

1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

3
4 CAUSE NO: 274 OF 2007

5
6 BETWEEN:

7 PAUL BURTON

8 Plaintiff

9
10 -AND-

11
12 THE REPRESENTATIVE(S) OF THE ESTATE OF ADAM
13 HONEYCHURCH, DECEASED

14 Defendant

15
16 BEFORE: The Honourable Madam Justice Levers

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18 APPEARANCE:

19 Mr. K. Broadhurst of Broadhurst Barristers for the Plaintiff

20 Mr. D. Schofield on behalf of the Crown

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22 Date of Hearing: 24th October 2007

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RULING

Levers, J.

This is an application by the Plaintiff, Paul Burton to obtain an order for the following relief:

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29/10/2007 1 B/1/12. Cnd.



1 (1) That the Defendant's insurers, Motor & General Insurance
2 Company Limited be appointed the Representative of the Estate
3 of Adam Honeychurch (deceased) for the purposes of accepting
4 service of the Writ of Summons in this Cause and defending
5 the action, such Order being made pursuant to GCR Order 15
6 Rule 6A;

7 (2) Alternatively, that the Solicitor General be appointed the
8 Representative of the Estate of Adam Honeychurch (deceased)
9 for the purposes of accepting service of the Writ of Summons
10 in this Cause and defending the action such Order being made
11 pursuant to GCR Order 15 Rule 6A;

12 (3) Such further or other Orders or Directions as the Court deems
13 fit; and

14 (4) That the costs of this application be provided for.

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16 There was also another summons dated 6th September 2007 to extend the
17 validity of the Writ for a further period of 4 months and that the costs of this
18 application be provided for.

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1 For convenience I shall deal with the latter summons first. Under GCR
2 Order 6 Rule 8, the Court has the jurisdiction to extend the validity of the
3 Writ and so orders that the validity of the Writ be extended as requested and
4 the costs of this application be costs in the Cause.

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6 The application as to the Defendant's insurance, Motor and General being
7 appointed is really the substantive issue in this matter.

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9 A Writ of Summons was issued on 26th June 2007, as a result of motor car
10 accident in which the Plaintiff alleges that the Defendant drove negligently
11 and/or breach of statutory caused the Plaintiff to suffer loss and damage.
12 Regrettably, the Defendant died in the accident. The Plaintiff therefore has
13 sought to ascertain whether there are personal representatives in the island
14 and has been unable to find any. As a result the Writ has not been served on
15 the Defendant. Despite writing on several occasions to the insurers no
16 response has been received, resulting in this application being made.

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18 The relevant facts in respect of this matter are:

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1 (1) There was a motor vehicle accident on 6th March 2005 wherein
2 the vehicle driven by the Defendant crossed over to the
3 Plaintiff's side of the road and collided with the Plaintiff's
4 vehicle. The Plaintiff was seriously injured and the Defendant
5 was killed too;

6 (2) The Defendant was insured at the material time by Motor &
7 General Insurance Company Limited;

8 (3) The Defendant does not have any representatives in the
9 Cayman Islands; and

10 (4) The Plaintiff brought this proceeding on notice to the Insurers
11 and has requested that they act in a representative capacity. To
12 date the Insurers have failed to respond to the Plaintiff's claim
13 or his letters.

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15 The Court can deal with the appointment of the Solicitor General very
16 simply. I do not believe that the Solicitor General can do anything more
17 at best than accepting service. We do not have the same provisions as the
18 English provisions whereby the court has a discretion to extend his
19 powers to more than accepting service of the Writ.

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1 However, the Court in this jurisdiction does have power to appoint a
2 personal representative under Order 15 Rule 6A (4) which reads as
3 follow:

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5 “In any such action as is referred to in paragraph (1) or (3) –

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7 (a) the plaintiff shall, during the period of validity for
8 service of the writ or originating summons, apply
9 to the Court for an order appointing a person to
10 represent the deceased's estate for the purpose of
11 the proceedings or, if a grant of probate or
12 administration has been made, for an order that the
13 personal representative of the deceased be made a
14 party to the proceedings, and in either case of an
15 order that the proceedings be carried on against the
16 person appointed or, as the case may be, against
17 the personal representative, as if he had been
18 substituted for the estate;

19
20 (b) the Court may, at any stage of the proceedings and
21 on such terms as it thinks just and whether of its
22 own motion or on application, make any such
23 order as is mentioned in subparagraph (a) and
24 allow such amendments (if any) to be made and
25 make such other orders as the Court thinks
26 necessary in order to ensure that all matters in
27 dispute in the proceedings may be effectually and
28 completely determined and adjudicated upon.”
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30 In light of the contents of that section, I hold that the Insurers are interested
31 parties in these proceedings and I further hold that the Court has jurisdiction
32 to make the order appointing the Insurers to represent the deceased's estate

1 for the purposes of these proceedings. I therefore allow paragraph (1) of the
2 Summons dated 8th October 2007, that the Defendant's insurance Motor &
3 General Insurance Company Limited be appointed as the representatives of
4 Adam Honeychurch, deceased for the purposes of accepting service in this
5 Cause and defending the action, such order being made pursuant to GCR
6 Order 15 Rule 6A.

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8 That the costs of this application be costs in the Cause.

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10 Dated this 29th day of October 2007

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14 Judge of the Grand Court

