

20th May, 1988.

BETWEEN The Jersey Cheshire Home Foundation PLAINTIFF

AND Clifford Harrison Rothwell
and others, exercising the profession
of consulting engineer under the
name of C.H. Rothwell & Partners FIRST DEFENDANTS

and

John H. Richards SECOND DEFENDANT

and

Peter Cameron Limited THIRD DEFENDANT

SUMMONSES HEARD BEFORE THE JUDICIAL GREFFIER ON THE 19TH APRIL, 1988.

Summary of reasons for Greffier's decisions

I deal first with the plaintiff's summons to show cause why the second defendant should not be ordered to give the plaintiff further and better particulars of paragraph 9 of his answer. I have come to the conclusion that the sentence in that paragraph which reads "It is denied that the terms of the letter constituted an admission of liability on the part of the second defendant" is nothing more than a mere traverse and that particulars should not be ordered in respect thereof. I have, however, concluded that the final sentence of that paragraph contains a positive averment and that accordingly particulars should be given. Costs will be in the cause in respect of that summons.

I turn now to the third defendant's summons seeking three alternative orders. These were dealt with in reverse order, commencing with an application under paragraphs (b) and (c) of Rule 6/10(7) of the Royal Court Rules, 1982, for an order that the third defendant be convened as a third party by the first defendants.

That Rule reads as follows:

"(7) Where in any action a defendant in his answer -

- (a) claims against a person who is already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action;

the Court may after hearing the parties make an order that such person be convened as a third party by the defendant"

It is quite clear that in the present case, the first defendants have in their answer neither "claimed" (para. (b)) nor "required" (para. (c)). I am unable therefore to make an order under that Rule. In pleading as they have, the first defendants, it seems to me, have done nothing more than indicate to the plaintiff their view that the latter has laid the blame at the wrong door - which the second defendant has also done (at paragraph 8 of his answer); and although I have the power to do so, I do not consider it appropriate to add the third defendant as a third party under Rule 6/10(9)(ii).

With regard to the second limb of the third defendant's summons, which sought an order under Rule 7/6 setting aside the contents of paragraphs 7.6, 9.3.2 and 15.2.4 (insofar only as the latter may contain any allegation against the third defendant) of the first defendants' answer, I do not consider that Rule (which appears in Part 7 of the Rules under the general heading "Proceedings at the trial") - to be in any way relevant.

Finally, the third defendant's summons sought an order under paragraphs (a) and (c) of Rule 6/13 that the same three paragraphs of the first defendants' answer be struck out. In my view, it is not open to one defendant to seek a striking out order in respect of the pleadings of another defendant - this can only be done as between adverse parties. However, even if this were not the case, it would not, I think, be appropriate to make the order sought, for while it might be said that the pleadings in question are unnecessary, they do not seem to me to be an unreasonable defence and I do not see them as likely to prejudice, embarrass or delay the fair trial of the action.

The costs of the third defendant's summons will be paid by the third defendant.

Judicial Greffier.