

ROYAL COURT

11th April, 1988

Before: The Deputy Bailiff  
assisted by Jurats Coutanche and Orchard

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BETWEEN	Maisie Ayling, wife of Antony Gough Sturdy	FIRST PLAINTIFF
AND	Stride Investments Limited	SECOND PLAINTIFF
AND	Joan Lillian Le Gros, wife of John Edward Joseph Douglas Sealey	DEFENDANT

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Application by the plaintiffs for an injunction preventing the defendant from selling, disposing of or charging certain properties which form the basis of the dispute between the parties. The request for the injunction was contained in the first paragraph of the prayer of the Order of Justice issued by the plaintiffs. The remaining paragraphs of the prayer sought an order to compel the defendant to join in a contract of sale and conveyance with the plaintiffs in respect of the properties or, in the alternative, to pay to the plaintiffs general and special damages.

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Advocate G. Le V. Fiott for the plaintiffs  
Advocate M. O'Connell for the defendant

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JUDGMENT

DEPUTY BAILIFF: The Court is satisfied that there is a serious question to be tried. In Symes -v- Couch the Court awarded damages where there was an oral agreement evidenced in writing. In Pirouet -v- Pirouet there was an oral promise only. Both those cases are subsequent to Romeril -v- Davies.

In the present case we have the letter by the defendant to the first plaintiff which we believe confirms an agreement between the parties, the housing application signed by the defendant for a sale to the second plaintiff, and a draft "contrat" prepared on the instructions of the defendant for the sale to the second plaintiff. It is unnecessary for us to go further into the merits; clearly there is a serious question to be tried.

Secondly, whilst damages will be an adequate and probably the only remedy, we are not satisfied that if the properties were transferred into a company, only fifty per cent of which would be beneficially owned by the defendant and then charged and the proceeds of the charge transferred out of the jurisdiction, that the defendant would remain in a financial position to pay the damages. She has chosen in her affidavit not to disclose fully her assets and liabilities.

Thirdly, we have to consider the balance of convenience. We are satisfied that pending further order, the status quo on the assets that are the subject of the action should be preserved. But we stress that it is pending further order and it is open to the defendant to seek a variation of the injunction that we propose to grant by providing security in some other way for the damages to which she might be found liable. A variation can be obtained by consent or from the Court by summons. Therefore, subject to the usual undertaking in damages should the Court find that any damages were payable by the first or second plaintiff, and I invite Mr Fiott now to give that undertaking, we grant an injunction in the terms virtually of the prayer, that is to say that the defendant be restrained from selling, disposing of, or charging the properties 'Clairvale Villa' and 'Petite Clairvale', until further order.

The Court orders that the defendant will pay the taxed costs of this hearing. We note, incidentally, that in her own affidavit she does not require the assets for use in Spain until October of this year and so in relation to costs she could easily have acquiesced to the injunction at least for a temporary period whilst she prepared a variation application.

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Authorities referred to in the Judgment:-

J.H.A. Symes -v- J. Couch J.J. 1978 119 - p.p. 119, 120, 122, 140, 141, 143  
144 and 147.

Pirouet -v- Pirouet J.L.R. 1985/86 (Part 2) p. 151.

H.P. Romeril et al -v- D.M. Davies J.J. 1977 135.

Other authorities referred to:-

J.M. Cerqueira et al -v- Royal Trust Bank (Jersey) Ltd. J.J. 1981 141 at p.  
142.

York Street Pharmacy Ltd -v- L.R. Rault et al J.J. 1974 65 at p. 70.  
David Bean on Injunctions (1st edition) at p. 11 re. "Adequacy of damages",  
p. 23 re. "The American Cyanamid Case" and p. 24 re. "Inadequacy of  
damages (to either side)".

Commissioners Report 13th July 1859 - para. 976 re. J. Hammond.