



Neutral Citation Number: [2020] EWHC 1168 (QB)

Appeal Ref: 9BS0128C
County Court Claim No: E49YM290

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BRISTOL DISTRICT REGISTRY
APPEAL FROM THE ORDER OF HHJ AMBROSE
DATED 19 NOVEMBER 2019

Bristol Civil and Family Centre
2 Redcliff Street, Bristol BS1 6GR

Date: 12 May 2020

Before :

MR JUSTICE MURRAY

Between :

QUALITY SOLICITORS HARRIS WATERS

**Claimant/
Respondent**

- and -

DIANA OKONKWO

**Defendant/
Appellant**

The Appellant appeared in person.

The Respondent appeared in person, represented by Mr Roger Waters, a partner of the firm.

Hearing date: 11 May 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 10:30 am on 12 May 2020.

Mr Justice Murray :

1. This is an application by Dr Diana Okonkwo for permission to appeal against paragraphs (1) and (2) of an order made by HHJ Ambrose made on 19 November 2019. Dr Okonkwo was the defendant in the underlying claim (E49YM290) issued by Quality Solicitors Harris Waters, a firm of solicitors, in the County Court at Bath on 2 October 2018.
2. The hearing of this application was by telephone (using the BT Meet Me conferencing service). Although I was able to hear all of the oral submissions made by Dr Okonkwo in support of her application, as well as the brief oral submissions made in reply by Mr Waters, it became apparent, while I was in the course of giving an *ex tempore* judgment on the application, that the parties were having difficulty hearing me, due to the audio of my voice “breaking up” on the line.
3. As there was nothing that I could do immediately to remedy that difficulty, I concluded that, rather than giving a full oral *ex tempore* judgment, it would be necessary to give my reasons in writing, following the hearing. I indicated that I would be dismissing Dr Okonkwo’s application for permission to appeal and that I would provide my reasons for doing so in a written judgment. The parties each confirmed that they had heard that indication before the hearing ended. This is my written judgment giving my reasons for dismissing the appellant’s application for permission to appeal.

The background

4. On 2 October 2018 the respondent issued a claim against the appellant for unpaid professional fees that it says were due to the firm for professional services. The partner at the respondent firm who has been principally involved in this matter is Mr Roger Waters, who appeared by telephone at the hearing of this matter, representing the respondent.
5. In the absence of a filed Defence to the claim, the respondent obtained a judgment by default against Dr Okonkwo on 20 November 2018. The respondent then applied for a writ of control to enforce that judgment, which was issued on 16 November 2018.
6. On 3 April 2019 Dr Okonkwo applied to stay the writ of control and to set aside the default judgment.
7. On 24 April 2019 there was a hearing before DDJ Billing at which the Deputy District Judge rejected Dr Okonkwo’s application to set aside the default judgment and to stay the writ of control. The Deputy District Judge also awarded the respondent £1,000 in costs.
8. On 13 May 2019 Dr Okonkwo filed an Appellant’s Notice seeking to appeal the order of DDJ Billing made on 24 April 2019.
9. On 24 May 2019 HHJ Ralton gave directions for the hearing of Dr Okonkwo’s appeal.

10. On 6 September 2019 HHJ Townsend, having reviewed the papers, refused permission to appeal, and indicated in his order that Dr Okonkwo could renew her application at an oral hearing, if she made the request before 4:00 pm on 1 October 2019, which she did.
11. At the oral hearing of her renewed application on 19 November 2019, at which Dr Okonkwo represented herself and Mr Waters represented his firm, HHJ Ambrose made an order, in which he:
 - i) refused Dr Okonkwo permission to appeal against the order made by DDJ Billing made on 24 April 2019;
 - ii) refused to stay the writ of control that had been issued to enforce the default judgment obtained against Dr Okonkwo; and
 - iii) ordered that there would be no order for costs of the hearing before him.
12. On 26 November 2019 Dr Okonkwo filed her Appellant's Notice seeking to appeal paragraphs (1) and (2) of the order of HHJ Ambrose dated 19 November 2019.
13. At the beginning of the hearing of this application, I explained to Dr Okonkwo section 54(4) of the Access to Justice Act 1999 provides that there is no appeal from a refusal of permission to appeal and therefore I had to dismiss her application for permission to appeal against paragraph 1 of the order of HHJ Ambrose on the basis that there is no jurisdiction to hear it. I further explained that I could hear her appeal against paragraph (2) of the order of HHJ Ambrose, which concerned the writ of control.

Test for permission to make a first appeal

14. This is not the appeal. This is an application for permission to appeal. The test for a permission to appeal in respect of a first appeal is set out in CPR rule 52.6(1). Permission to appeal may only be given where:
 - i) the court considers that the appeal would have a real prospect of success; or
 - ii) there is some other compelling reason for the appeal to be heard.
15. An appeal will only have a real prospect of success if the appellant can show that there is a real (rather than fanciful) prospect of persuading the appellate court that:
 - i) the judge below was wrong in law;
 - ii) the judge made a material factual error;
 - iii) the judge erred in the exercise of a discretion outside the generous ambit within which reasonable disagreement is possible; or
 - iv) the order appealed against is unjust due to a serious procedural or other irregularity in the proceedings in the lower court.

16. The appellant only needs to show, in effect, that the appeal is arguable, not that she is more likely than not to succeed. The hurdle to be surmounted by an applicant for permission to appeal is not a high one, provided that there is some merit in the appeal.

Documents filed

17. Dr Okonkwo has filed an electronic bundle comprised of a Table of Contents and a variety of documents set out in Sections A to J of her bundle. These documents include her Appellant's Notice dated 26 November 2019, her Grounds of Appeal, her skeleton argument which was undated but sent to the Court on 9 December 2019 and a statement of the appellant's position, which is dated 7 May 2020.
18. The respondent has filed a paper bundle, with a variety of documents set out under tabs A to D. Tab A includes the respondent's position statement dated 5 November 2019, which I assume was before HHJ Ambrose, and a witness statement by Mr Waters dated 11 April 2019.

Grounds of appeal

19. Almost all of Dr Okonkwo's Grounds of Appeal and her arguments in her skeleton argument and her more recent statement of position are concerned with the substance of the decision of HHJ Billing rejecting Dr Okonkwo's application to set aside the default judgment and why both HHJ Townsend, on the papers, and HHJ Ambrose, at the oral hearing, were wrong to reject her application for permission to appeal. As I have already noted, the appellant has no right of appeal against HHJ Ambrose's refusal of permission to appeal against the order of DDJ Billing, and therefore the default judgment stands.
20. The principal question, therefore, for me to decide in relation to this application is whether Dr Okonkwo has any grounds to appeal HHJ Ambrose's refusal to stay the writ of control. In her oral submissions at the hearing before me, Dr Okonkwo focused almost entirely on what she characterised as the injustice of DDJ Billing's original order and of the subsequent refusals of permission to appeal by HHJ Townsend and HHJ Ambrose. In her written submissions, the only grounds that the appellant put forward of potential relevance to paragraph (2) of the order of HHJ Ambrose are the following:
 - i) There was a serious procedural irregularity in the course of these proceedings as there was no continuity of circuit judges, the first order after Dr Okonkwo filed her Appellant's Notice having been made by HHJ Ralton on 24 May 2019, the next order having been made by HHJ Townend on 6 September 2019 and the final order, against which she is now appealing, having been made by HHJ Ambrose on 19 November 2019. Dr Okonkwo claimed to have been disadvantaged by this, but she did not elaborate this point in her written submissions.
 - ii) The writ of control should be stayed because from the outset she had seriously queried the authenticity of the High Court enforcement officers seeking to enforce against her assets on the basis of the writ of control, and she suspected that she was a victim of fraud. She alleged that the enforcement officers were "corrupt".

- iii) The writ of control should be stayed because the default judgment was obtained by deception.

Decision on each ground

21. My views on each of these grounds are as follows:

- i) There was clearly no procedural irregularity in one circuit judge having given entirely standard directions for the hearing of the appellant's application for permission to appeal against the order of DDJ Billing, another circuit judge having considered her application for permission to appeal on the papers and a third circuit judge having considered her renewed application for permission to appeal at an oral hearing. Dr Okonkwo does not explain how this disadvantaged her, but in any event there was no procedural irregularity in this regard. There is no merit in this ground of appeal.
- ii) Dr Okonkwo has made very serious allegations against the enforcement officers. If there is any merit in her complaints, the proper course for her to take is to invoke the complaints procedure of the Sheriffs Office, which I understand Dr Okonkwo has already done. The respondent's bundle included a letter dated 9 April 2019 from the Sheriffs Office to the appellant dealing with her submission and rejecting her complaint. In any event, that is not a matter for me, nor is it a reason to stay the writ of control. If the enforcement were wholly fraudulent, as Dr Okonkwo also appeared to be submitting, then that would be a matter for the police. But, again, that would not affect the validity of the writ of control or provide a reason for staying the writ of control. There is no merit in this ground of appeal.
- iii) The argument that the writ of control should be stayed because the default judgment was obtained by deception is hopeless, given that Dr Okonkwo has exhausted her appeal rights in relation to the default judgment, as I have already explained. There is no merit in this ground of appeal.

Conclusion

- 22. Accordingly, Dr Okonkwo's application for permission to appeal in relation to paragraphs (1) and (2) of the order of HHJ Ambrose dated 19 November 2019 is refused.
- 23. This application for permission to appeal is wholly without merit. Having reached that conclusion, I am obliged under CPR rule 23.12(b) to consider whether it is necessary to make a civil restraint order against her. As I am not aware of any other relevant application made by Dr Okonkwo that has been found to be totally without merit, I conclude that no such order is currently necessary.