5 pages.

ROYAL COURT

23rd July, 1990 111A

Before: The Deputy Bailiff, and
Jurats Vint and Le Ruez

Between:	**IBL Limited**	First Plaintiff
And:	**Meridian Group (UK) Limited**	Second Plaintiff
And:	**Planet Financial and Legal Services Limited**	First Defendant
And:	**Brian Harrison Webbe**	Second Defendant
And:	**Philip Arthur Coussens and John Trevor Howard Henderson**	Parties Intervening

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Application by the parties intervening for leave to introduce an affidavit.

Advocate P. de C. Mourant for the plaintiffs.
Advocate M. St. J. O'Connell for the defendants.
Advocate J.G. White for the parties intervening.

JUDGMENT

DEPUTY BAILIFF: When Mr. O'Connell addressed us on the 15th May, 1990, he did so in part, on the argument that Mr. Burgher's affidavit was flawed, mainly because of his failure to exhibit the English pleadings to show that none of the matters raised in Jersey had been canvassed in England.

Mr. Binnington, at that hearing, made a strong case in respect of the Malverda transactions on the basis of Mr. Burgher's affidavit. There were strong grounds, he said, for believing that there was a substantial connection between the beneficial shareholders of Malverda and shareholders in the first plaintiff. Discovery was needed - there was a distinct lack of documentation. This was a tracing claim and it fell within Norwich Pharmacal principles.

Mr. White now wishes to put in Mr. Ashcroft's affidavit to try to establish, as Mr. O'Connell did, that Mr. Burgher's affidavit was flawed, this time insofar as the Malverda transactions are concerned. If he had done so at the proper time, no objection could have been taken.

The Court must not lose sight of the fact that we are here reviewing injunctions imposed ex parte. The question which the Court will have to ask itself is whether the Judge who signed the Order of Justice, in this case myself, would have granted the injunctions if he had had Mr. Ashcroft's affidavit side by side with Mr. Burgher's.

This Court in Shelton -v- Viscount (1982) 269 Ex. 265 said that when defendants come to this Court to lift injunctions then it is essential that those applications be supported by sworn affidavits - and the Court made a practice direction to enforce that decision. Of course in this case affidavits were filed by Mr. Coussens and Mr. Henderson, but that does not necessarily preclude the admission of a further affidavit.

It follows that Mr. White is not wrong in principle to produce Mr. Ashcroft's affidavit - the question is whether its late production is such an abuse of the process of the Court that it should be rejected unread.

When Mr. Binnington addressed us on the 20th June, 1990, he criticised the affidavit of Mr. Coussens, in particular paragraph 6 at p.4 read to us this morning by Mr. White; he criticised the fact that nowhere in the affidavits or in the representation was there anything that contradicted what was in the plaintiff's pleadings and affidavit; with some surprise he could not even find a denial. Therefore, there remained points of law only, which had been dealt with already. The Court shared Mr. Binnington's surprise and placed some weight on the fact that there was no denial. Mr. Binnington argued that the application by Messrs. Coussens and Henderson, relying on natural justice, was in effect an application to suppress evidence and thus defeat the interests of justice. The Court had some sympathy for the view that a strict application of the rules of natural justice could, in effect, defeat the true interests of justice. We hold the same view today. But we feel that we really have no alternative, however reluctantly, but to admit this very late affidavit.

We have noted, too, that when it came to the question of terms upon which intervention might be allowed Mr. Binnington suggested that the Court should impose terms whereunder Messrs. Coussens and Henderson should be ordered to file affidavits dealing with the matters of which the plaintiffs made complaint. He argued that both the representation and supporting affidavit suggested that Messrs. Coussens and Henderson were keen to have their version heard and that in the interests of justice they should be heard. He argued that if they did not put forward their version of a correct factual picture they were being selective in their use of the 'natural justice' argument. As he put it Messrs. Coussens and Henderson were trying to 'have their cake and eat it'. Mr. White strongly opposed that submission for reasons which were far from convincing. But the Court declined to order the filing by the applicants of affidavits dealing with factual matters because it was dealing with an interlocutory matter and must avoid a trial of substantive matters which should be better dealt with in the English proceedings. But that is not to say that the intervenors must be deprived of the opportunity of putting in an affidavit of facts which might have influenced me when signing the original Order of Justice.

The weight which will be given to that affidavit will, of course, be a matter entirely for the Court.

Whilst the Court is grateful to counsel for their researches we are not convinced that a direct analogy with applications for leave to amend can properly be drawn. Nevertheless to the extent that they may be helpful those authorities support the view which we have taken.

Accordingly leave to introduce the affidavit is granted on terms that the intervenors will pay the costs of both the plaintiffs and the defendants of and incidental to the application to admit on a taxation basis.

And if Mr. Mourant wishes now to seek an adjournment to consider the affidavit, which of course we have not yet seen, he will be entitled to it.

Authorities referred to:

Shelton -v- Viscount (1982) 269 Ex.265.

Rules of the Supreme Court (1988 Ed'n) Order 20, r.5: 20/12/1.

G.L. Baker Limited -v- Medway Buildings and Supplies Limited (1958) 3 All ER 540.

Laurens -v- Jersey Mutual (1987-88) JLR N1.