

The Act of this Court gave the Third Party twenty-eight days from the date of service to file an answer.

Mr. Begg in a very fair and candid affidavit in support of his summons deposed that on the 26th October, 1990 at 4.50 p.m. he received a telephone call from a firm of Belgian lawyers. He did not note the caller's name nor the name of the firm but told us that the caller spoke good English. It will be noted that this telephone call was received some twenty days after the period of twenty-eight days allowed by the Court had elapsed.

The Belgian lawyer, who was clearly acting for the third party, asked whether it was too late to file an Answer as the time for filing was passed. In Mr. Begg's words "I confirmed to the lawyer that, at that stage, it was not too late, and my understanding was that the Belgian lawyers were ~~not~~ going to instruct somebody to represent their client in Jersey".

The summons (which the affidavit supported) was filed on the 28th November, 1990, was duly served on the third party, and ordered him to appear before this Court on the 12th December, 1990.

The summons sought relief in six forms.

Leave was sought

- (i) To amend the prayer of the answer by adding the words " ... or in the alternative, why specific performance of the Agreement by the third party should not be ordered forthwith," to the end of paragraph (e) thereof.
- (ii) to ask that the amendment be made retrospective to the filing of the Answer.
- (iii) to segregate (if deemed necessary or appropriate) the claim made by the defendant against the third party so as to make it a separate claim, independent of the main action.
- (iv) to order judgment in favour of the defendant under Rule 6/17 (4) and/or Rule 6/7 (5).
- (v) for the defendant to enforce once judgment^{was} awarded under (iv) without having to wait for the outcome of the main action.

An application was also made for costs.

At the hearing today the third party was surprisingly represented. We say "surprisingly" because Mr. Labesse told us that only at 4.30 p.m. last evening was he approached on the telephone by a firm of Belgian lawyers. He then received a letter by fax from Belgium just before this hearing. That letter, in French, contains this paragraph.

"Comme vous pourrez le constater, le "Court Sealed Act" en date du 28/11/90 a été transmis à mon client par lettre du 05/12/90 du correspondant de Monsieur Begg qu'il a reçu en date du 07/12/90, et qu'il m'a transmis le 10/12/90."

It is clear that the third party was aware of all the directions of this Court.

The letter goes on to say that it is necessary for the third party to convene "un certain Monsieur Capelle".

The appearance of Mr. Labesse, albeit at the eleventh hour, has put a different complexion on the summons but there are certain matters which require our attention.

Mr. Begg put his argument this way. He said that, despite the third party's appearance he had what he described as an automatic judgment against the third party. That contention arises from the wording of Rule 6/10/4 of the Royal Court Rules which reads

- (4) Where the time limited for filing an answer by the third party has expired and no answer has been filed -
- (a) he shall be deemed to admit any claim stated in the defendant's answer and shall be bound by any judgment (including judgment by consent) or decision in the action insofar as it is relevant to any claim, question or issue stated in the defendant's answer; and
 - (b) the defendant by whom the third party was convened, may, if judgment by default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, obtain judgment against the third party in respect of any contribution or indemnity claimed in his answer and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

Mr. Begg then goes on to link that rule with rule 6/17/4 which reads -

- (4) Where admissions of fact are made by a party to an action either by his pleadings or otherwise, any other party to the action may apply to the Court for such judgment or order as on those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment or make such order, on the application as it thinks just.

It will be seen that Mr. Begg's argument runs along an interpretation of the rules which makes a deemed admission a consequence of failing to file an answer (by the third party) in time. Mr. Begg then uses that deemed admission as a springboard to enable him to apply to court for a judgment on those admissions .

He also, of course, relies on Rule 6/7/5 which reads -

- (5) Where the time limited for filing an answer has expired and no answer has been filed, the plaintiff may, after giving not less than twenty-four hours' notice to the Greffier and to the defendant, ask the Court to pronounce judgment against the defendant.

We do not conceive that it is possible to interpret the Rules so as to give an "automatic" judgment under Rule 6/10/4(a). It is clear from a reading of Rule 6/10/4(b) (which gives a particular example of a default where a defendant has allowed a default judgment to be taken against him) that by sub-rule (b) the defendant still has to apply for a judgment against the third party which he would not have had to do if one were to follow the interpretation of Rule 6/10(4) (a) urged upon us by Mr. Begg.

In an interesting and very closely defined argument, the learned Judicial Greffier examined this very point in the Jersey Cheshire Home Foundation - v - Clifford Harrison Rothwell and Others JJ4 June 1990 (unreported). We entirely agree with the learned Greffier when he says at page 6 " ... I do not believe that any Rule of Court or Principle of Law in the Island of Jersey gives rise to a judgment without the decision of the Court".

The third party has appeared. In the circumstances (and because we do not accept Mr. Begg's argument on automatic judgments) we have no hesitation in exercising our discretion so as to enable the third party to file an answer. Mr. Labesse graciously acknowledged a self-evident fact which is that the third party has been dilatory in the extreme. We, therefore, order that the third party files his answer within 21 days of the date of this hearing.

We allow the amendments asked for in paragraphs (i) and (ii) of the summons (Mr. Labesse agreed this course). Mr. Begg did not press paragraph (iii) which falls away.

Because we regard the delay as serious and inexcusable (and despite the very agreeable apologies made to this Court by Mr. Labesse on his client's behalf) we order that the third party shall pay the costs of and incidental to this day's hearing on a full indemnity basis.

A U T H O R I T I E S .

Royal Court Rules, 1982: 1/5; 6/7(5); 6/10(4); 6/12; 6/17(4);
Cheshire Home Foundation-v-Rothwell & Ors (4th June,1990) Jersey Unreported
Whiteside-v- Kerrell & Anor (24th October, 1990) Jersey Unreported
Odger's "Principles of Pleading and Practice" (2nd Ed'n; 1981): pp.196-8
Barnard: "The Civil Court in Action" (2nd Ed'n; 1985): pp.148-9
R.S.C.(1991)Vol.2:Section 15/5,16/7(pp.254-7);Section 62/2/85 (pp.1013-4);
pp.16-19; pp.347-53; pp.487-9.
Romeril-v-Davis (1977) JJ 135
Taylor-v-Fitzpatrick (1979) JJ 1
Felard Investments Ltd-v-Church of Our Lady (1979) JJ 19
Brocken-v-Coxshall (31st October,1990) Jersey Unreported
4 Halsbury 44: paras 401-2, 413-4, 419-20, 486, 492, 525-6, 529, 533, 551,
559, 560-2, 565.
4 Halsbury 8: paras:406,407,641-3.
Blore-v-Ashby (1889) 42 Ch.D 682
Richard West Partners (Inverness) Ltd.-v-Dick (1969)2 Ch. 424
Taylor & Ors-v-Kitchin & Anor (1985-86) JLR N4
Johnson-v-Ribbins (1977) 1 All ER 806
Stott-v-West Yorkshire Road Car Company Limited. (1971) 3 All ER 534