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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

CAUSE NO. C251/05

BETWEEN: HUGH GERALD AUBRECHT

Petitioner

AND: RUPERT GEORGE ANGEL

Respondent

**Appearances: Miss Kirsten Houghton of Campbells for
the Plaintiff
Mr. Norman Hill instructed by Ms. Keva Reid of McKinney Reid &
Company for the Defendant**

Before: Hon. Justice Henderson

Heard: November 2, 2006



RULING

The plaintiff, Hugh Gerald Aubrecht, asks for an interim payment in the amount of \$200,000.

Mr. Aubrecht suffered catastrophic injuries in a motor vehicle accident several years ago. It can safely be concluded, as I do, that, if liability is established, the damage award will be very substantial. The application is resisted on the ground that Mr. Aubrecht does not have a claim which will succeed at trial.



1 The defendant, Rupert George Angel, counters with an application for security for costs. The
2 plaintiff is impecunious so the tort claim would necessarily fall into abeyance if I make any order
3 requiring him to post security for costs. On broad grounds of public policy and fairness, I am of the
4 view that security for costs, particularly in tort claims, should not be awarded where there is no
5 prospect of the plaintiff being able to satisfy the order. (The position may well be different in
6 commercial claims.) The application for security for costs is dismissed.

7
8 Before we can award to any plaintiff an interim payment, a high burden must be met. The law in
9 this jurisdiction and in England is set out succinctly in *British and Commonwealth Holdings PLC v.*
10 *Quadrex Holdings Inc.*, [1989] 1 Q.B. 842 (CA). At pages 865 and 866, the Vice Chancellor said:

11 "But Order 29, as construed by this court in the *Shearson*
12 *Lehman case* [1987] 1 W.L.R. 480, requires the court at the
13 first stage to be satisfied that the plaintiff will succeed and
14 the burden is a high one. It is not enough that the court thinks
15 it likely that the plaintiff will succeed at trial."
16

17 The test is a high one and must necessarily be high where, as is the case here, there is no prospect
18 that the interim payment will be repaid if the claim is dismissed.

19
20 I have listened carefully as counsel rehearsed the arguments which each would advance at trial, and
21 I have considered some of the more important parts of the evidence. I find myself unable to
22 conclude that this plaintiff will succeed at trial. Certainly, the plaintiff has reasonable prospects of
23 success at trial, but I can put it no higher than that.

24
25 For these brief reasons, the application for an interim payment is dismissed.

1 I am not without sympathy for this particular plaintiff. I have made inquiries of the Listing Officer
2 and of the Chief Justice about an early trial date. I am assured by each that I am at liberty to set
3 this matter down in the month of December for three days and it will be heard. It may be that we
4 will have to bring in an acting judge from elsewhere and that is what will be done if necessary.

5

6 Dated this 2nd day of November, 2006

7

8 *Henderson, J.*

9 Henderson, J.
10 Judge of the Grand Court

