



# IN THE COURT OF APPEAL, CIVIL DIVISION

REF: A3/2016/4389



Raja (Widow & Administratrix of the Estate of  
Mohammed Sabir Raja, Deceased) –v– Hoogstraten

## ORDER made by the Rt. Hon. Lord Justice Gross

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:** granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

1. The Defendant ("the Applicant") is refused PTA.
2. It follows that there is no appeal in which the (alleged) Beneficiaries ("the IPs") can intervene.
3. The application by the IPs for a stay of the enforcement of the Charging Order, the subject of the judgment and order of Norris J dated 4<sup>th</sup> November, 2016 ("the judgment"), is refused.
4. If the IPs are so advised, they are at liberty in the course of the Respondent's application for an order for the sale ("the order for sale proceedings") of the properties in question ("the properties"):
  - (i) To seek to assert their (alleged) beneficial interests in the properties; and
  - (ii) To contend that the final Charging Order by its terms only affects any beneficial interest of the Applicant in the properties.

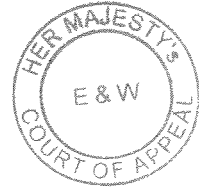
This Court expresses no view one way or the other on the outcome of any such application/s by the IPs, though the Court hearing the order for sale proceedings will no doubt be mindful of the decision in *JSC BTA Bank v Ablyazov (No. 15)* [2016] EWCA Civ 987; [2017] 1 WLR 603.

### Reasons

1. The Applicant has no good reason for having failed to pay the Respondent the very significant sums outstanding over many years in respect of costs (now estimated at £1.5 million).
2. On the facts of this case and the terms of the interim Charging Order, Norris J did not err as to the Burden of Proof.
3. If the IPs were minded to intervene, they should have intervened in the proceedings before Norris J, prior to, not after, his judgment.
4. In any event, the Judge's decision adverse to the Applicant did not override the rights of the IPs, in that they are at liberty in the order for sale proceedings to proceed in accordance with **Decision, para. 4**, above. Additionally, the IPs may have other remedies as indicated by the Judge, at [72] of the judgment (though, again, this Court expresses no view on the merits of any such claims, if they are pursued).
5. There is no let alone any real prospect of any appeal by the Applicant succeeding.
6. PTA is accordingly refused.
7. It follows that there is no appeal in which the IPs can intervene.
8. In the circumstances, the application by the IPs for a stay of the enforcement of the Charging Order falls away. In any event, in all the circumstances already recounted, it would be contrary to the interests of justice now to grant a stay.



9. It is instead just that the IPs are left to pursue such remedies as are open to them under **Decision, para. 4** and **Reasons para. 4** above.



**Information for or directions to the parties**

This case falls within the Court of Appeal Mediation Scheme automatic pilot categories\*. Yes  No

Recommended for mediation Yes  No

If not, please give reason:

**Where permission has been granted, or the application adjourned**

- a) time estimate (excluding judgment)
- b) any expedition

Signed: *[Signature]*

Date: 03 April, 2017

*By the Court*

**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: **A3/2016/4389**

**DATED 3RD APRIL 2017  
IN THE COURT OF APPEAL**

NICHOLAS VAN HOOGSTRATEN

- and -

STARBIBI RAJA (WIDOW & ADMINISTRATRIX OF  
THE ESTATE

**ORDER**

Copies to:

Engleharts Solicitors  
DX 59252  
Hove  
Ref: KR/BAGOT TRUST/53532

Sabeers Stone Greene  
DX 58701  
Shepherds Bush  
Ref: UE/AH/06976

Chancery Division  
1st Floor, Roll's Building  
File Management  
London EC4A 1NL  
Ref: HS-2016-000506