COURT OF APPEAL

30th June, 1989

Before: The Bailiff, sitting as
a single Judge

Between:	**Emile Francis Le Vannais**	Appellant
And:	**The Island Development Committee of the States of Jersey**	Respondent

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Application by the Appellant, under Rule 16 of the Court of Appeal (Civil) (Jersey) Rules, 1964, for an enlargement of time within which to file a Notice of Appeal from the Judgment of the Royal Court (Samedi Division) of the 9th December, 1988.

Advocate B.E. Troy for the Appellant
Advocate S.C. Nicolle for the Respondent.

JUDGMENT

THE BAILIFF: On the 20th July, 1987, the Royal Court sat to hear an appeal from Mr. E.F. Le Vannais against the purported revocation by the Island Development Committee on the 15th September, 1986, of a permit, issued by the Natural Beauties Committee, the predecessor of the Island Development Committee, to the appellant on the 30th January, 1949, to build a bungalow

and outbuilding on the Côtil du Mont Vautier, St. Ouen.

On the 9th December, 1988, the Royal Court dismissed Mr. Le Vannais' appeal. The appellant took no steps to initiate an appeal to this Court, but rather on the 6th January, 1989, submitted a claim for compensation to the Island Development Committee under Article 7(4) of the Island Planning (Jersey) Law, 1964. That Article, however, requires such a claim to be submitted to the Committee within one month of the notification by the Committee of its decision to revoke a permit. I was told by Miss Nicolle that the letter from Mr. Troy, counsel for Mr. Le Vannais, specifically said that it was Mr. Le Vannais' intention not to appeal but to seek compensation.

However, the Court has no power to enlarge the time within which an application for compensation may be made and the appellant appears to have accepted the position because he acquiesced in what was a suggestion made in fact by Miss Nicolle to the Committee itself for an ex gratia payment on a 'without prejudice' basis to be made to him. However, because she told me that she had also advised the Committee that the grounds which were advanced or were going to be advanced by Mr. Le Vannais to substantiate his right to compensation, that is to say that he was not out of time, and if he was not out of time, furthermore that his claim was covered by the circumstances, were not accepted by her. Perhaps because of that advice the Committee rejected the application on the 24th April, 1989.

The present summons therefore seeks an extension of time within which Mr. Le Vannais may appeal against the Royal Court's judgment of the 9th December, 1988, and this summons was received by the Greffier on the 24th May, 1989.

The authorities in an application to extend time were considered very carefully by the learned Deputy Bailiff on the 8th July, 1988, in his judgment in the case of Hickman -v- Hickman and I need not repeat them here; both counsel in this case are agreed that I have to have four matters before me before I can come to a decision. First, I have to consider the length of the delay; secondly the reasons for it; thirdly whether there would be an arguable case if the matter came before the Court of Appeal; and fourthly the degree

of prejudice to the parties.

I deal first of all with the delay. Miss Nicolle has submitted that this is not an ordinary case inasmuch as it is not a delay in the ordinary sense of the term because it was really a change of heart: as I have said, after the judgment below, Mr. Le Vannais decided that he would not, for reasons disclosed in his affidavit, proceed with any further litigation and therefore sought a different approach. When he was faced with the Committee's refusal to grant an ex gratia payment, he then changed his mind and it is that change of mind which distinguishes this particular case from the other cases where delay has been considered by the Courts in England and by this Court.

It is perfectly true that mistakes due on the part of a legal adviser do not necessarily prejudice an applicant (Gatti -v- Shoosmith (1939) 3 All ER 916) and again the learned Deputy Bailiff referred to that matter in paragraph six of his judgment in Hickman -v- Hickman. There was also the earlier case of Palata Investments Ltd -v- Burt and Sinfield Ltd (1985) 2 All ER 517 where the same principle was applied. I had to ask myself regarding this question whether the change of mind took this case completely out of the other type of cases, and I have come to the conclusion that it did not. It is merely a reason for the delay. It could be a change of mind, it could be an oversight, it could be carelessness; it could be any number of reasons and a change of mind, in my opinion, is merely another reason for the delay, which if I wish to accept it, is one that I can properly take into account.

So far as the actual length of time is concerned, it is eighteen and a half weeks. I would have regarded that as quite substantial, but Miss Nicolle is perhaps more generous and described it as an intermediate amount. As Lord Denning said in one of the earlier cases: "So here there is a delay, not a very long one but it is long enough". In that case it was three and a half months. But it was a fairly substantial delay nevertheless.

On the second point I have to consider the appellant's explanation, which I have already touched on, and which I infer from his affidavit, is that had the Island Development Committee either been prepared to accept his application for compensation some two and a quarter years' later, or make an

ex gratia payment then probably the appellant would not have proceeded with an appeal from the judgment. It seems to me he must have relied on his counsel who did not appreciate the need to apply to the Island Development Committee in September, 1986 for compensation, or at least to give notice that an application would be made without prejudice pending the appeal. As I have said, the applicant in my view is not to be prejudiced by that failure if that indeed was the case.

It is worth noting that the appellant appears to have been out of time with his appeal from the Island Development Committee's decision of 15th September, 1986, but that point was not apparently taken by the Committee before the Royal Court.

The third matter I have to decide is whether there is an arguable issue between the parties in this Court. Now, the issue before the Royal Court was whether the appellant had an irrevocable consent of permit and that question in turn depended on the interpretation of the transitional provisions in the 1964 Law because there were no provisions for revocation in the earlier statutes or regulations.

The Deputy Bailiff thought that the wording of the transitional provisions was wide enough to enable him to relate back the provisions for revocation to the earlier statutes. But he did qualify his ruling by saying that if he were wrong then he would rely on Carson -v- Carson (1964) 1 WLR 511 at p.517 and that it was the opinion and the intention of the legislature of the States that all consents whether given under the earlier statutes or the existing law should be revocable.

It is my opinion that, because the learned Deputy Bailiff had queried whether he was right on that particular point and had relied on the general intention of the legislature not spelt out in the current legislation, ~~that~~ there could well be an arguable case to be heard before the Court of Appeal.

Lastly I come to the fourth point: the degree of prejudice to the parties. It seems to me that the only prejudice which an appeal might cause to the Island Development Committee would be a planning difficulty, because as Miss Nicolle has said there might well be some permits under the 1949

legislation which would suddenly come to light. I presume that the reason for the revocation was a planning reason and that it would be wrong for further delay to ensue whilst this matter was in the Court of Appeal before the Island Development Committee could know how to deal with any such permits which came to light. I do not find there a particularly strong degree of prejudice to the Committee. It might be slightly embarrassing but not really prejudicial.

On the other hand the appellant, it seems to me, has lost his chance of receiving any compensation and if I were to refuse his application he would also lose the opportunity to build a retirement home which, it is quite true, came to him as a windfall, because he appears to have bought the land without knowledge of this permit; nevertheless, according to his affidavit, he wishes to build a retirement home and without deciding the issue it is something which would be prejudicial to him if I were to refuse leave at this stage.

Moreover the applicant has had to wait a considerable time for the judgment itself. As I have said, he either misinterpreted Article 7 of the Island Planning (Jersey) Law, 1964, or was wrongly advised and sought to obtain compensation within one month of the Royal Court's decision.

Taking all the circumstances into account, I have decided to grant leave and the costs will be in the cause.

Authorities

Island Planning (Jersey) Law, 1964.

Hickman (née Norton) -v- Hickman (8th July, 1988) Jersey Unreported.

Gallie Ltd -v- Davies & Anor (14th April, 1986) Jersey Unreported; (1985-86) JLR N.2 C.A.

Palata Investments Ltd -v- Burt and Sinfield Ltd (1985) 2 All ER 517.

Revici -v- Prentice Hall Incorporated (1969) 1 All ER 772.

Carson -v- Carson (1964) 1 WLR 511.

Gatti -v- Shoosmith (1939) 3 All ER 916.

Atwood -v- Chichester (1878) 3 QBD 722.