

**Costs**

54 It follows that, as my Lords agree, the appeal will be dismissed with costs. As the appellant is legally aided, the amount of costs to be paid by her will be referred to the Registrar for determination

55 **ALDOUS** and **PARKER, JJ.A.** concurred.

*Appeal dismissed.*

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[2010–12 Gib LR 320]

**IN THE MATTER OF MACIAS**

SUPREME COURT (Dudley, C.J.): April 19th, 2012

*Legal Aid and Assistance—refusal of legal assistance—counsel’s opinion on merits—by Legal Aid and Assistance Act 1960, s.14(3), Registrar entitled to take into account counsel’s opinion on merits of applicant’s case, but must nevertheless reach own conclusion—counsel’s opinion to be limited to merits of case and not extend to whether applicant meets residency criteria for legal assistance*

The appellant applied to the Registrar of the Supreme Court for legal assistance.

The appellant, a Spanish national, applied to the Registrar for legal assistance for the purposes of representation in divorce proceedings and an action under the Domestic Violence and Matrimonial Proceedings Act 1998. The Registrar sought counsel’s opinion on the merits of his case, pursuant to the Legal Aid and Assistance Act 1960, s.14(3). That opinion concluded that the applicant was not ordinarily resident in Gibraltar so as to qualify for legal assistance, which conclusion the Registrar adopted in refusing legal assistance. The appellant had a civilian registration card, driving licence and tenancy agreement from the Government of Gibraltar.

On appeal to the Supreme Court, the appellant submitted that (a) the Registrar had placed too much weight on counsel’s opinion rather than forming an independent judgment; and (b) counsel’s opinion that he was not ordinarily resident in Gibraltar was wholly irrelevant, as that was not an opinion on the merits of his case for the purposes of the Legal Aid and Assistance Act 1960, s.14(3), and should have been entirely disregarded.

The respondent submitted in reply that (a) the Registrar had been entitled to rely upon counsel’s opinion; and (b) counsel’s opinion that he

was not ordinarily resident in Gibraltar was relevant to his entitlement to legal aid, notwithstanding that it was not an opinion on the merits of his case for the purposes of the Legal Aid and Assistance Act 1960, s.14(3).

**Held**, allowing the appeal:

(1) The Registrar had erred by placing too much weight on the opinion of counsel in determining the application for legal assistance rather than forming an independent judgment. When evaluating the merits of a case and the residence status of an applicant, for the purposes of determining an application for legal assistance, the Registrar had to reach her own conclusion, and was not entitled merely to adopt the view of the counsel asked to give an opinion on the merits pursuant to the Legal Aid and Assistance Act 1960, s.14(3) (para. 5).

(2) Moreover, the opinion of counsel that the appellant was not ordinarily resident in Gibraltar was wholly irrelevant, as it was not an opinion on the merits of the appellant's case for the purposes of s.14(3), and should have been entirely disregarded. In fact, the appellant's civilian registration card, driving licence and tenancy agreement from the Government of Gibraltar were very strong evidence that his residence in Gibraltar qualified him for legal assistance. In the absence of any evidence to the contrary, the Registrar should have concluded that the appellant was ordinarily resident in Gibraltar. The refusal would be set aside and the matter remitted to the Registrar for her to inquire into the merits of the case. However, as the hearing in respect of which the legal assistance was sought was scheduled for hearing the next day, the appellant would be issued with an emergency certificate to have legal representation in that hearing (paras. 5–8).

**Legislation construed:**

Legal Aid and Assistance Act 1960, s.14(3): The relevant terms of this sub-section are set out at para. 5.

Legal Aid and Assistance Rules 1960, r.6(2): The relevant terms of this sub-rule are set out at para. 3.

The Chief Justice considered the matter on the papers.

1 **DUDLEY, C.J.:** This is an appeal from a refusal by the Registrar to grant the appellant, who is a Spanish national, legal assistance for the purposes of representation in divorce proceedings and, I think, proceedings issued pursuant to the Domestic Violence and Matrimonial Proceedings Act 1998.

2 The reasons given by the learned Registrar for refusing the grant of legal assistance were these:

“I have now heard back from the reporting solicitor, Mr. Joey Nuñez, and after careful consideration, I hereby inform you that your client

does not meet the criteria of r.6 of the Legal Aid and Assistance Rules [*sic*] therefore he is not entitled to legal assistance.”

3 For present purposes the relevant provisions of that rule are in r.6(2), which provides:

“Legal assistance under Part II of the Act shall be available only to persons otherwise qualified therefor under the said Part II and who—

- (a) are ordinarily resident in Gibraltar; or
- (b) not being ordinarily resident in Gibraltar, are—
  - (i) Gibraltarians as defined in the Gibraltarian Status Act;
  - (ii) nationals of a reciprocating State;
  - (iii) employed in Gibraltar under a permit for employment granted under Part III of the Employment Act;
  - (iv) employed in Gibraltar but who do not require a permit under the Employment Act by reason of holding or of being entitled to be issued with a permit under Part IX of the Immigration Control Act.”

4 In the usual manner, the Registrar referred the matter to a barrister for reporting on the merits of the case. The reporting barrister wrote to her expressing the view that he was not satisfied that the appellant was ordinarily resident in Gibraltar or the national of a reciprocating State.

5 I am of the view that, to the extent that the Registrar may have relied upon the conclusion reached by the reporting barrister, she was not entitled to do so. Rather it was for her to reach a determination on the material and information placed before her. That much is to be inferred from s.14(3) of the Legal Aid and Assistance Act 1960, which provides that—“the solicitor or barrister to whom the application is referred shall investigate the merits of the applicant’s case and report thereon to the Registrar.” Whether or not an applicant qualifies for legal assistance by virtue of residence is completely distinct from whether or not an applicant’s case has merit.

6 In support of his case, the appellant relies upon a Gibraltar civilian registration card with a Gibraltar address, a Gibraltar driving licence issued in his favour and a tenancy agreement in which, together with his wife, he is granted a tenancy by the Government of Gibraltar over a flat at Mid Harbour Estate.

7 I am of the view that the material provided is very strong evidence that the appellant is resident in Gibraltar and, in the absence of any evidence to the contrary, the Registrar should have concluded that the appellant was ordinarily resident in Gibraltar.

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IN RE LEMMA INS.

8 The appeal is allowed, the refusal is set aside and I remit the matter to the Registrar for her to inquire into the merits of the case. That said, I understand from the Registry that a hearing in respect of the matter in which the appellant seeks legal assistance is scheduled for hearing tomorrow. In those circumstances, the appellant is to be issued with an emergency certificate such that he may have legal representation for the purposes of that hearing.

*Appeal allowed.*

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**[2010–12 Gib LR 323]**

**IN THE MATTER OF LEMMA (EUROPE) INSURANCE  
COMPANY LIMITED**

SUPREME COURT (Dudley, C.J.): May 16th, 2012

*Arbitration—stay of proceedings—agreement to arbitrate—no stay of winding-up proceedings in reliance on arbitration clause because proceedings not “action at law” requiring arbitration*

*Companies—compulsory winding up—inability to pay debts—disputed debt—dispute to be real not frivolous before injunction preventing winding-up petition can succeed*

The respondent company sought the winding up of the applicant company pursuant to a statutory demand for payment.

The parties were insurance companies that entered into a contract of reinsurance, according to which the respondent was to provide the applicant with bordereaux at particular dates to enable it to assess risk. The contract made arbitration of any “dispute” a condition precedent to any “action at law” and contained claims assistance provisions by which the respondent was to provide details of major claims over a particular value to the applicant. An intermediary clause provided for another company (“Monitor”) to pass communications between the parties. The applicant was entitled to cancel the agreement upon giving three months’ notice.

A dispute arose when the respondent failed to provide a bordereau by the date specified and the applicant gave 30 days’ notice to cancel the contract. The bordereau was provided to Monitor 25 days after the due date. The respondent did not treat the contract as at an end, but claimed