



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: A4/2018/1574



Britannia Hotels No.2 Ltd -v- Aspen Insurance K (Ltd) and others

ORDER made by the Rt. Hon. Lord Justice Simon

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: application refused

Reasons

The Judge considered carefully and appropriately the test to be applied on Britannia's application to intervene in proceedings brought by the insurers seeking a declaration of non-liability to the assured contractors: see [1]-[2], [19], [21]-[28].

Two broad grounds are advanced in support of the application.

(1) It is said that the insurer's proceedings were premature, given that there had been no claim against them on the policy by the assured, Britannia's Scottish proceedings against the contractors had not progressed to any significant extent and there was the possibility of further evidence from assured contractors.

The Judge considered this at [54]-[55] of the judgment; but was entitled to the view that no further relevant information would become available. It was for the assured contractors to produce evidence in answer to each claim and they had not done so. At [68] he set out, on the basis of his prior reasoning, why Britannia's contentions before him failed.

(2) The Judge was wrong to place the reliance he did on clause 10 of the policy wording.

The Judge was plainly right in his conclusion that the clause prescribed the limit of cover (it was not properly speaking an exclusion clause, although a *contra proferentum* construction would not have assisted either Britannia or the assured). The Judge dealt with Britannia's arguments from [35], and in particular [63]-[65]. The construction arguments did not cross the favourably low threshold of arguability that the Judge was prepared to accept.

There is no realistic prospect of a successful appeal on these points, or any other compelling reason for granting permission to appeal.



Information for or directions to the parties

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

Pilot categories:

- | | |
|--|--|
| <ul style="list-style-type: none"> • All cases involving a litigant in person (other than immigration and family appeals) • Personal injury and clinical negligence cases; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. • EAT Appeals |
|--|--|

<ul style="list-style-type: none"> • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; 	<ul style="list-style-type: none"> • Residential landlord and tenant appeals
If yes, is there any reason not to refer to CAMS mediation under the pilot?	Yes/No (delete as appropriate)
If yes, please give reason:	
Non-pilot cases: Do you wish to make a recommendation for mediation?	Yes/No (delete as appropriate)
Where permission has been granted, or the application adjourned	
a) time estimate (excluding judgment)	
b) any expedition	



Signed: *[Handwritten Signature]*
Date: *2 March 2018*

Notes

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **A4/2018/1574**

By the Court

**DATED 2ND NOVEMBER 2018
IN THE COURT OF APPEAL**

ORDER

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Lower Court Ref: CL-2018-000245