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6TH MAY, 1986

LABLANC LIMITED

-v-

NAHDA INVESTMENTS LIMITED

BAILIFF: This case comes before the Court by way of a Summons for striking out the present Plaintiff's claim which was instituted by an Order of Justice on the 31st August, 1984 and in which allegations are made of a Contract concluded in the early part of 1983. A holding Answer was filed on the 21st September, 1984. The rules which apply in respect of Striking Out are contained in Rule 6/13 of the Royal Court (Jersey) Rules, and there are four grounds upon which the Court may order the Striking Out:

(a) It discloses no reasonable cause of action or defence, as the case may be; or

(b) It is scandalous, frivolous or vexatious; or

(c) It may prejudice, embarrass or delay the fair trial of the action; or

(d) It is otherwise an abuse of the process of the Court;

On the 12th December, 1984 an application was made to dismiss the claim under (a) it discloses no reasonable cause of action or defence and that was dismissed by the Royal Court. A request for Further and Better particulars was issued by the Defendant but eventually, as a result of a Summons on the 10th April, 1985 the Judicial Greffier made an Order for further and better particulars, but that was not a peremptory order or as it is called an "unless order". The Further and Better particulars were filed on the 8th May, 1985, but were not as full as the Defendant wished and on making representations to the Plaintiff, further Further and Better particulars were eventually sent on the 4th June, 1985.

On the 31st October, 1985 the Judicial Greffier gave leave to the Defendants to file an amended Answer. The Plaintiff did not appear. An amended Answer was filed and so far, because it called for a reply containing as it did, a Counter claim, the Plaintiff has not replied to the amended Answer.

On the 10th April, 1986 the interim injunctions were lifted on a summons and application by the Defendant. Again the Plaintiff did not appear. We were told by Mr. Sinel that on each occasion he had been unable to obtain instructions, one of the reasons, one assumes, because of that difficulty is

the same reason advanced today that there has been a change of ownership in the structure of the holding Company of the Plaintiff company. However, the position is now, as the defendant has admitted through Mr. Wheeler, the matters at issue are now crystalized, subject of course to the reply from the Plaintiff.

Looking at the issues and the Rules which the Courts in England observe in applications of this sort, and I should say here that Mr. Wheeler makes this application under two heads. Firstly that the Plaintiff's Action is scandalous, frivolous or vexatious or it is otherwise an abuse of the process of the Court. Looking as I say at Halsbury where reference is made to what happens in the English jurisdiction, we find in paragraphs 434 and 435 in volume 37 a number of principles. Firstly, it is said in paragraph 434 that:

> "An abuse of the process of the Court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused".

And in paragraph 435 discussing the Court's inherent jurisdiction, which we have of course, as the English Court has:

> "On the other hand, where it appears to the Court that there is what has been described as a matter fit to be investigated, it will decline to stay or dismiss the action".

Furthermore, the party is not to be driven lightly from the public seat of justice and we are satisfied that the case is not hopeless in the sense that there is a matter to be investigated, and indeed the Royal Court so found as a result of its finding and decision of the 12th December, 1985, it must have been satisfied that indeed there was a proper case to hear.

The defendant admits that there has not been an inordinate delay except, he says, the plaintiff is in breach of the rules in as much as it has not filed its reply to the amended Answer, which is true. Nor has it obeyed the Order of the Court as regards the costs of some of the earlier proceedings. But it seems to us that apart from those two matters, it could be argued that the most that the plaintiff company has been guilty of is some tardy compliance with the Orders of the Court.

Secondly, the defendant has admitted that if there were to be a fairly early hearing he would not suffer prejudice, and with respect we look now at the leading case to which we were referred by both Counsel that is to say Allen -v- Sir Alfred McAlpine & Sons Limited., and others referred to and reported in 1. All E.R. 1968 at page 543 and I read from Diplock, L.J. as he was then, Judgement beginning at the bottom of page 555 and over the

page:

"What then are the principles which the court should apply in exercising its discretion to dismiss an action for want of prosecution on a defendant's application? The application is not usually made until the period of limitation for the plaintiff's cause of action has expired".

Well that is not applicable here.

"It is then a Draconian order and will not be lightly made. It should not in any event be exercised without giving the plaintiff an opportunity to remedy his default, unless the court is satisfied either that the default has been intentional and contumelious, or that the inexcusable delay for which the plaintiff or his lawyers have been responsible has been such as to give rise to a substantial risk that a fair trial of the issues in the litigation will not be possible at the earliest date at which, as a result of the delay, the action would come to trial if it were allowed to continue".

And I read from section C:

"Since the power to dismiss an action for want of prosecution is only exercisable on the application of the defendant his previous conduct in the action is always relevant".

We note that the Court has power, certainly in English jurisdiction, and we are satisfied that we, likewise, have power to make an alternative Order, and we think justice will be met if we do so. We are satisfied, having regard to the circumstances, that the delay of the plaintiff, such as it was, was not contumelious, nor was it inordinate, and indeed the defendant has admitted that it was not inordinate.

Therefore under all the circumstances, exercising our discretion in accordance with the principles to which we have been referred, and I should say here that before I give my Order, give my decision that as regards the point that in a further Summons for the signing or giving of judgement in favour of the counterclaim, a delay which was agreed between the parties over three weeks is not something which we consider should concern us this morning. It is not evidence of the defendant company agreeing delays in this particular case, it is part of a different application. But the Order we are going to make, having regard to the principles which I have enunciated are these:-

Firstly the Summons will be dismissed. Secondly, the costs which are outstanding due by the plaintiff are to be paid within four weeks or the defendant will have leave to apply to this Court for Striking Out, which, I shall add, we shall want a great deal of persuasion by Mr. Sinel to persaude us not to do, if the application is made at that time. And thirdly, the pleadings between

the parties are to be completed and the matter made ready for trial from twelve weeks from today and fourthly the costs of the plaintiff, the taxed costs of this present application and summons will be paid by the defendant.