

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CIVIL DIVISION

3  
4 CAUSE NO. G0188 OF 2015

5  
6 BETWEEN:

7  
8 WILLIAM McKEEVA BUSH

9 Plaintiff

10 AND

11 DAVID BAINES, COMMISSIONER OF POLICE

12 AND

13 DUNCAN TAYLOR

14 AND

15 THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

16  
17 Defendants

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20 **Appearances:** Mr. Ian Huskisson of Travers Thorp Alberga for the  
21 Applicant

22

23 **Before:** Hon. Justice Richard Williams

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25 **Heard:** 2 March 2016

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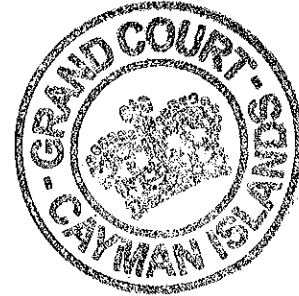
27 **Draft Judgment**

28 **Circulated:** 3 March 2016

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30 **Judgment Delivered:** 3 March 2016

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**HEADNOTE**

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*Application to serve out of the jurisdiction - Application for order of substituted service.*

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**TRANSCRIPT OF EX TEMPORE JUDGMENT**

36

**Introduction**

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1. Having regard to the need for there to be reasons for my decision to be given

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promptly, I feel it appropriate to deliver an Ex Tempore Judgment. A transcript of

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this Judgment will be provided to the parties.

*160303 Bush v Baines et al - Transcript of Ex Tempore Judgment*

1    **The Application**

2    2.    The matter comes before me on the Plaintiff's ex parte application for leave to  
3        serve Mr. Duncan Taylor, the Second Defendant, out of the jurisdiction and for an  
4        order for substituted service. The application is brought by a Summons filed on 27  
5        January 2016 and is supported by an affidavit sworn by the Plaintiff on 23  
6        January 2016.



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8    **Background**

9    3.    The Plaintiff issued his Writ of Summons and Statement of Claim on 21 October  
10        2015. That was served on the First and Third Defendants who are both  
11        represented by the Attorney General's Chambers. Their Acknowledgement of  
12        Service, in which it was indicated that the proceedings would be contested, was  
13        filed on 24 November 2015. On 28 January 2016 the First and Third Defendants'  
14        Defence was filed.

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16   4.    The Plaintiff's claim is that the Defendants conspired to cause him to lose  
17        political office. It is claimed that Mr. Taylor, who was the Governor of the  
18        Cayman Islands at the relevant time, is a necessary or proper party to the  
19        proceedings as it is alleged that he was "*at the heart of the conspiracy.*" It is  
20        submitted that the claim is found on tort, fraud or breach of duty and the damage  
21        was sustained or resulted from an act committed within the jurisdiction.

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1 5. I have had an opportunity to review the Defence of the First and Third Defendants  
2 in which they deny the claim. Having regard to the duty to give full and frank  
3 disclosure, I have also been informed by the Plaintiff that Mr. Taylor may argue  
4 that he is immune from suit due to him holding his former office as Governor of  
5 the Cayman Islands. My attention has been drawn to the case of *In the Matter of*  
6 *Fedele* [1988-89 CILR 155] in which Chief Justice Collett stated at page 157 line  
7 40:

8 *"It is equally clear that Governors of dependent territories of the*  
9 *Crown, as a class, do not partake of the Sovereign's general*  
10 *immunity from suit. A colonial Governor may be sued in the courts*  
11 *of his colony in contract or tort, whether or not his actual*  
12 *admissions are alleged to have occurred in the course of his*  
13 *official duties there: ... The validity of his official acts may*  
14 *generally be called into question in appropriate proceedings*  
15 *brought against him as a defendant in the courts of the*  
16 *territory:..."*

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18 **Application - Serve out of the Jurisdiction**

19 6. The first question for me at this stage is whether the action is within Grand Court  
20 Rules ("GCR") O. 11, r.1(f) at all. That rule provides that service of a writ out of  
21 the jurisdiction is permissible with leave of the Court if in the action begun by the  
22 writ:

23 *"The claim is founded on a tort, fraud or breach of duty whether*  
24 *statutory at law or in equity and the damage was sustained, or*  
25 *resulted from an act committed, within the jurisdiction;"*  
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1 7. It is up to the Plaintiff to demonstrate that its cause of action falls within the rule,  
2 and to do that the standard which it must meet is that of a good arguable case that  
3 the matter is within the rule: *Seaconsar Far East Bank Ltd. V Bank Markazi*  
4 *Jomhuri Islami Iran* [1993] 4 All ER 456 (HL).

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6 8. The assumption of jurisdiction over a foreign person is not something which the  
7 Court undertakes lightly. There is no presumption in favour of the applicant, and  
indeed the rule provides to the contrary:



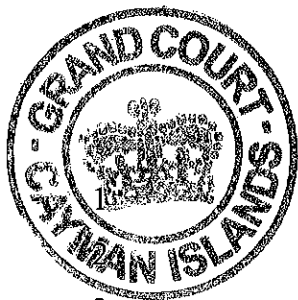
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“No such leave shall be granted unless it shall be made sufficiently  
to appear to the Court that the case is a proper one for service out  
of the jurisdiction under this Order.” GCR O.4, r.3

13 9. This provision is in similar terms to the English RSC Ord.11, r.4(2) and it is  
14 directed:

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“...not to the existence of the cause of action but to the question  
whether the plaintiff has sufficiently established that the case falls  
within one of the heads of jurisdiction specified in r.1” *Seaconsar*  
(supra) at p.462E.

20 10. The proper approach is set out by Lord Goff in *Seaconsar* (supra), at p. 467 G-H:

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“...A judge faced with a question of leave to serve proceedings out  
of the jurisdiction under Ord. 11 will in practice have to consider  
both (1) whether jurisdiction has been sufficiently established, on  
the criterion of good arguable case laid down in *Korner's case*,  
under one of the paragraphs of r.1(1), and (2) whether there is a  
serious issue to be tried, so as to enable him to exercise his  
discretion to grant leave, before he goes on to consider the



*exercise of that discretion, with particular reference to the issue of forum conveniens.”*

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4 11. The question whether the Plaintiff crosses the first hurdle is not, therefore, one of  
5 discretion. A discretion only arises once he has shown a good arguable case that  
6 the matter is within the rule.

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8 12. I have carefully considered the Statement of Claim and in particular paragraph 9  
9 therein which sets out in some detail the alleged conspiracy. Having reviewed the  
10 events relied upon which it is alleged constitute the tort I am satisfied that in  
11 substance the cause of action arises in the Cayman Islands. I am also satisfied that  
12 Mr. Taylor is arguably a necessary or proper party. I note that in the Defence filed  
13 by the First and Third Defendants they deny the allegations set out in paragraph 9  
14 of the Statement of Claim and state that the (former) “Governor” did not give  
15 directions or issue instructions about the police operation and that he is not liable  
16 for the actions of the First Defendant or the police. Having carried out the more  
17 limited exercise required at this time, I am satisfied that the facts, if proved,  
18 provide a sufficient basis for the alleged cause of action and there is an arguable  
19 case.

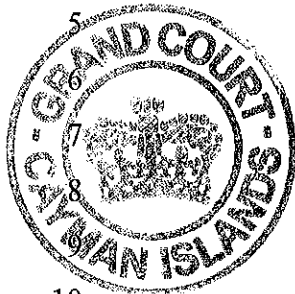
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21 13. Accordingly, I order that the Plaintiff has leave to serve the Writ and Statement of  
22 Claim and any further applications, pleadings or orders on the 2<sup>nd</sup> Defendant out  
23 of the jurisdiction.

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1    **Substituted Service**

2    14.    Having granted leave to the Plaintiff to serve Mr. Taylor out of the jurisdiction I  
3            may now go on to consider whether an order for substituted service should be  
4            made. GCR O.65, r. 4(1) provides:



5            *“If, in the case of any document which by virtue of any provision of*  
6            *these rules is required to be served personally on any person, it*  
7            *appears to the Court that it is impracticable for any reason to*  
8            *serve that document personally on the person, the Court may make*  
9            *an order for substituted service of that document.”*

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11    15.    The grounds for the application are contained in the affidavit in support sworn by  
12            Mr. Bush. Attempts have been made to serve Mr. Taylor via the Attorney General  
13            of the Cayman Islands’ Chambers. However, on 22 October 2015 the Chambers  
14            indicated in writing to the Plaintiff’s attorneys that, as they had no instructions  
15            from the Second Defendant who was out of the jurisdiction, they could not accept  
16            service.

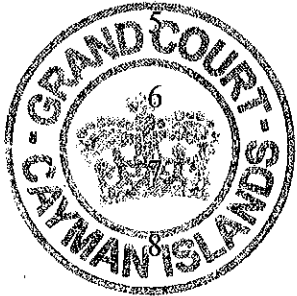
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18    16.    I accept that, due to Mr. Taylor holding the post as the United Kingdom’s  
19            Ambassador to Mexico, for a number of reasons, including security, it would be  
20            impossible for a process server to serve him personally. In addition, it appears that  
21            having regard to the United States Court of Appeals case of *Hellenic Lines v*  
22            *Moore* [1965] 345 F. 2<sup>nd</sup> 978 a serving Ambassador in a Vienna Convention  
23            country is immune from personal service of process under Article 40 of that  
24            Convention. Mexico is a signatory to that Convention. Counsel has not brought to

1 my attention the existence of any specific protocol that is required to be followed  
2 when serving process on a serving or former British diplomat.

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4 17. It is not appropriate for there to be an order for substituted service via the  
journalist, Wendy Ledger, as I am not satisfied that the process will be brought to  
Mr. Taylor's attention by her. I am also not satisfied that it would be appropriate  
for substituted service to be effected by providing the pleadings to the Attorney  
General of the Cayman Islands.



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10 18. I am satisfied that an order of substituted service should be made by delivery by  
11 Federal Express ("FedEx") Courier addressed to Mr. Duncan Taylor at the British  
12 Embassy in Mexico City, Rio Lerma, No.71, Col. Cuauhtemoc, CP. O6500. I am  
13 satisfied that he should receive the documents if service is effected by that means.

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15 19. Having regard to the personal nature of the proceedings, I am not satisfied that it  
16 would be appropriate to immediately serve the pleadings via the general email  
17 address at the Embassy. However, the Plaintiff has leave to send an email to that  
18 email address in which he should indicate that the Court has granted leave for  
19 substituted service by email to that email address in civil proceedings relating to  
20 Mr. Taylor, but that such service is not to be effected by that means before the  
21 expiry of fourteen days after the sending of the initial email. The email should  
22 explain that the purpose of such an approach is to afford Mr. Taylor the  
23 opportunity to provide a preferred email address within a reasonable period of

1 time and, if he does so, service should then be effected to that address rather than  
2 to ukinmexico@fco.gov.uk.

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4 20. The Second Defendant shall have twenty eight days to acknowledge service after  
5 the email with attached documentation is transmitted or twenty eight days after  
6 the FedEx service is effected in the manner set out in paragraph 18 above,  
7 whichever of the two modes of substituted service is the later.  
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9 **Foot Note**

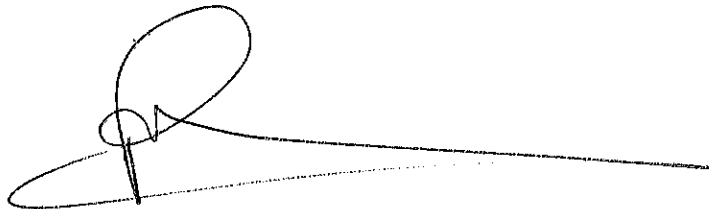
10 21. At the outset of this hearing I drew Counsel's attention to the fact that it was  
11 reported in an edition of the Cayman Compass newspaper published on 21  
12 December 2012 that the Plaintiff had made remarks at a public political rally on  
13 the previous evening about me in my capacity as a Judge. Although the article is  
14 no longer available online<sup>1</sup> and despite the fact that the recruiting and selection  
15 process for Judicial Officers was and is carried out by the Judicial and Legal  
16 Services Commission, I informed Counsel that I recall that it was reported in the  
17 said article that the Plaintiff had said at the rally that I was the "new judge" who  
18 had been handpicked and specifically recruited by Mr. Taylor to serve his will.  
19 The reported remarks were put into context at the rally by Mr. Bush indicating  
20 that I had been the Grand Court Judge who had ordered the search warrant of his  
21 property in the criminal proceedings which are the subject matter of the present  
22 proceedings. I drew Counsel's attention to paragraph 9 (i) of the Statement of  
23 Claim where specific reference is made to the search of the Plaintiff's home and

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<sup>1</sup> The link was <http://www.caymannewsservice.com/politics/2012/12/21/mac-expecting-be-charged>.  
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1 to the claim therein that the search was designed to serve the political objective of  
2 causing the maximum political damage to him.

3  
4 22. I thought it appropriate for Counsel to be made aware of this information before I  
5 received any oral submissions, thereby affording him an opportunity to take  
6 instructions, if he wished, and to consider whether he preferred the present  
7 application to be dealt with by another judge. Having considered my comments  
8 Counsel indicated that, even in the absence of his client and having not taken  
9 instructions from his client, he had no issue with me dealing with the application,  
10 but he agreed that the effect of the content of the reported comments should be  
11 considered when listing any other application in this matter. I indicated that, in  
12 light of Counsel's clearly stated position, I was content to hear the present  
13 application contained in the Summons before me. However, having regard to the  
14 Plaintiff's earlier publically expressed comments about my involvement in the  
15 events which form a part of the basis of this claim, as well as the test set out by  
16 the House of Lords in *Porter v McGill* [2002] 1 All ER 465, I informed Counsel  
17 that I had reservations about the appropriateness of my hearing any further  
18 applications that may be brought in the matter.

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22 **THE HON. MR. JUSTICE RICHARD WILLIAMS**  
23 **JUDGE OF THE GRAND COURT**

