

# Application for an extension of time for appeal against a committal order (*Lakatamia v Su*)

21/10/2019

**Dispute Resolution analysis:** The applicant, Mr Su, was committed to prison by the first instance judge, following various findings of fact in relation to two particularly important and serious groups of contempt of court. Although permission to appeal against a committal order is not required by the Civil Procedure Rules 1998 (CPR), Mr Su filed his appellant's notice over four months late and therefore required an extension of time. The court considered the correct approach to be taken to an application for an extension of time, following the cases of *Denton v H White* and *R (Hysaj) v Secretary of State for the Home Department*. Written by Oliver Browne, partner and chair of the London Litigation & Trial Department, at Latham & Watkins.

*Lakatamia v Su* [\[2019\] EWCA Civ 1626](#) (24 September 2019)

## What are the practical implications of this case?

This case helpfully explores the three-stage approach in *Denton v White* [\[2014\] 1 WLR 795](#) (which, as noted by the court, applies to applications for extensions of time). That test requires the court to assess the seriousness and significance of the breach of CPR, consider why the relevant default occurred and then consider all the circumstances of the case.

On the final part of the test—considering the circumstances of the case—the court noted that, in most cases, the merits of the underlying appeal have little to do with whether it is appropriate to grant an extension of time. However, where the court can see without much investigation that the grounds of appeal are either very strong or very weak, the merits might have a significant part to play when it comes to balancing the various factors that have to be considered. Here, the underlying appeal was clearly very weak and, accordingly, the application for an extension of time failed.

## What was the background?

On 29 March 2019, Sir Michael Burton (sitting as a High Court Judge) made a committal order against Mr Su for multiple breaches of freezing orders, orders requiring disclosure of assets and orders requiring Mr Su not to leave the jurisdiction. The judge had found that Mr Su was guilty of contempt of court relating to 'the non-disclosure and dissipation of the Monaco assets leading to the disappearance of 27m euros' and an 'attempt to flee the jurisdiction'. Mr Su was, as a result of the committal order, held in custody in HMP Pentonville.

[CPR 52.3](#) provides that an appeal against a committal order is an exception to the rule that permission to appeal is generally required, but [CPR 52.12\(2\)](#) provides that an appellant's notice must be filed within certain time limits (21 days in these circumstances). The appellant's notice ought to have been filed by 19 April 2019, but was in fact filed on 27 August 2019, over four months out of time.

In applying for an extension of time, Mr Su put forward two reasons for the delay—first, that, following his committal, Mr Su had disinstructed his lawyers and correspondence was conducted on his behalf by a McKenzie friend and second, that Mr Su did not have access to the sum of £1,199 for the court fee. The court assessed these reasons, and then the overall circumstances of the case, in light of the three-stage approach in *Denton v White*.

## What did the court decide?

The court followed the decision of *Denton v White* (noting that in *R (Hysaj) v Secretary of State for the Home Department* [\[2014\] 1 WLR 795](#), it had been made clear that an application for an extension of time ought to be treated in the same way as an application for relief from sanctions). The three-stage approach in *Denton v White* required the court to assess the seriousness and significance of the breach of CPR, consider why the default occurred and consider all the circumstances of the case.

In relation to the first two parts of the *Denton v White* test, the court considered the reasons advanced by Mr Su for the delay. As regards the first, the court explained that *R (Hysaj) v Secretary of State for*

*the Home Department* 'establishes that the absence of legal representation is not a good reason for a delay and that litigants in person, whether or not assisted by a McKenzie friend, are required to comply with the rules just as a legally represented party is'. As regards the second, the court concluded that there had been no explanation of what attempts, if any, had been made to find the money with which to pay the court fee and so the court concluded it could see no good reason for extending time.

The court then moved to a consideration of all the circumstances of the case. Although the court acknowledged that Mr Su's human rights were engaged because he is in prison, the court said that 'it is not incompatible with the European Convention on Human Rights for a national system to impose time limits even in the case of criminal convictions resulting in prison sentences provided that they are not too short or too rigorously enforced'. Further, the *R (Hysaj) v Secretary of State for the Home Department* case made it clear that 'in most cases the merits of the appeal have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process outlined in *Denton v White*'.

Having outlined the approach the court was going to take when considering all the circumstances of the case, the court then reviewed the groups of contempt committed by Mr Su. The court supported the judge's conclusions in full and made a number of remarks about the seriousness of the contempts of court and the lack of evidence in support of Mr Su's overall position. The court then concluded as follows—'this is one of those cases where even a brief examination of the grounds of appeal show that they are extremely weak. In those circumstances I do not consider that the third stage of the Denton process requires us to extend time'. The application for an extension of time was therefore dismissed.

#### Case details

- Court: Court of Appeal, Civil Division
- Judge: Lewison and Asplin LJ
- Date of judgment: 24/09/2019

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