WITN10650104

**From:** David Neuberger [GRO]
**Sent:** Sun 17/03/2019 8:42:07 PM (UTC)
**To:** Anthony Grabiner [GRO]
**Subject:** DEN 4 Re: URGENT [WBDUK-AC.FID26896945]

Tony,
Angela would agree but I am rather hooked on this. Also by getting involved just before I went on holiday and I knew it had an urgent aspect, I feel a residue of responsibility to be available for the PO want me. Having got you on board, I am slightly uncertain why they want me around. But Rob emailed me on Friday asking me to be available for a telephone call on Monday afternoon, and he has just emailed to ask me to join the telephone conference at 2.15 tomorrow. Assuming that stands, I propose to take a relative back seat. But happy to discuss further by email or phone.

As to the judgment, turgid is the word. I thought you might enjoy his analysis of the law. I really don't think he's right. A. I think that Leggatt's dicta in Yam Seng are probably wrong, and B. Even if they are right I think they should be more, probably much more, limited in their application than Fraser suggests. I also thinks he misunderstands Chitty.

Best
David

Sent from my iPhone

On 17 Mar 2019, at 16:58, Anthony Grabiner [GRO] wrote:

> D
> The judgment is turgid. I've just reached the bit where he tells us that he disagrees with the editors of Chitty on relational contracts. He says they have incorrectly summarised the jurisprudence!!
>
> You are supposed to be on holiday. Stop reading these emails.
>
> Best,
>
> Tony
>
> Lord Grabiner QC
> One Essex Court
> Temple
> London, EC4Y 9AR
>
> GRO
>
> On 17 Mar 2019, at 19:25, David Neuberger [GRO] wrote:

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Tony,
I agree with you re the judgment.
And I agree with Tom Beezer re the football but I am not sure that you are onside with that opinion.

David

Sent from my iPhone

On 17 Mar 2019, at 13:52, Tom Beezer <GRO> wrote:

Lord Grabiner
Appreciated. Thank you for disrupting your Sunday.
Noted re Rob…. These people who like football…mystery to me.
Regards
Tom

**Tom Beezer**
Partner
Womble Bond Dickinson (UK) LLP

d:
m: GRO
t:
e:

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***20 March 2019 at the British Library***
***Book your place here***

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**From:** Anthony Grabiner [mailto: GRO]
**Sent:** 17 March 2019 16:44
**To:** Rob Smith
**Cc:** Tom Beezer; Gideon Cohen; David Cavender; David Neuberger
**Subject:** Re: URGENT [WBDUK-AC.FID26896945]

Tom/Rob,

Treat this as my broad 'yes that is ok'.

I'm still wading through the treacle of this mad judgment. I don't understand what he thought he was doing or what he thought he was supposed to be doing. The constant repetition of the mantra that he wasn't deciding anything outside of the common issues is hardly credible. I've yet to get to the many other matters but I can see from Gideon's note and from the various quotes that it just gets worse.

Tom - if you need to communicate direct please do. There's no point is going via Rob because he's full of West Ham thoughts this weekend.

Tony

Lord Grabiner QC

WITN10650104

One Essex Court
Temple
London, EC4Y 9AR

GRO

On 17 Mar 2019, at 15:30, Rob Smith
<GRO>>> wrote:

Tony

Please see the attached and the first paragraph of the email.

I will deal with the rest. Thanks
Get Outlook for iOS<https://aka.ms/o0ukef>

---------- Forwarded message ----------
From: "Tom Beezer" <GRO>
<GRO>
Date: Sun, Mar 17, 2019 at 1:18 PM +0000
Subject: RE: URGENT [WBDUK-AC.FID26896945]
To: "Rob Smith"
<GRO>
Cc: "Andrew Parsons" <GRO>
<GRO>, "Amy Prime"
<GRO>

Rob

Forgive me for this short e mail. I am not pushy enough to seek to barge into Lord Grabiner's Sunday direct.

Could we do the following:

- Can you please send the attached draft note to Lord Grabiner QC ? It is not hugely long. The operative parts of the note are 4 sides of text. The balance of the Word Doc' are selected quotes from the CIT Judgment which make it seem longer than it really is.

- What POL is seeking here from Lord Grabiner is a broad "yes that is OK" to the note (assuming he does so agree), not detailed comment (although if Lord Grabiner wishes to comment, he is welcome to). POL want the broad "ok" so the Board of POL have confidence that Lord Grabiner does not disagree with the direction set out. You see the two places in highlight in the body of the note where I say "Lord Grainger has reviewed and ok'ed" etc. if that comes to pass I'll take those out of

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highlight and finalise the note.

- If the OK/comment could come today – all well and good. If tomorrow then earlier the better as the note will go to the Board in advance of the call tomorrow afternoon.

- Onto housekeeping matters:

o Yes please to a call with Lord Grabiner at some point after 1.30 tomorrow. Please let me know what time would suit best. That call would be with Jane (GC at POL) and me. That is so Jane can get Lord Grabiner's views which she can then transmit to the Board. Would David C QC need to be on that call too for detail and continuity purposes ? That could be sensible but we'll be guided by Lord Grabiner.

o On the 5.15pm call for the POL Board, Lord Grabiner QC cannot make that time and I understand the call time cannot move. I think Lord Neuberger could dial in at 5.15pm. Could you see if that is in fact possible ? Please let me know as soon as you can in regard so I can update Jane.

o Should David C QC be on the 5.15 call too for background and detail ? Again, let us know.

o Jane is keen to stress that the POL Board want to hear from each of Lords Neuberger and Grabiner directly and candidly on the recusal issue so if David C QC is there it is for background specifically as the POL Board do want the views of "new voices". I'll speak to David about that too and he will understand I am sure, but I wanted to set that out here for the sake of clarity so we are all in the same position.

MANY MANY thanks for your help.

Andy tells me West Ham did well yesterday…one day I'll tell you my one and only "football" story…you'll have guessed it is not my thing…which frustrates Andy…

t

Tom Beezer
Partner

WITN10650104

Womble Bond Dickinson (UK) LLP
d:
m:
t:
e: GRO
GRO
GRO



From: Anthony Grabiner GRO
Sent: 17 March 2019 10:59
To: Rob Smith
Cc: Tom Beezer
Subject: Re: URGENT [WBDUK-AC.FID26896945]

Rob/Tom,

I agree with David Neuberger's approach and I support the recusal application proposal. I could speak tomorrow but not at 5.15 for about an hour because of a prior commitment.

Regards,

Tony

Lord Grabiner QC
One Essex Court
Temple
London, EC4Y 9AR

GRO

WITN10650104

On 17 Mar 2019, at 09:51, Rob Smith
GRO
GRO >> wrote:

Morning Tony

Please see in Red below. Is this workable?

Thanks
Get Outlook for iOS<https://aka.ms/o0ukef>

---------- Forwarded message ----------
From: "Tom Beezer" GRO
GRO
GRO >
Date: Sun, Mar 17, 2019 at 9:46 AM +0000
Subject: URGENT [WBDUK-AC.FID26896945]
To: "Rob Smith"
GRO
GRO >
Cc: "Andrew Parsons" GRO
GRO
GRO >, "Amy Prime"
GRO
GRO

Rob

Sorry for all this contact over the weekend…

I have had an e mail from the client at Post Office and they say:

Ideally, I would like to know today whether Lord Grabiner is supportive of the recusal application, and if so, to what extent. Are we able to get any insight on that? Provided that he is, then we should stand up Lord Neuberger for the Board call, and I will also be able to feedback the outcome of the meeting with Lord Grabiner. (which could be any time from 1.30 onwards that suits him).

So I think the following issues arise:

1) Is Lord Grabiner able to indicate today (e mail to you is fine and then you copy onto me – or direct to me and Andy (copied)) if he is in broad agreement with the statement that he is supportive of a recusal application needing to be made in this case and it having prospects of success. I think POL is seeking to flush out whether lord Grabiner is broadly supportive, as Lord Neuberger was in his note, or whether he takes a different view. If both are aligned, then there is a POL Board

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decision to be taken. If there is a difference of view then we (POL and WBD) will have to think about how to guide the POL Board.

2) Assuming Lord Grabiner is in agreement broadly, then can POL GC (Jane MacLeod) and I get a call set up after 1.30pm on Monday at a time that suits Lord Grabiner ? Jane wants to get a download so that can be replayed to the later POL Board meeting.

3) The POL Board meeting is at 5.15pm. Lord Grabiner cannot make that. If there is broad agreement between Lord Grabiner and Lord Neuberger then the plan would be for Lord Neuberger to be on a call with the POL Board at that 5.15pm time slot. Can that be set up ?

Thanks
Tom

Tom Beezer
Partner
Womble Bond Dickinson (UK) LLP
d:
m:
t:
e: GRO
GRO
GRO
GRO

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bond-dickinson-uk-llp/>

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