

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2 CIVIL DIVISION

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LEGAL AID NO. LACV 0125/2018

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5 IN THE MATTER OF THE LEGAL AID LAW 2015

6 IN THE MATTER OF AN APPLICATION FOR LEGAL AID BY THE APPLICANTS  
7 BLONDE UZZLE AND CLINTON POWERY

8 AND IN THE MATTER OF AN APPEAL OF THE DECISION OF THE DIRECTOR OF  
9 LEGAL AID PURSUANT TO SECTIONS 4 AND 38 OF THE LEGAL AID LAW (2015  
10 REVISION)

11 TAKEN ADMINISTRATIVELY ON THE PAPERS WITHOUT A HEARING

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**HEADNOTE**



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*Legal Aid Law (2015 Revision) – Sections 4 and 38 – Legal Aid Regulations  
(2016) – Reconsideration of Legal Aid application - Issues arising: Allegation of  
18 Fraud, Merits of the case. No substantive question of law.*

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**JUDGMENT**

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1 INTRODUCTION

2 1. By Notice of Appeal dated 7<sup>th</sup> December 2018, the Applicants, Ms. Blonde Uzzle and  
3 Mr. Clinton Powery appeal the decision of the Director of Legal Aid (the “Director”) to  
4 refuse their application for legal aid to continue civil proceedings G033 of 2008<sup>1</sup>.

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6 2. Those proceedings were initiated by the Applicants by a writ of summons filed on the  
7 16<sup>th</sup> July 2008 against the First Defendant, Terridean Powery and the Second Defendant,  
8 the Registrar of Lands. By this writ, the Applicants, who are the Personal  
9 Representatives of the Deceased, Andrew Powery, who died on 9<sup>th</sup> June 2005, allege a  
10 fraudulent transfer of property in favour of the First Defendant, a granddaughter of the  
11 Deceased. The Applicants were at that time represented by Attorneys, Mourant du Feu  
12 & Jeune. The matter proceeded in the following way:

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14 i. 16<sup>th</sup> January 2008: The Plaintiffs filed an Ex parte Summons for registration  
15 of an inhibition. This was supported by the Affidavit of Blonde Uzzle dated  
16 11<sup>th</sup> July 2008.

17 ii. 27<sup>th</sup> August 2008: An Inhibition Order was made.

18 iii. 13<sup>th</sup> October 2018: Affidavit of Service was filed by the Plaintiffs.

19 iv. 20<sup>th</sup> October 2008: Acknowledgement of Service was filed by the First  
20 Defendant indicating an intention to defend.

21 v. 19<sup>th</sup> November 2008: Defence and Counterclaim filed by First Defendant.

22 vi. 8<sup>th</sup> February 2008: Reply to Defence and Counterclaim filed by Plaintiffs.

23 vii. 31<sup>st</sup> August 2009: Summons filed by Plaintiffs seeking directions as to  
24 arrangements for trial.



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<sup>1</sup> *Blonde Rachel Ann Uzzle and Clinton Credoc Powery v Terridean Camella Powery and Registrar of Lands*





- 1 v. The Director failed to take into consideration Section 19 (4) of the Legal  
2 Aid Law that in the interests of justice the Director may in the circumstances  
3 of a particular case disregard the disposable income of assisted persons.
- 4 vi. The Applicants have provided evidence on the issue of delay by the Order  
5 for Directions as the matter did not go beyond that point failing to reach a  
6 trial date being the reason for making the legal aid application.
- 7 vii. The Director failed to inquire from the attorney as to how much it would  
8 cost to take the matter to trial.
- 9 viii. The Director erred in failing to determine the full understanding of the Writ  
10 in Cause 333/2008 in her decision.
- 11 ix. The Director did not state that the Applicants could make a contribution  
12 from any funds that may be derived if the case is successful.

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14 **THE LEGAL AID LAW (2015 REVISION)**

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16 8. By s.4 of the Legal Aid Law 2015, legal aid may be granted in civil proceedings in the  
17 Grand Court subject to ss.(3) and ss.(5). Subsection (3) relates to family proceedings and  
18 subsection (5) prohibits the grant of legal aid for certain civil matters such as defamation.  
19 Section 4(6) provides that legal aid may be granted to individual natural persons who  
20 are parties in civil proceedings and civil appeals.

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22 9. Section 4 (5) is the important qualifying section:

23 *“Legal aid in civil proceedings may only be granted if the Director is satisfied after*  
24 *making inquiries under section 16 that the applicant appears to have a reasonable*  
25 *prospect of succeeding on the merits of the case.”*



1 10. The inquiries to be made pursuant to s.16 include inquiries as to the means and condition  
2 of the applicant and as to the merits of his case.

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4 11. Section 17(3) and (4) provide that an applicant for legal aid under s.4 may be granted a  
5 certificate by the Director, in his discretion, and in the exercise of that discretion the  
6 Director shall consider, *inter alia*, whether it is in the interests of justice to grant legal  
7 aid. Matters which shall be considered under the heading of interests of justice include  
8 whether the determination of any matter arising in the proceedings may involve  
9 consideration of a substantial question of law and whether the Applicant may be able to  
10 understand the proceedings or to state his own case.

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12 12. By s.19, the Director may, where it is appropriate, require an assisted person to make a  
13 contribution or may, where the interests of justice require, disregard the disposable  
14 income of a person and not require him to make a contribution.

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16 13. Section 42 of the Law provides for the making of Regulations *inter alia* as to the general  
17 regulation of the grant of legal aid certificates.

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#### THE LEGAL AID REGULATIONS 2016

20 14. Regulations 7 to 10 of the Legal Aid Regulations 2016 relate to legal aid for civil  
21 proceedings. Regulation 8 provides:

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*“8. (1) A certificate shall be granted if the Director is satisfied that the  
applicant appears to have a reasonable prospect of succeeding on  
the merits of the case.”*

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**THE MERITS OF THE CASE**

15. The submission of the Applicants that means is not determinative of an application and that the law provides for contributory arrangements where appropriate is correct.

16. Indeed, the Director may also disregard the disposable income of assisted persons if the interests of justice so require.

17. The primary consideration for this appeal is thus whether the Applicants have a reasonable prospect of succeeding on their case.

18. The two Applicants are the personal representatives of the Estate of Deceased, Andrew McField Powery, pursuant to a will which he made and signed on the 16<sup>th</sup> September 1997. Mr. Powery died on the 9<sup>th</sup> June 2005 at the age of 92 years and 11 months. The Applicants were granted probate on the 26<sup>th</sup> September 2007. The will provided that with the exception of 12,500 square feet of property known as West Bay North East, Block 8 A Parcel 36, which was bequeathed to the said First Defendant, all the Deceased's real and personal property was to be divided equally among his eight children.

19. By her First Affidavit filed 16<sup>th</sup> July 2008, Ms. Uzzle states that Mr. Powery could not read or write at all during his lifetime. She states further that since the year 2000 he suffered from Alzheimer's disease, dementia and confusion and was also hard of hearing and had poor eyesight. He was admitted to hospital on 4<sup>th</sup> March 2001, 25<sup>th</sup> March 2001, 14<sup>th</sup> July 2001 and again on three occasions in 2002 - 10<sup>th</sup> May, 24<sup>th</sup> June and on 26<sup>th</sup> August 2002, when his state of dementia for two and a half years was noted on his records.

1       20.     Following his death, the Applicants and his children discovered that an instrument of  
2             transfer dated 9<sup>th</sup> March 2002 had been completed, transferring a two-acre parcel of land  
3             to the First Defendant and Mr. Powery jointly for natural love and affection. The First  
4             Defendant became the sole owner of this property upon his death.

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6       21.     The allegation is that the transfer was obtained fraudulently, that the First Defendant  
7             brought a justice of the peace into her mother's house for the transfer documents to be  
8             executed by the bedside of Mr. Powery without the knowledge of his children, that she  
9             unduly influenced him while he was in a reduced mental state and not capable of  
10            understanding the nature, contents and effect of the Instrument of Transfer.

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12       22.     It is further alleged that the signature on the instrument of transfer was not consistent  
13            with his usual signature. In support of this latter assertion, Ms. Uzzle states: "*the First*  
14            *Defendant had mentioned to a family member that she had "assisted" Andrew Powery*  
15            *to execute the Instrument of Transfer.*"<sup>2</sup>

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17       23.     In reply, the First Defendant in her Defence and Counterclaim asserts that Mr. Powery  
18            could and did know how to sign his name as evidenced by his signing of the will which  
19            the Plaintiffs rely on. It is further asserted in reply that Mr. Powery loved the First  
20            Defendant dearly and it was his wish that the transfer be made during his lifetime. The  
21            First Defendant and her mother were caregivers for Mr. Powery and at no time did the  
22            Doctors who visited him mention that he was suffering from any form of dementia or  
23            confusion.



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<sup>2</sup> Affidavit dated 11<sup>th</sup> July 2008 – paragraph 15.9

1       24.     The transfer was made at a time when he was in in his right mind and he remained alert  
2             and talkative up until his death. The transfer was executed by Mr. Powery in the presence  
3             of Justice of the Peace, Floyd Bush who knew him and spent at least one hour chatting  
4             with him at the time the transfer of land was executed.

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6       25.     In considering the merits of the case of the Applicants, it is noted that there is no mention  
7             in the account given by Ms. Uzzle in her Affidavit of any other witness who was present  
8             at the material time who would be available to support her allegation that the signature  
9             of Mr. Powery was fraudulently obtained. Neither is there any mention of the availability  
10            of handwriting expert evidence. There are no medical records on file neither is there a  
11            report from a medical practitioner. There is no detail provided as to whether at the time  
12            of his hospital visit prior to execution of the Transfer Instrument in March 2002, the  
13            stage of his Alzheimer's disease and dementia was mild, moderate, moderately severe  
14            or severe. In particular there is no reference to his level of functionality at the material  
15            time.

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17       26.     My view is that the Plaintiffs will struggle to prove the alleged fraud given the presence  
18             of the Justice of the Peace at the time of the execution of the transfer instrument, and the  
19             likely evidence from the First Defendant that this was for at least one hour.

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1 27. Additionally, prior to the date of execution of the instrument in March 2002, the  
2 Deceased had last been at the hospital some seven months prior to that, on the 14<sup>th</sup> July  
3 2001. At that time the complaints were fever and confusion. It is not clear whether these  
4 were interrelated or whether the confusion was separate and part of his general  
5 continuing state or his state on that occasion. About two months after the execution of  
6 the transfer on 10<sup>th</sup> May 2002, he was admitted for weakness and pyrexia. Significantly,  
7 there is no reference at this point to confusion but Ms. Uzzle states that “*his state of*  
8 *Dementia for two and half years was noted on his records.*”

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10 28. Proof of the Plaintiff’s case would, in my view, require medical evidence to the standard  
11 of on a balance of probabilities that, despite not having examined Mr. Powery on the day  
12 or close to the time of the execution of the transfer, the continuum of his illness, as well  
13 as the stage of his illness, must have meant that he was incapable of understanding the  
14 nature of his acts on that day, at that particular time. Alternatively proof of the case  
15 would require some evidence from a witness who was present, as to his state of mind, or  
16 observation of some fraudulent influence, or from a witness as to whether or not it is  
17 possible to say that the signature on the document was not in fact made by him. As to  
18 possible factual non-expert witnesses from whom affidavits have not yet been obtained,  
19 I am concerned as to whether their recollections may be viewed as reliable given that  
20 some 16 years have now passed since the instrument was executed.



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1       29.     This is not a matter that requires the consideration of a substantial question of law. There  
2             are no complex issues to be resolved. The fact that fraud is alleged does not alter the  
3             nature of the case. In my view none of the considerations under s.17(4) of the Law appear  
4             to apply such that it could be said that the interests of justice require that legal aid ought  
5             to be granted in the instant case.

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7       30.     This is essentially a factual dispute as to whether, despite his age and illnesses, the  
8             Deceased was functioning and had the mental capacity, three years before his death, to  
9             know what he was doing when he executed the questioned transfer.

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11      31.     I bear in mind that an interlocutory injunction had been granted but note that this was on  
12             an *ex parte* basis prior to the filing of the Defence and Counterclaim.

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14      32.     On all the material that is presently available, I am unable to conclude, as the Law  
15             requires, that the Applicants appear to have a reasonable prospect of succeeding on the  
16             merits of the case.

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18      33.     The Applicants did not provide the Director with a copy of an attorney at law's opinion  
19             on the merits of the case as per Regulation 7 (2) of the Legal Aid Regulations 2016.  
20             They have provided no additional material as to the merits of the case, or as to any  
21             additional evidence which is in hand or is likely to be in hand. In the absence of this, an  
22             assessment has therefore been made on the material available, which includes the  
23             detailed affidavit of Ms. Uzzle.



1       34.     I conclude from my review that there is no proper basis to grant legal aid in this case. I  
2             would decline to grant legal aid even for the limited purpose of obtaining an attorney at  
3             law's opinion. The circumstances are not such as to justify this.

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5       35.     The appeal from the decision of the Director is therefore refused.

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8     **Dated this the 23<sup>rd</sup> day of January 2019**

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10    **Honourable Justice Cheryll Richards Q.C.**  
11    **Judge of the Grand Court**

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