

## Baker v Quantum Clothing Group

Court of Appeal (Civil Division)

05 June 2009

### Case Analysis

#### Where Reported

[2009] EWCA Civ 566; [\[2009\] C.P. Rep. 38](#); [Official Transcript](#)

#### Case Digest

**Subject:** Administration of justice **Other related subjects:** Civil procedure

**Keywords:** Bias; Judicial decision-making; Judicial independence Recusal

**Summary:** An application for a direction that the court recuse itself on the basis of apparent bias was refused where no fair minded observer would have considered that there was any real possibility that a judge might be biased by any tenuous association with one party's solicitors.

**Abstract:** The applicant companies (X) applied for a direction that the court recuse itself on the basis of the apparent bias of one of the judges. X had been the respondents to an appeal in a test case brought by one of their employees (B), who was the respondent to the instant application, concerning noise-induced deafness in the textile industry. At the outset of the substantive appeal hearing, one of the members of the bench informed the parties that he was the honorary President of the British Tinnitus Association (BTA). He explained that the association was concerned to bring clinicians and patients together and was an entirely voluntary self-help organisation. The judge invited the parties to raise any concern or issue that they might have had about his involvement with that body. No ground for concern was taken by the parties and the judge asked that if any concern arose subsequently that the court be informed "fairly soon" thereafter. Several weeks after the court had reserved judgment, X wrote to the court asking that the appeal be relisted before a different panel of judges on the basis of an alleged "web of links" between the judge and B's solicitors. The judge issued a written statement refusing to recuse himself, observing that any allegation of a "web of links" between himself and B's solicitors was unfounded and that the application for recusal was brought very late.

Application refused. (1) The judge had made it plain that he had no knowledge of any of the matters constituting the alleged "web of links". In those circumstances, no fair-minded observer would have considered that there was any real possibility that he might have been biased by any tenuous association with B's solicitors. Even if the facts that had given rise to the "web of links" allegation had been known to the judge, it would not have moved such an observer to conclude that there was any real possibility of bias. The objects and purpose of the BTA were quite unrelated to litigation and would not cause a reasonable person to think that anyone associated with the BTA might be biased towards a claimant with tinnitus. On that basis, the "web of links" allegation was without any substance. The objection on that basis should never have been made, and once made should have been dropped as soon as the judge had made his statement. (2) The judge had invited parties' objections to his involvement to be made "fairly soon". In those circumstances, it was surprising that matters relied upon were only discovered some

weeks after the conclusion of the appeal. It was not open to a party that thought it had grounds for asking for recusal to take a leisurely approach to raising an objection. Applications for recusal went to the heart of the administration of justice and had to be raised as soon as was practicable. (3) (Obiter) It was difficult to see how a tenuous connection between a judge and a firm of solicitors could ever be regarded by the well-informed observer as giving rise to a possibility of bias, [Locabail \(UK\) Ltd v Bayfield Properties Ltd \(Leave to Appeal\) \[2000\] Q.B. 451](#) applied.

**Judge:** Smith, L.J.; Jacob, L.J.

**Counsel:** For the first applicant: Robert Owen QC, Simon Beard. For the second applicant: Christopher Purchas QC, Catherine Foster. For the third applicant: Toby Stewart. For the respondent: John Hendy QC, Theodore Huckle, Robert O'Leary.

**Solicitor:** For the first applicant: Weightmans LLP. For the second applicant: Hill Hofstetter. For the third applicant: Halliwells. For the respondent: Wake Smith.

## Related Cases

### **Baker v Quantum Clothing Group Ltd**

[\[2007\] EWCA Civ 750; Official Transcript](#); CA (Civ Div)

### **Baker v Quantum Clothing Group Ltd**

[\[2008\] EWCA Civ 823; Official Transcript](#); CA (Civ Div)

### **Baker v Quantum Clothing Group**

[\[2009\] EWCA Civ 499; \[2009\] P.I.Q.R. P19; \(2009\) 153\(21\) S.J.L.B. 29; Times, June 17, 2009; Official Transcript](#); CA (Civ Div)

## Significant Cases Cited

### **Locabail (UK) Ltd v Bayfield Properties Ltd (Leave to Appeal)**

[\[2000\] Q.B. 451; \[2000\] 2 W.L.R. 870; \[2000\] 1 All E.R. 65; \[2000\] I.R.L.R. 96; \[2000\] H.R.L.R. 290; \[2000\] U.K.H.R.R. 300; 7 B.H.R.C. 583; \(1999\) 149 N.L.J. 1793; \[1999\] N.P.C. 143; Times, November 19, 1999; Independent, November 23, 1999; Official Transcript](#); CA (Civ Div)

## All Cases Cited

### **Helow v Advocate General for Scotland**

[\[2008\] UKHL 62; \[2008\] 1 W.L.R. 2416; \[2009\] 2 All E.R. 1031; 2009 S.C. \(H.L.\) 1; 2008 S.L.T. 967; 2008 S.C.L.R. 830; \(2008\) 152\(41\) S.J.L.B. 29; 2008 G.W.D. 35-520; Times, November 5, 2008; Official Transcript](#); HL

### **Furniss v Firth Brown Tools Ltd**

[\[2008\] EWCA Civ 182; Official Transcript](#); CA (Civ Div)

### **Gillies v Secretary of State for Work and Pensions**

[\[2006\] UKHL 2; \[2006\] 1 W.L.R. 781; \[2006\] 1 All E.R. 731; 2006 S.C. \(H.L.\) 71; 2006 S.L.T. 77; 2006 S.C.L.R. 276; \[2006\] I.C.R. 267; \(2006\) 9 C.C.L. Rep. 404; \(2006\) 103\(9\) L.S.G. 33; \(2006\) 150 S.J.L.B. 127; 2006 G.W.D. 3-66; Times, January 30, 2006; Official Transcript](#); HL

### **Porter v Magill**

[\[2001\] UKHL 67; \[2002\] 2 A.C. 357; \[2002\] 2 W.L.R. 37; \[2002\] 1 All E.R. 465; \[2002\] H.R.L.R. 16; \[2002\] H.L.R. 16; \[2002\] B.L.G.R. 51; \(2001\) 151 N.L.J. 1886; \[2001\] N.P.C. 184; Times, December 14, 2001; Independent, February 4, 2002; Daily Telegraph, December 20, 2001; Official Transcript](#); HL

### **Locabail (UK) Ltd v Bayfield Properties Ltd (Leave to Appeal)**

[\[2000\] Q.B. 451](#); [\[2000\] 2 W.L.R. 870](#); [\[2000\] 1 All E.R. 65](#); [\[2000\] I.R.L.R. 96](#); [\[2000\] H.R.L.R. 290](#); [\[2000\] U.K.H.R.R. 300](#); [7 B.H.R.C. 583](#); [\(1999\) 149 N.L.J. 1793](#); [\[1999\] N.P.C. 143](#); [Times, November 19, 1999](#); [Independent, November 23, 1999](#); [Official Transcript](#); CA (Civ Div)

## Journal Articles

### **Baker v Quantum Clothing Group: apparent judicial bias - application for recusal**

Appeals; Bias; Delay; Rehearings.

[C.P.N. 2009, 7\(Jul\), 3](#)

### **Hearing loss trigger dates shifted back**

Causation; Employers' duties; Factories; Hearing; Noise; Statutory duties; Textile industry.

[Post Mag. 2009, Jul 9, 42](#)

## Books

### **The White Book from Sweet and Maxwell**

Chapter: Section 9 - Jurisdictional and Procedural Legislation

Documents: [Section 14-Power of judge of Senior Courts to act in cases relating to rates and taxes](#)

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