

In the Royal Court of Jersey

17th July, 1989

Before: The Bailiff, and
Jurats Coutanche and Hamon

Between: **Robert McGorin** Plaintiff

And: **Michael Barron Pascoe** Defendant

Applications (1) by the plaintiff that the defendant provide an account, verified by affidavit, of all sums received by the defendant from two named third parties and for an enquiry thereon and (2) by the defendant for a stay of the action, or alternatively, a stay of any order made by the Court in relation to the plaintiff's application in (1) above.

Advocate R.J. Michel for the plaintiff
Advocate A.J. Dessain for the defendant.

This is not an easy case to decide,

THE BAILIFF: ... but it can be reduced to a number of main points. Firstly, Mr. Rigby and Mr. Nagley are respectively solicitors and accountants who had as their client the plaintiff in this action, Mr. McGorin. Both Mr. Rigby and Mr. Nagley sent sums of money to the defendant in this case, Mr. Pascoe, for

investment.

It is not necessary for us to decide what type of investment or what was to be done with the money. Now, what was the position as a result of that money being sent? First of all it is quite clear that Mr. Rigby and Mr. Nagley were agents of Mr. McGorin and therefore they had to account for him in the ordinary way, about what we have had various submissions made by counsel during the day. We have no doubt that that is the true position and indeed Mr. Rigby has been ordered to account to Mr. McGorin by filing an account by the 21st of this month.

Now, because Mr. Pascoe received money from Messrs. Rigby and Nagley to invest, he also was their agent and has to account, in our opinion, to them. So the next question the Court had to ask itself is, does Mr. Pascoe therefore have to account to the principal, i.e. Mr. McGorin, even though he was undisclosed, and secondly, can that undisclosed principal sue, as he has in this present case? The answer to both those last questions is in the affirmative, particularly as regards the right of an undisclosed principal to sue. For that authority we rely on Bowstead on Agency, 15th edition, at Article 79 on p. 312 - and I cite the passage: "1. An undisclosed principal may sue or be sued on any contract made on his behalf or in respect of money paid or received on his behalf by his agent acting within the scope of his actual authority". Now, there is no dispute that Mr. Rigby and Mr. Nagley were authorised to send money to Mr. Pascoe for certain investments. And so the first question the Court has to ask itself is, given those facts and given the question of law arising from them, whether Mr. McGorin is entitled in this Court to seek from Mr. Pascoe an account.

When the case opened this morning, I asked both counsel for Jersey authorities, and particularly Pothier, and I asked them if they had any which they wished to place before the Court. I am glad to say that counsel, during the luncheon adjournment, found a number of authorities which make it quite clear that an account requested by a principal from his agent is well known to Jersey law.

Mr. Michel was able to cite a number of cases from the Table des Décisions: Le Masurier -v- Proper, for example, 1876 217 Ex 522. And we have no doubt that the type of action sought by Mr. McGorin is entirely within the scope of our jurisdiction and the Court has full power to make the order which indeed is sought by Mr. McGorin today. However, Mr. Pascoe has submitted, through Mr. Dessain, that even if we were to make that order we should not do so, because his accountants, Touche Ross & Co. particularly according to their third affidavit through Mr. Beamish, the locally resident partner, which was filed on the 13th July this year, has deposed that without the accounts which have to be submitted to the High Court, it is unlikely that they will be able to prepare a proper account.

The difficulty arises because Mr. Nagley was the solicitor not only for Mr. McGorin but also for Mr. Pascoe, and we have had referred to us a number of affidavits and correspondence which seems to suggest that the question of privilege is raising its head and that Mr. Nagley has had some correspondence with the English Law Society, and it is clear to us that that is a matter very much for that Society's mind. Nevertheless, it seems to us not unreasonable for the defendant to say that "my accountants cannot really prepare an account unless they have had a look at Mr. Rigby's figures first". But the difficulty about that is that we know from a letter which Mr. Rigby sent - perhaps unaccountably, but he did - to Mr. Michel on the 6th of this month, in which he said that the accounts were nowhere near completion. So that if we made the order which Mr. Michel wants dependent on Touche Ross having a sight, first, of Mr. Rigby's accounts in the High Court, that might postpone the accounting by Mr. Pascoe to almost the freak Calends. There is no doubt of course, that Mr. Pascoe has admitted in his affidavit that he has in fact received monies from Mr. Rigby and Mr. Nagley - that he did in his affidavit of the 12th May, 1988, and it is quite clear that he recognises that he is answerable either to each of those persons or to their principals, as the case may be. Therefore, there is an admission that money has been received by the defendant and that he is accountable to someone in England, whether it is Mr. Nagley or Mr. Rigby or the undisclosed principal, Mr. McGorin, or indeed another undisclosed principal, is not relevant to this issue this afternoon.

It seems to us that we should make an order requiring Mr. Pascoe to account to the plaintiff for the money which he has had. But there is, as I say, substance in the argument that Mr. Beamish will not be able to prepare such a full account, which he will need, until he has Mr. Rigby's figures. Now we think we ought to give an opportunity for Mr. Beamish to see those figures if at all possible. But this cannot be prolonged ad infinitum, otherwise proceedings would run into the sand, which is not right or desirable in this Court. So we are going to make the order sought for, that there will in fact be a disclosure of the figures by Mr. Pascoe, but that will not be for a period of three months from today - that should give him sufficient time, if pressure can be applied on Mr. Rigby, to file the figures with the High Court for Mr. Beamish to look at the accounts; and even if he cannot see the accounts, whilst it is desirable and would be more helpful for Mr. Beamish to see Mr. Rigby's figures, it is not totally necessary because, as Mr. Michel rightly pointed out, what Mr. Beamish is seeking to do is prepare a reconciliation account of the figures passing between Mr. Rigby and Mr. Nagley on the one hand and the figures passing back from Mr. Pascoe, either to Mr. Rigby or Mr. Nagley and companies under their control, which is not a matter at issue at the moment.

What the plaintiff wants to know, and which he is entitled to know is "how much money within your knowledge have you had and what have you done with it?" And that seems to us a perfectly proper request to make.

It is true that Mr. Dessain has argued that the Order of Justice does not ask for this until after the matter has been proved, but we think that there is an admission, clearly, in the affidavit of Mr. Pascoe to which I have referred - the third affidavit - which makes it clear that he is an accounting party and therefore a person against whom such an order to account may properly be made.

Now that only leaves open the question - perhaps the wider question - canvassed by Mr. Dessain, that in any case we should stay the action altogether, or pending some further order. He has rightly said there are a number of questions which have to be resolved - how much money was given by Mr. McGorin to Mr. Rigby; how much money did Mr. Rigby keep; how much money did he send to Mr. Pascoe; how much money did Mr. Pascoe

keep; how much money did Mr. Pascoe send back; how much did Mr. Rigby in his turn pass over to the plaintiff - it is quite true that those matters are to be dealt with in due course. But we think there is insufficient overlap between the English proceedings and these proceedings, which after all are between different parties to the English proceedings, for us to say that we should exercise our inherent jurisdiction - which is unfettered, we accept that, Mr. Dessain - to stay the proceedings, and therefore your application to stay the proceedings is dismissed. And we make the order you seek, Mr. Michel, but we give Mr. Pascoe three months in which to comply.

Authorities cited:

Various cases from the Table des Décisions under the general heading "Compte".

Bowstead on Agency, 15th Ed. pp. 312-322.

Bullen Leake and Jacob's Precedents of Pleadings 12th Ed. pp. 183-185.

Chitty on Contracts, 25th Ed. Vol. 1 pp. 763-765;

1143 & 1144; 1156 & 1157.

Halsbury's Laws of England 4th Ed. Vol. 1 pp. 466-470, 475 & 476;

Vol. 9 pp. 434-439, 461-464;

Vol. 37 pp. 330-332.

P.H. Pettit Equity and the Law of Trusts, 5th Ed. pp. 146-150.

Pothier Nouvelle Édition Tome Premier Section II pp. 156-157.

Shaver -v- Wallace (1950) 2 All E.R. 463.

Wells -v- Wells (1961) 1 W.L.R 397-407.

Foley -v- Hill 2 H.L.C 28-9 E.R. 1002.

Shackleton -v- Swift (1913) All E.R. 570.

Trusts (Jersey) Law 1984 Articles 17(5), 17(6) and 47(2)(ii).

Rules of the Supreme Court Order 43.