COLLAS CRILL

# The DIY approach to litigation: Trigwell v Clapp

SEPTEMBER 2017

The recent case of *Trigwell v Clapp* in the Royal Court of Jersey showcased a DIY approach to litigation.

The case involved a dispute over the beneficial ownership of shares in a Jersey company, Astral Enterprises Limited. In essence, Mr Trigwell sought a declaration that he was the beneficial owner while Mr Clapp argued that the company is beneficially owned by him. The Jersey case followed years of related litigation in England, so it's fair to say that the parties were seasoned litigators.

The company was administered in Jersey by a series of entities and the court found the company records to be somewhat "shambolic" and some of the minutes to be "nonsensical". There are also examples of directors purporting to act after having resigned and administrators taking at face value the actions of their predecessors with no proper investigation. Not surprisingly, this led to a very tangled web that the court had to unpick.

At the hearing Mr Trigwell represented himself and Mr Clapp was represented by his wife (not a legal practitioner). The court was presented with five files of documents and affidavit evidence. Several witnesses gave evidence and were cross examined.

Mr Clapp asked for permission to be represented by his wife because he is suffering from the early stages of Alzheimer's disease. Expert medical evidence confirmed that he has the mental capacity to be a witness, but not the mental capacity to present his case.

A person does have a right to represent themselves and be what is known as a "litigant in person". A corporate entity can be represented by a director duly authorised to do so. However, the circumstances in which a party can be represented by an unqualified person (often referred to as a MacKenzie Friend) are strictly controlled and the court will only grant permission in special circumstances.

The reason why access to representation is controlled in this way is because a person exercising rights of audience before a court should ordinarily be properly trained and subject to an overriding duty to the court.

In this case the Royal Court considered very carefully whether to allow Mrs Clapp to represent her husband and concluded that, exceptionally, it should be allowed. The special circumstances were his lack of mental capacity and financial resources. Mr Clapp is not entitled to legal aid as he is not resident in the island.

After a detailed review of the evidence, the Royal Court found in favour of Mr Clapp. At the end of the judgment the Court paid tribute to both parties, finding that they both applied themselves conscientiously and courteously to the task at hand.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

However, the DIY approach will not remove all of the cost and there will still be court fees to pay. It's also worth highlighting that, in this case, both parties had been subject to years of litigation in the UK and were able to understand the legal process in more detail.

The law is often full of complexities and nuances which can be difficult to navigate, particularly when dealing with different jurisdictions and at what is often a very stressful time. While this is an option for litigants with limited financial resources and no right to legal aid, the level of expertise, peace of mind and guidance of trained legal counsel is often an invaluable resource that shouldn't be understated.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.