

1

18-3-2019

Tom Beezer notes
Lord Grabiner QC conf'
@ OEC 18 March 2019
2pm → 3.20pm

AGQC
DCQC
Gideon C

- Draft J'ment
- notes
- Agree Neuberger view
- Procedural structure:
 - procedure presupposes no arg' by way appeal. relationship contracts.
20+ implied terms
danger – serious errors
want to go to CT' appeal
BUT 2nd contract underway
Findings impact 2nd Trial
Really poor case management
- Case mgnt' barking
- Supposed to be Trial CIT
 - To determine what contract was AND implied terms – if any
BUT what he has done →
trespassed into matters for later stages.
not been able to restrain himself
from straying into later matters.

Finding breaches
Finding facts

2

Judge investigates these extra matters despite strike out applic'.

Judge regards extra stuff as relevant he is investigating. Gone too far.

Judge reaches conclusions w/o POL evidence.

- Judge take leave of senses
- Judge forming facts & concluded views in this mind.
- won't be able to shift him from concluded views. Will be tied to Judgment 1.
- is a dogs breakfast
- But now sequence of trials
- But have to ask him to recuse
- Strong advice to do it = recuse
- Strong arguments to support complaint
- you have to do it.

3

- 1) recusal
- 2) Adjourn current trial
- 3) permission CofA

Recusal to be done deal urgency

APPEAL:

Implied term analysis is rubbish

- shocking
- "relational" contract = codswallop
- implication of good faith is developing
but gone too far
- BIG important issues

- First point recusal + adjournment
application.
 - make ASAP. But prepare.
 - Gideon doing schedule:
 - what CIT issues are
 - Implied terms
- Then how J'ment proceeded – how
matters in J'ment by topic went beyond
into later trial areas. (Breach/damages)

Then quotes which reveal concluded
view on POL behaviour.
List it all out.

4

Jane:

Appeal on law
recusal. Hugely sensitive.
Sensitive given our ownership.
UKGI will not be involved in
overseeing BEIS → Greg Clarke
UKG Investment holds the shares
→ They have oversight of POL

POL has been criticised - harsh & oppressive
Number of time

Board worried that look aggressive.

If don't take action will lose.

AGQC

- Board has no choice
- Strong view right course action
- I think you have a strong case
- I do think serious prospect of success
- Judge has done unbelievable nonsense
- Judge has apparent bias
- Have no choice

Appeal on law w/o recusal goes back
to him. Hopeless.

5

David Neuberger has a v. clear view.
Board has to do what it has to do. Has
no choice.

of Board of 8 2 are conflicted
- Ken McCall SiD
- Carla Audit
- Chief oo Lloyds

we will proceed on basis will prepare.
must get on with it.

Confident success CofA

On going trial – so urgent matter.

JANE

Inst' => prepare on basis will go.

Need to get Board over line.

Call today.

Sch B meet next Monday.

Send DCQC version PDF

- DCQC
If no recusal – appeal on law
Court may ask why not ask recusal

DCQC

Real issue is decisions in Horizon trial
are happening now – expert view –
has to decide between – once done
we are stuck with that for all time
for a breach trial.

So if not seek recusal H trial
rolls on. w/o recusal CofA
not urgent – so H trial
finishes and we are stuck with
facts found.

Lord G:

- reputable lawyers say get on with it
do duty to company.
They have obligation to get on with it.

Apparent bias – not actual bias
seems he has reached a concluded view

AGQC → apt no choice. Got v. case to make
applic.

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If I thought 50/50 would say so.

he has gone v. badly wrong

business must get on with it. have to do it.

no choice

Stand up be counted.