

**IN THE CAYMAN ISLANDS COURT OF APPEAL**

Civil Appeal No. M4 of 1999  
Grand Court Cause No. 62 of 1996

**BETWEEN:**

**PAGET BROWN & COMPANY LIMITED**

Appellant/2<sup>nd</sup> Defendant

- and -

**OMNI SECURITIES LIMITED**

(In Liquidation)

Respondent/Plaintiff

**BEFORE:** The Rt. Hon. Edward Zacca, President  
The Rt. Hon. Telford Georges, Justice of Appeal  
The Hon. Ira Rowe, Justice of Appeal

Mr. Dominic McCahill instructed by Messrs. W.S. Walker & Company for the Applicant  
Omni Securities Limited (In Liquidation).

Ramon Alberga, Q.C. and Roger Nelson instructed by Messrs. Roger Nelson & Company  
for the Respondent Paget Brown & Company Limited.

August 2, 1999; August 9<sup>th</sup>, 1999

**JUDGMENT**

This is an application for leave to appeal to the Judicial Committee of the Privy Council from a judgment of this Court dated April 16<sup>th</sup> 1998 setting aside the decision of the Harre, C.J. dated May 20<sup>th</sup> 1998.

The applicant Omni Securities Limited (in liquidation) (Omni) is a Cayman Islands company. The respondent, Paget Brown and Company Limited (Paget Brown), is a Cayman Islands company offering management services to companies wishing to carry on business from the Cayman Islands.

In its claim Omni stated that there was a contract between Paget Brown and itself under which Paget Brown had undertaken to provide a registered office and a company

secretary and to make available someone who could be appointed a director of the company. Mr. Coleman, a chartered accountant, was nominated and duly appointed. He was an employee of Paget Brown.

Omni alleged conduct on the part of Mr. Coleman, which amounted to a breach of duty on his part as a director of Omni. It sought to make Paget Brown liable for the damages suffered in consequence of these breaches of duty. The claims were based in contract and vicariously in tort.

The claim in contract was based on an express or implied term of the agreement that Paget Brown would monitor the second Defendant Coleman so as to ensure he was performing his duties as director. The claim in tort was based on Paget Brown's vicarious liability to Omni for damage caused by the negligence or breach of duty by Coleman as a director. Alternatively the tort claim was based on Omni's failure to ensure that Coleman was competent to fulfil his duties as a director and for failure to monitor his performance to ensure that he was properly exercising his function.

Paget Brown applied to have the statement of claim struck out on the ground of failure to disclose any cause of action against it. Harre, C.J. dismissed the application and granted leave to amend the statement of claim in terms of an amendment submitted. On appeal to this Court the judgement of Harre, C.J. was set aside and the statement of claim struck out. Hence this application that conditional leave be granted to appeal to the Judicial Committee.

Section 3(2)(a) of the Cayman Islands (Appeals of Privy Council) Order 1984 provides:

“s. 3(2) Subject to the provisions of this order, an appeal shall lie from decisions of the Court to Her Majesty in Council with the leave of the Court in the following cases:

- (a) decisions in any civil proceedings where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council.”

It has been urged that conditional leave should be granted on both grounds but essentially the argument based on the phrase “or otherwise” merely rephrases the requirement that the issue should be one of great general or public importance.

The Court of Appeal held that the statement of claim alleged no facts from which either an implied or express term to monitor Mr. Coleman’s performance could be discerned. This finding is made on an examination of the statement of claim. It raises no point of general public importance.

The claim in tort failed on the ground that the principles set out in Kuwait Asia Bank E.C. v National Mutual Life Nominees Ltd [1991] A.C. 187 applied. Omni sought to distinguish that case on the ground that the claimant there was a shareholder. The court held that that was not a valid basis for distinguishing the case.

The principle is stated at page 221 of the judgment:

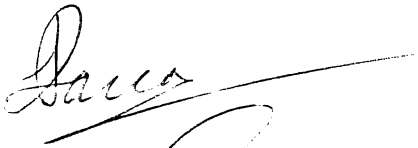
“In the absence of fraud or bad faith (which are not alleged here) a shareholder or other person who controls the appointment of a director owes no duty to creditors of the company to take reasonable care to see that directors so appointed discharge their

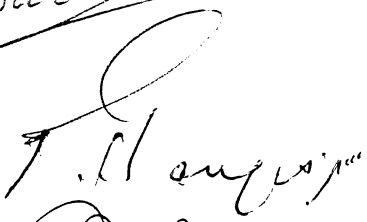
duties as directors with due diligence and competence.” (emphasis supplied)

The formulation indicates (as the underlined phrase makes clear) that its thrust is not directed solely to shareholders, and understandably so. Although provided by Paget Brown, the director is appointed by the company – Omni. His or her duties to Omni have been defined with same elaboration in statute law and decided cases. Monitoring by Paget Brown may well involve undue interference in the affairs of a company of which it is not even a shareholder.

It has been urged that some judicial interpretation of the liabilities of entities licensed under the Companies Management Law arises in this case as a matter of general importance in the growing offshore commercial activity of the Cayman Islands. The Law appears to be no more than a licensing law.

For these reasons we refused leave to appeal, since it appeared to us that there was no ground of general public importance. Costs of the application awarded to Paget Brown and Company Limited.

Zacca, P. 

Georges, J.A. 

Rowe, J.A. 

