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COURT OF APPEAL

4th January, 1988

Before: Sir Godfray Le Quesne, Q.C., (President)
J.D.A. Fennell, Esq., O.B.E., Q.C., and
R.D. Harman, Esq., Q.C.

Between	John Philip Sauvage	Appellant
And	The States of Jersey Island Development Committee	Respondent

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Appeal of the appellant against the
Order of the Royal Court (Samedi Division)
of the 13th April, 1987, made under the provisions
of Rule 11/7 of the Royal Court Rules, 1982,
as amended.

Advocate S.J. Habin for the appellant
Advocate Miss S.C. Nicolle for the respondent.

JUDGMENT

President: Mr Sauvage owned a field at Sorel. On the 20th March, 1985, the Island Development Committee, acting under the provisions of Article 21 of the Island Planning (Jersey) Law 1964, issued to him two notices requiring

him to remove from that field certain unauthorised structures and certain derelict equipment. There had been an earlier transaction between Mr Sauvage and the Committee in which he had applied to the Committee for planning permission for the construction of a cattle shed in the field. The Committee had in fact issued approval in principle for the construction of this shed and had communicated this to Mr Sauvage or to his architect, but had subsequently changed their minds and purported to revoke it.

On the 17th April, 1985, Mr Sauvage, as he was entitled to do, filed notices of appeal to the Royal Court, one against each of the two notices requiring him to remove articles from the field and one against the decision of the Committee to withdraw the approval in principle which they had granted for the construction of the cattle shed.

On the 28th July, 1985, Mr Sauvage applied to the Judicial Greffier that the three appeals should be set down for hearing, and that was done. The Committee was then required to file a statement of its decision in the three cases, and the three statements were filed, one on the 31st July, 1985 and two on the following day. The next step should have been the filing of the appellant's cases in the appeals, and indeed in anticipation that these cases would be filed dates for hearing of the appeals were fixed, the appointed dates being in January, 1986. However, at this point some difficulty arose between the appellant and Miss Nicolle, who was acting for the Committee, about the disclosure of documents and the compilation of an agreed bundle of documents for the use of the Court. Because these matters could not be settled in time, both sides ultimately agreed that the hearing could not conveniently take place in January, 1986, and would have to be adjourned.

Accordingly, the dates in January, 1986, were vacated. Soon after that, the matters which had been in disagreement between Mr Sauvage and the Committee relating to the documents were settled and on the 24th March, 1986 Mr Sauvage filed his cases. I say his cases, he in fact filed only two cases, one in the first of his three appeals and the other in the second, but it was ultimately accepted on both sides that the case which he filed in the first appeal was meant to cover the third appeal as well. At this stage, therefore, the position was that the appeals had been set down for hearing on the 28th June, 1985, the Committee's statement had been filed, and the

appellant's cases had been filed. The next step should have been filing of the Committee's cases.

On receiving the two cases filed by Mr Sauvage on the 24th March, 1986, Miss Nicolle, on behalf of the Committee, wrote to Mr Sauvage, asking him whether he proposed to file a case relating to the third appeal. To that letter no reply was received and eventually, on the 4th July, 1986, Miss Nicolle wrote to Mr Sauvage again, reminding him of her letter of the 24th of March and pressing him for a reply. To that letter again no reply was received. Accordingly, on the 12th November, 1986, Miss Nicolle eventually filed the Committee's cases in the three appeals. On that same day she wrote again to Mr Sauvage saying that she had filed these cases, and concluding her letter with these words: "I would be grateful if you would now inform me when you intend to apply to the Bailiff in Chambers for a date for the hearing of the appeal".

The position therefore was that by this stage the appeals had been set down for hearing since the 28th June, 1985, the dates originally fixed for hearing in January, 1986, had been vacated, but the appellant had never taken any steps to apply for the fixing of new dates for hearing.

The letter of the 12th November, 1986 again did not produce any response from the respondent. On the 15th January, 1987, Miss Nicolle wrote to him again, saying that on the 30th January, 1987 she would be applying to the Royal Court to dismiss the appeals on the ground that Mr Sauvage had not applied within the prescribed period for a day to be fixed for the hearing. This was a reference to the provisions of paragraph 11/7 of the Royal Court Rules 1982, which provides, so far as material, as follows: "If at the expiration of two months from the date on which the appeal is set down for hearing the appellant does not apply for a day to be fixed for the hearing, the Committee may, after giving not less than four days notice to the Greffier and the appellant, apply to the Court for the appeal to be dismissed, and the Court may dismiss the appeal or make such other order as it thinks fit".

The Committee's application came before the Court on the 30th January, 1987, and on that day the Court ordered that the appeals be dismissed for want of prosecution. However, Mr Sauvage then presented a representation to the Court saying that he had moved, the address to which notice of the intention to apply for the dismissal of his appeals had been sent was no longer his address, and he had never received the notice and had known nothing of the application until he had read of the Court's order in the newspaper. This representation came before the Court on the 20th February, 1987, and on that day the Court set aside its order dismissing the appeals and adjourned the matter so that the Committee's application for the appeals to be dismissed should come before the Court again on the 13th April.

It did come before the Court on the 13th April, 1987, and on that day the Court ordered that the appeals be dismissed. No transcript of the order made nor of what was said by the Court on that day was prepared, but Mr Habin, who, although not acting for Mr Sauvage at that time, is acting for him now, has obtained a transcript of the tape recording of the proceedings of the Court that afternoon. That transcript shows that the following words were used by the Court in making their order: "It is the view of this Court that the appellant has abused the process of the Court and the many indulgences granted to him by the Committee, by the Law Officers of the Crown and by the Court and the delays involved have been inordinate. The Court orders that the three appeals be struck out. The appellant will pay the taxed costs of the respondent".

In criticising this order of the Royal Court today, Mr Habin has submitted first that the power which the Court was exercising is a discretionary power. Upon the language of paragraph 11/7 of the Royal Court Rules, this is clearly right. The concluding words of that paragraph are: "....the Committee may, after giving not less than four days notice to the Greffier and the appellant apply to the Court for the appeal to be dismissed and the Court may dismiss the appeal or make such other order as it thinks fit". This is a power, therefore, to be exercised at the Court's discretion. That means not to be exercised in any casual or unconsidered way, but in accordance with principles which have now been well established by earlier authorities.

The clearest statement to which Mr Habin has referred us is contained in the speech of Lord Diplock in the case of Birkett -v- James (1977) 2 All ER 801. Referring to the power to dismiss an action for want of prosecution, Lord Diplock said at page 805: "The power should be exercised only where the Court is satisfied either 1) that the default has been intentional and contumelious, e.g. disobedience to a peremptory order of the Court or conduct amounting to an abuse of the process of the Court; or 2) (a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party".

Mr Habin submits that applying those principles the Royal Court should not have taken the action of striking out the appeals because he says there was no evidence before them of anything which could properly be regarded as an abuse of the process of the Court and, although there had been - and Mr Habin expressly conceded that he could not challenge this - inordinate and inexcusable delay, the Court failed to apply its mind to the question of whether that delay had caused any serious prejudice to the defendants.

As I have said, the Court did not deliver any reasoned judgment. We have therefore to consider whether upon the material before us there is anything upon which the Court could properly have exercised their discretion in the way in which they did. In my judgment clearly there was.

The appellant's argument with the Committee about the provision of documents had been settled by March, 1986, and on the 24th of that month the appellant filed his cases. Thereafter he did nothing; he did not reply to letters from the Committee in which they pointed out that although there were three appeals he had filed only two cases and enquired whether he intended to file a third. He took no action to have a new date fixed for the hearing of the appeals. At the time when the matter was ultimately brought before the Court on 30th January, 1987, this state of inaction had been prevailing for ten months. In my judgment, and this, as I have said, is now admitted on behalf of Mr Sauvage, the Court was perfectly entitled to

regard this as 'inordinate and inexcusable delay'.

Had it caused any prejudice to the defendants? As Mr Habin has pointed out to us, the cases in which the significance of delay has been discussed have normally been ordinary civil litigation concerning the action or inaction of litigants in asserting their private rights. Appeals against administrative decisions of bodies like the Island Development Committee raise considerations of rather a different sort. Provision has been made by the States for appeal against these decisions to the Courts and the rules have laid down timetables which are meant to be observed. The appeal has to be brought within the relatively short period of one month from the making of the decision. After that, a period of one month is allowed for the Committee to lodge its statement of its decision. Within two months thereafter the appellant has to lodge various documents including his case and within two months after the delivery of the appellant's case the Committee has to deliver its case.

It is clear therefore that, compared with ordinary civil litigation, relatively short periods have been allowed for the various steps in an appeal of this kind. The reason for that seems to me to be clear. The Committee is charged with the duty of enforcing the planning laws. Those laws involve the daily handling of many applications by members of the public for planning permission and the taking of frequent action for the correction of things being done or not done in disobedience to the planning laws. It seems to me clear that good administration becomes impossible if matters upon which the Committee has reached a decision cannot be put into execution for many months because appeals are started but are not prosecuted with the diligence which the law requires. This seems to me to create, in the words used by Lord Diplock in a different connection, 'serious prejudice' in two ways. First, as I have said, it greatly increases the difficulty of the Committee in efficient and expeditious administration of the law. Secondly, it seems to me that if a member of the public receives an order from the Committee to take certain action, and does not take the action but appeals against the order, and then does nothing to prosecute his appeal or at least nothing to bring it to hearing, and is seen by all his neighbours to be acting in defiance of the order of the Committee for many months, this must increase the difficulty of the Committee in getting respect and obedience to

its orders upon which the administration of the law depends.

It seems to me, therefore, that the inordinate and inexcusable delay which it is admitted occurred in this case was accompanied by consequences which amounted to serious prejudice to the Committee in the discharge of its duties.

In spite of the clear and skilful argument which has been addressed to us by Mr Habin, I can see no ground for impugning the exercise by the Royal Court of its discretion, and in my opinion the appeal should be dismissed.

Mr Fennell: I agree.

Mr Harman: I agree.

Authorities cited to the Court * referred to in the Judgment.

Allen -v- Sir Alfred McAlpine and Sons, Ltd: [1968] 1 All ER 543 C.A.

William Parker Ltd -v- Ham & Son Ltd: [1972] 3 All ER 1051 C.A.

Wallersteiner -v- Moir: [1974] 3 All ER 217 C.A.

* Birkett -v- James: [1977] 2 All ER 801.