30-04-03

**IN THE COURT OF APPEAL FOR THE CAYMAN ISLANDS**

**CIVIL APPEAL NO. 4 of 2002**

**GRAND COURT CAUSE NO. 368 of 2000**

**BETWEEN:**

THE NATIONAL TRUST FOR THE CAYMAN ISLANDS

**PLAINTIFF/RESPONDENT**

**AND:**

HUMPHREYS (CAYMAN) LTD

**DEFENDANT/APPELLANT**

**BEFORE:** **The Rt. Honorable Mr. Justice E. Zacca, President**
**The Honorable Mr. Justice G. Collett, JA**
**The Honorable Mr. Justice I. Rowe, JA**

**Appearances:** Mr. Douglas Schofield of Hunter & Hunter for the Appellant
Mr. Waide DaCosta of Broadhurst DaCosta for the Respondent

**Heard:** 24th April, 2003. **Delivered:** 30th April, 2003

CAYMAN ISLANDS COURT OF APPEAL

**REASONS FOR JUDGEMENT**

**BY THE COURT**

This was an appeal against an award of costs made against the Appellant and in favour of the Respondent as part of the reasons for judgement handed down by Sanderson J on 26th February, 2002 in Grand Court Cause No. 368 of 2000. These costs were awarded to the successful Respondent in respect of their appeal to that Court from a decision of the Planning Appeals Tribunal to approve a certain substantial development proposal in the Seven Mile Beach vicinity promoted by the Appellants.

The principal ground of appeal relied upon in this Court to challenge the Grand Court order for costs was that there was, as the judge found, a conditional fee agreement in place between The National Trust and its Counsel.
This was alleged to be unenforceable and contrary to public policy in that, in this jurisdiction, the ancient misdemeanors and torts of champerty and maintenance are still in force as part of the Common Law, despite the fact that they both have been abolished in England and Wales by statute for some years.

Sanderson J, considered this submission and rejected it in a reasoned decision which was impugned before us by the Appellants as having impermissibly refused to follow the applicable English authority as to the proper interpretation of the Common Law in this respect.

Before this interesting point of law could be raised in argument before us, however, it was necessary for the Appellant to confront a preliminary objection properly put before us by the Respondent that no appeal lay to this Court from the decision of the Grand Court in this matter. There were two limbs to that preliminary objection as developed before us by Counsel for the Respondent, Mr. DaCosta.

The first limb of objection relied essentially upon on Section 6 (c) of the Court of Appeal Law (1999 Revision), which provides

> - "No appeal shall lie –
> (c) from any decision of the Grand Court in respect of which it is provided by any law in force in the Islands that such decision is to be final"

That provision says Counsel is to be read in conjunction with Section 51 of the Development and Planning Law (1999 Revision) which governs appeals to the Planning Tribunal from the Planning Authority and appeals from that Tribunal to the Grand Court as

in the instant case. Subsection (4) gives a right of appeal to the Grand Court within a 14 day time limit and subsection (5) goes in to provide –

> (5) "After hearing the parties to an appeal under subsection (4), the Grand Court may confirm, reverse or modify any decision of the Tribunal and the decision of the Grand Court shall be final and binding upon the parties affected thereby."

Upon the face of the matter, therefore, it would seem that no appeal lay in this matter, since the order for costs objected to by the Appellants undoubtedly forms part of the decision of the Grand Court in the exercise of its jurisdiction conferred by Section 51 (5) of the Development and Planning Law. That was a law in force in these Islands at the relevant time for the purpose of Section 6 (c) of the Court of Appeal Law.

Counsel for the Appellant tried valiantly to counter this objection by citing the decision of The House of Lords in Anisminic v Foreign Compensation Commission (1969) 2 A.C. 147. That well known authority is of course applicable to judicial review cases and establishes the proposition that legislative provisions seeking to oust the jurisdiction of the High Court by seeking to confer finality on the decision of inferior tribunals will be strictly construed. But that proposition can have no application to decisions of courts of unlimited jurisdiction such as the Grand Court here; because, of course, prerogative writs will not go from the Grand Court to itself. A decision of the Grand Court regular upon its face cannot be so impugned by judicial review or, if the statutes already quoted are to be taken in their ordinary meaning, by any appeal to this Court.

The Court of Appeal is a statutory creation and its jurisdiction is confined to hearing and deciding those appeals which the Legislature has seen fit to say should come before it. This Court has no inherent jurisdiction to entertain appeals outside its statutory remit. We felt obliged, therefore, to accede to the preliminary objection on this ground apart from any other.

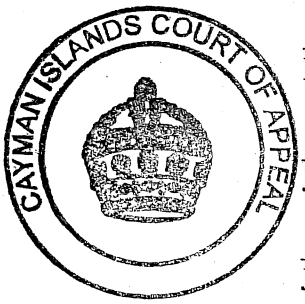
For the sake of completeness we should, however, mention the alternative limb of objection which relied upon Section 6 (e) of the Court of Appeal Law.
This provides that no appeal shall lie -

> "(e) without the leave of the Grand Court or of the (Appeals) Court, from an order made ..... as to costs only where costs are by law left to the discretion of the Grand Court.."

Here there is no doubt that the appeal sought to be brought was confined to the award of costs and it is common ground that no leave was sought either from the Grand Court or from the Court of Appeal in accordance with the applicable Rules; also that the time for seeking such leave has long expired.

On this other limb of objection, also therefore, it would seem that the preliminary objection must have succeeded. In the result, therefore, the objection was upheld, and, at the conclusion of arguement we dismissed the appeal but made no order as to costs.

When it became obvious during the latter stages of arguement that the preliminary objection was likely to succede, observations were made to us by Counsel on both sides as to the present quite unsatisfactory state of law in the Cayman Islands in regard to conditional fee agreements. We entirely agree with their observations, which we were given to understand are also concurred is by the Cayman Law Society and the Caymanian Bar Association, the professional bodies representing legal practitioners in these Islands. We would therefore urge the Attorney General and through him the responsible executive and legislative authorities to give the matter urgent attention. What seems to be needed is, first, a fresh consideration of whether the doctrines of champerty and maintenance, already abolished in England, serve any useful social purpose in the Cayman Islands at this time; secondly, in the light of that decision and any action taken on that point, to eliminate certain apparent contradictions and anomalies in the Grand Court Rules which give rise to uncertainty and may mislead some practitioners in the preparation of bills of costs where conditional fee agreements are involved.




President

Justice of Appeal

Justice of Appeal