach the Judge's findings.

78. In discussing the matter of *"Abuse of process and the approach of this court"*, at paragraph 12, Buxton LJ, after citing from the leading case of ***Hunter v Chief Constable of the West Midlands***, provides what in my humble view, is masterful guidance:

> *"The court therefore has to consider by an intense focus on the facts of the particular case, whether in broad terms the proceedings that it is sought to strike out can be characterized as falling under one or other, or both, of the broad rubrics of unfairness or the bringing of the administration of justice into disrepute. Attempts to draw narrower rules applicable to particular categories of case (in the present instance, negligence claims against solicitors when an original action has been lost) are not likely to be helpful."*
>
> (My emphasis)

79. In discussing the claim under the rubric *"Bringing the administration of justice into disrepute"*, the learned Judge of Appeal had this to say, at paragraph 25:

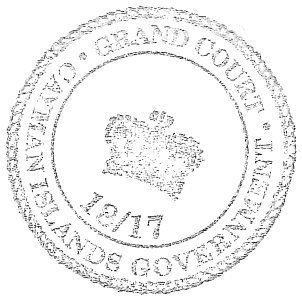
> *"25. I therefore conclude that it would bring the administration of justice into disrepute if Mr. Laing were to be permitted in the second claim to advance exactly the same case as was tried and rejected by H.H Judge Thornton. If H.H. Judge Thornton's judgment was to be disturbed, the proper course was to appeal, rather than to seek to have it in effect reversed by a court not of superior but of concurrent jurisdiction hearing the second claim. That the second claim is in substance an attempt to reverse H.H. Judge Thornton is important in the context of wider principles of finality of judgments. In Hunter, at*



545D, Lord Diplock said that the proper course to upset the decision of a court of first instance was by way of appeal. Where, wholly exceptionally, a collateral, first instance, action can be brought it has to be based on new evidence, that must be such as entirely changes the aspect of the case: see per Earl Cairns L.C. in Phosphate Sewage v Molleson (1879) 4 App. Cas. 801 at 814. The second claim in our case not merely falls short of that standard, but relies on no new evidence at all."

80. At paragraphs 35-37 Moses LJ also helpfully pinpoints the relevant considerations, as follows:

> *"35. I agree that the appeal should be allowed for the reasons given by Buxton LJ. The attempt to bring proceedings in contract and in tort against TW involves an impermissible challenge to the facts found by H.H Judge Thornton, and is, for that reason, an abuse of process.*
>
> *36. I should explain why I conclude that the challenge is impermissible. Allegations of negligence during the course of litigation, against solicitors or advocates, will normally involve an attempt by a claimant to demonstrate that the previous conclusion of the court would have been different, absent negligence on the part of the lawyer. In many cases it will, indeed, be necessary to do so in order to prove causation and loss. The paradigm is the loss of a case due to negligent advocacy. But to bring such proceedings for negligence does not bring the administration of justice in to disrepute: Hall v Simons teaches to the contrary.*
>
> *37. But such cases differ from the instant appeal in two important respects. Firstly, in the normal run of case, the impugned conduct of the lawyer is independent of the factual conclusions of the court; those conclusions are only relevant to prove causation and loss. His case does not, in reality, involve any challenge to the findings or*



conclusion of the court. He merely contends that, in the light of the negligence of which he now complains, the court's conclusions would have been different. But this is not so in the present case. As Buxton L.J has demonstrated (at [19] and [27]), the claimant cannot establish that his advisor's drafting of the agreements was negligent without challenging the judge's findings as to credibility and fact. To make good the allegations of negligence, Mr. Laing must show that his account of the agreements is the truth. He must demonstrate that Thornton's judgment of his credibility is wrong."

(My emphasis)

81. In my judgment, the present claim does amount to an attack on the findings of Foster J, findings of mixed law and fact in relation to Laches and Acquiescence. As Mr. Hinds' pleaded case is that (paragraph 29 of the Statement of Claim), had Conyers correctly advised him to take action to prevent his claim to Parcel 63 from becoming time-barred, and therefore proceedings being brought before 25 February 2011, "*he would have been entitled to recover Parcel 63.*" (My emphasis)

82. Plainly, to demonstrate that, Mr. Hinds' case would require that issues as to his knowledge and conduct, in respect of which Foster J made detailed findings, including as to credibility, would become live, and have to be "*re-run*" again. It was argued before me on behalf of Mr. Hinds that there was no detrimental reliance by the brothers on the conduct of Mr. Hinds in relation to Parcel 63. However, as Mr. Chapman pointed out, at paragraph 15.3 of his judgment (cited by Mr. Chapman during his submissions at paragraph 40 above) Foster J did indeed find that the brothers relied upon Mr. Hinds' conduct. For ease of reference and understanding I set that paragraph out again here:

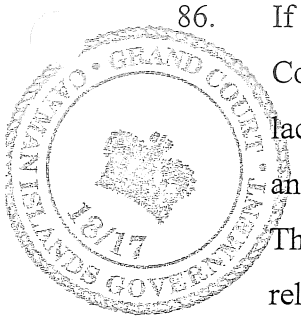
> *"15.3 For many years, at least since the time of Esther's letter to all 4 of her sons in June 1987, if not sooner, John III, Clive and Tom had reasonably understood and expected that the Cayman properties held by their mother would be shared equally between all 4 of them. Phillip knew of this long-standing expectation and understanding on*

the part of his half-brothers but he did nothing to challenge it. Neither they, nor Esther, were given any indication that Phillip intended to challenge that expectation and he did not do so until after Esther's death many years later. It was consistent with and pursuant to to that concept of equal division that Esther transferred Parcel 15C/63 to John III, Clive and Tom in equal shares in light of her earlier transfer of parcel 15E/152 just to Phillip, in order to more or less equalize matters between the 4 of them at that time. The evidence was that all of her sons, including Phillip, understood that was her intention and why. As I have already mentioned, the evidence was that Phillip clearly wasn't happy at the time about this transfer by Esther but he did nothing about it. It would, in my opinion, have been a reasonable inference for Esther, John III, Clive and Tom to make from Phillip's conduct that he accepted the position. In my view, John III, Clive and Tom were entitled to and did rely on that." (My emphasis)

83. If this case is allowed to proceed it could result in another Judge of concurrent jurisdiction making potentially inconsistent findings and forming an inconsistent view as to credibility.

84. The instant case is just as much a collateral attack on the findings of Foster J, even if not expressly saying so, as was the case in the ***Ridgewood Properties Group***. It is just as impermissible as was the case in ***Laing v Taylor Walton***. In both cases, the claims were struck out.

85. Further, the fact that Mr. Hinds did appeal, and tried to have the issues of laches and acquiescence dealt with on appeal, does not in my judgment, make it any less abusive for these proceedings to be brought against Conyers. The cases that speak about the correct way to challenge a judgment at first instance being to appeal, are not saying that if you do appeal, but subsequently mount a collateral attack on aspects of the first instance judgment, then the fact that you appealed removes the taint of abuse.



86. If Mr. Hinds' argument is right that, based on the principle in ***Hollington v Hewthorn***, Conyers are not entitled to rely on the findings of Foster J in support of the issues of laches and acquiescence, then if it can, Conyers would have to go to the three brothers, and try to adduce all the same evidence. That does appear to me to be manifestly unfair. This would be unfair to Conyers, in respect of whom no allegation of negligence in relation to these issues of laches and acquiescence has been made, to be compelled to seek to have witnesses come and give evidence on those matters all over again.

87. However, not only would it be unfair to Conyers, but it would also be manifestly unfair to the witnesses, the Defendants in the underlying proceedings, who have already given evidence, and who have had these matters resolved, but who may have to come back and give evidence, in what would be Mr. Hinds' second bite at the cherry. That in my view would bring the administration of justice into disrepute.

88. This is in my view quite a remarkable case. The underlying proceedings were to a large extent shrouded in delay. These proceedings represent an impermissible collateral attack on the GC judgment of Foster J. They would allow for Mr. Hinds to have another day in Court, with a *"rerun"* of issues already decided against him. It seems to me, that when the circumstances and the Law are looked at carefully, and indeed, when the facts of this case are looked at with *"intense focus"*, as recommended by Buxton L.J in ***Laing v Taylor Walton***, considering the matter in broad terms, it is plain that to allow these proceedings to proceed would be manifestly unfair to Conyers and to the Defendants in the underlying proceedings, and would bring the administration of justice into disrepute. When I look at the case broadly on the merits, taking into account all the private and public interests involved, these proceedings are clearly an abuse of the process of the Court.

89. As regards paragraph 30 of the Statement of Claim: it is there claimed that the incorrect advice of Conyers directly led to the proliferation of disputed issues between the Mr. Hinds and the Defendants as well as prolongation of the case such that this rendered Conyers services valueless by its breaches of contract and/or breaches of duty of care.

Further, that by reason of these matters Mr. Hinds has suffered loss and damage for which Conyers is liable.

90. It is obvious in my view that Conyers did nothing to cause the Defendants in the underlying action to run the arguments they did, and these Defendants did raise centrally to their case, the issue of Laches and Acquiescence. Further, since those Defendants had already raised the issue of time-bar regarding Parcel 63, albeit the wrong period, the point about time-bar would have had to be dealt with anyway. I note that in Mr. Hinds' Written Submissions on Appeal in the underlying proceedings, he was saying that the Defendant brothers caused the proliferation of issues, yet now he claims Conyers did.

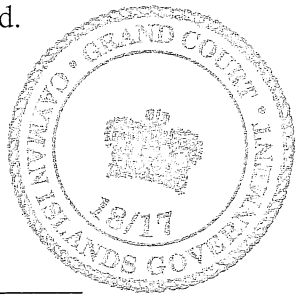
91. In my judgment, paragraph 30 of the Statement of Claim raises matters that are frivolous and vexatious and on that ground, stand to be struck out.

92. The claim also that Conyers' services have been rendered valueless is obscure, and is also unsustainable in the circumstances and falls to be struck out.

93. I am of the view that the Writ of Summons and Statement of Claim, and therefore the entire claim, should be struck out on the grounds that the claim is an abuse of process and/ or is frivolous and vexatious.

94. It obviously follows that the May 2018 summons and draft amended summons filed 31 January 2019, are also struck out/fall away.

95. Unless I hear from the parties within 7 days of delivery of the finalised judgment seeking a different order, costs will be granted to the Defendant against the Plaintiff on the standard basis, to be taxed if not agreed.



THE HON. JUSTICE INGRID MANGATAL
JUDGE OF THE GRAND COURT