

ROYAL COURT
17th January, 1991

11A

Before the Judicial Greffier

BETWEEN Bastion Offshore Trust Company Limited APPELLANT
AND The Finance & Economics Committee of
the States of Jersey RESPONDENT

SUMMARY

Application by the Appellant for further and better particulars of the statement of the Respondent's case.

Advocate W.J. Bailhache for the Appellant

Her Majesty's Attorney General for the Respondent

JUDGMENT

JUDICIAL GREFFIER:

The issue before me was as to whether the Judicial Greffier has the power pursuant to Rule 6/14 of the Royal Court Rules, 1982, as amended, or in exercising the inherent jurisdiction of the Court, to Order Further and Better Particulars of a Respondent's case in an appeal which falls within the ambit of part 11 of the Royal Court Rules.

The leading authority is that of Ashworth Sons & Barratt v Housing Committee which was an application to the Judicial Greffier for striking out under Rule 6/13 in relation to an administrative decision of the Housing Committee. I now quote that Judgment in full -

"The procedure for appealing from an administrative decision of a States' Committee was originally laid down in the Royal Court (Appeals from Administrative Decisions)(Jersey) Rules, 1966.

Clearly, at that time, those Rules stood alone and in isolation from other Rules then in existence, in particular the Royal Court (Procedure & Pleadings)Rules, 1965.

In 1968, however, all the then existing Rules of Court, covering a wide range of matters and including the Appeals from Administrative Decisions Rules, were consolidated into the Royal Court Rules, 1968, and these were themselves revised and largely re-enacted, with further additions, in 1982 as the Royal Court Rules, 1982.

As far as the Appeals from Administrative Decisions Rules were concerned, these were, with I think only two exceptions, taken as they stood and incorporated as Part 11 of the consolidated 1968 Rules. Those exceptions were, firstly, the provisions with regard to fixing a day for trial, in which cases some of the provisions of Rule 6/21 were specifically extended to the provisions for fixing dates for the hearing of appeals; and secondly, the provisions relating to extension of time, which were removed entirely. This latter provision was, as I see it, omitted because Rule 1/5 of the 1968 Rules made (and still makes) provision for the Court by order to extend or abridge the period within which a person is required by Rules of Court to do any act in any proceedings, which clearly includes an appeal against an administrative decision.

Mr. Whelan refuted Mr. Mourant's argument that Rule 6/13 of the 1982 Rules did not apply to appeals from administrative decisions and submitted that the provisions of Part 11 of the Rules could not stand alone and in isolation and that, although originally enacted as an independent set of Rules, when incorporated in the 1968 consolidated Rules they must have been so incorporated for a purpose - he suggested that one reason for this was to provide a uniform code of procedure in order to avoid anomalies such as would become apparent if Part 11 were held to stand alone.

I have considered this matter very carefully and have concluded that Rule 6/13, under which this summons is brought, does not apply to Part 11. Rule 6/2 divides the forms of action into two classes, i.e. simple actions and actions instituted by Orders of Justice and all the Rules which follow in Part 6, with the exceptions to which I have referred, apply only to such actions. In my view, subject to those exceptions, the Rules relating to appeals from administrative decisions as set out in Part 11 stand alone now as they did in 1965 when they were enacted as a separate set of Rules. I therefore have no power to do what Mr. Whelan asks me to do, that is to strike out the appeal."

I agree with the decision of the Judicial Greffier in that case and would add the following further points in support of the principle that part 6 of the Royal Court Rules does not apply to an appeal under Part 11 thereof:-

- (a) In 1990 the Royal Court (Amendment No. 5) Rules, 1990 were made by the Superior Number of the Royal Court. This created a power under Rule 6/18(5) for evidence to be taken in writing before the Viscount in certain cases. However, a new Rule 11/7 was created which provided for an identical power in relation to administrative appeals. If the Royal Court had not taken the view that Part 6 did not apply to Part 11 appeals then there would have been no necessity to have created the separate power by means of Rule 11/7; and
- (b) although the terms of Rule 6/1 do not expressly exclude Part 11 appeals, they merely reflect the provisions that can be traced back to Rules 1(1) and 1(2) of the Royal Court (Procedure and Pleadings)(Jersey) Rules, 1965; there is no reason to believe that when the various Royal Court Rules were consolidated in 1968 there was any intention to imply that Part 6 would in future apply to Part 11 appeals and the terms of the existing Rule 11/6 tend to indicate to the contrary.

Having rejected the applicability of Rule 6/14 I now turn to the question of the applicability of the inherent jurisdiction of the Court.

This is the second occasion in a very short period on which I have had to consider this point. The first occasion was in relation to an application for the striking out in the case of Melva House Limited -v- Bowshot Limited and Regal Construction (Jersey) Limited, the Judgment in relation to which will be given soon after this Judgment. In that

case and in this I came to the view that for me to be satisfied that the inherent jurisdiction of the Court could apply I would firstly have to be satisfied that the Royal Court had an inherent jurisdiction which covered this particular procedural situation and secondly, I would have to be satisfied that that jurisdiction had been delegated to the Judicial Greffier in the absence of a specific rule to that effect. The wording of the definition of the Court in Rule 1/1(1) of the Royal Court Rules, 1982, as amended, is -

"The Court" except in the provisions of these Rules mentioned in the First Schedule hereto means any division of the Royal Court, the Bailiff or the Greffier;". I find that to be significant as it appears to me that the intention underlying the Royal Court Rules was to give the Greffier, subject to the right of appeal to the Inferior Number by way of re-hearing set out in Rule 15/2(1), the power to deal with all matters before the Royal Court except those which were clearly outside of his remit, such as the trials of actions and the granting of injunctions, and those matters listed in the First Schedule to the rules. It therefore appears to me that the powers of the Judicial Greffier in relation to interlocutory matters which are within his area of delegated authority are not merely restricted to those set out in the Royal Court Rules, but would include any power exercisable by the Royal Court. Examples of this are unless orders made in order to enforce decisions of the Judicial Greffier and orders for costs. The power to make these is not specifically in the rules but must exist by delegation from the Royal Court. Accordingly, if this application for Further and Better Particulars falls within the inherent jurisdiction of the Royal Court then I would find, as this is clearly an

interlocutory matter within the authority of the Greffier, that any such inherent jurisdiction would have been extended by delegation to the Judicial Greffier.

It is clear that the Royal Court has always had rules of procedure and practice going back in time to well before the first rules of Court and that these must have arisen from the inherent jurisdiction of the Court to order its own procedure. In the case of *Clore v Stype Trustees (Jersey) Limited*, Jersey Judgments 1984 on page 13 the Royal Court decided that it had inherent jurisdiction to hear an application from trustees for directions as to the future conduct of litigation concerning a trust. However, the inherent jurisdiction of the Royal Court cannot be held to cover any matter of procedure. It is one thing to say that the Royal Court has, in general, an inherent jurisdiction to order its own procedure and practice and quite another thing to seek to exercise that jurisdiction in a way in which it has not previously been exercised and in relation to an area of law which is now covered by a section of the Rules of Court. If the Royal Court has always exercised a jurisdiction to order Further and Better Particulars of the case of a party to an administrative appeal then that jurisdiction would not have been taken away by the provisions of the 1966 Rules of Court or by any subsequent Rules of Court. However, if the Royal Court has not in the past exercised such a jurisdiction, then, as rules have now been provided, it would appear to me to be wrong to exercise the inherent jurisdiction in the area covered by section 11 of the rules. Furthermore, it appears to me to be quite clear that the Royal Court has never in the past ordered such Further and Better Particulars.

This is supported by a section page 599 of *Arbaugh v I.D.C.* (1966) 256 Ex.60 and J.J. p.593 as follows -

"It is the practice in this Court for an appeal against a Committee's decision (in exercise of a right of appeal) to be instituted by simple action. Until the coming into force of the Royal Court (Procedure and Pleadings)(Jersey) Rules 1965, the Court, when the action was first called, requested the Committee "de mettre à la disposition de la Cour un relevé des raisons qui avaient motivé leur décision" (and since the coming into force of those Rules the action has been transferred to the pending list." This decision was actually made in the short period between the promulgation of the Royal Court (Procedure and Pleadings)(Jersey) Rules 1965 and the Promulgation of the Royal Court (Appeals from Administrative Decisions)(Jersey) Rules 1966. The latter Rules created for the first time the requirement for the lodging of the Appellant's case and the Committee's case. Prior to that only a statement of reasons for the decision were filed and that at the request of the Court rather than by way of Court Order. Clearly prior to 1966 it was not the practice of the Royal Court to use its inherent jurisdiction to order even the Committee's statement, as this was merely requested, let alone Further and Better Particulars of the Committee's case. I therefore find that there is no authority for the extension of the usage of the inherent jurisdiction of the Court to such a matter and that as Rules of Court have been made in order to deal with the procedure in this area it would be wrong to extend the use of the inherent jurisdiction of the Court in this way.

A further point which arises is that of the status of the Committee's case. Quite apart from the considerations mentioned above, it appears to me that the Committee's case has a different status to that of a normal pleading. By its very nature it will be a mixture of allegations of fact, allegations of law and arguments based upon fact and law. Although the allegations of fact might be capable of being subject to an application for Further and Better Particulars, apart from the considerations mentioned before, it is clear that the other matters would not and in my view, the Appellant's case and the Committee's case are essentially the setting down in writing in advance for the assistance of the Court and of the other party of the contentions which will be made at the hearing.

Finally, the application for Further and Better Particulars is dismissed and costs will follow the event so that the Appellant is ordered to pay the taxed costs of the Respondent of and incidental to this application.

AUTHORITIES.

Royal Court Rules, 1982, as amended: Part 11; Rules 1/1; 6/1; 6/13; 6/14; 11/7; 15/2(1).

Royal Court Rules, 1968.

Ashworth Sons & Barratt-v-Housing Committee (12th June, 1984) Unreported and Undistributed Decision of the Judicial Greffier.

Royal Court (Amendment No.5) Rules, 1990.

Royal Court (Procedure and Pleadings)(Jersey) Rules, 1965

Clore-v-Stype Trustees (Jersey) Ltd. (1984) JJ 13.

Arbaugh-v-IDC (1966) JJ 593.

Royal Court (Appeals from Administrative Decisions)(Jersey) Rules, 1965.