

ROYAL COURT

19th July, 1991 100

Before: The Bailiff, and
Jurats Blampied and Gruchy

Between: **Derek Stanley Arthur Warwick** Plaintiff

And: **Frank Callaghan** Defendant

Advocate W.J. Bailhache for the Plaintiff
Advocate P.C. Sinel for the Defendant

JUDGMENT

BAILIFF: On the 12th July of this year, an Order of Justice was served on the defendant, Mr. Frank Callaghan, at the instance of the plaintiff, Mr. Derek Stanley Arthur Warwick, and in that Order of Justice there is an allegation that an agreement was reached on the 4th June in Southampton, whereby the defendant would transfer his beneficial interest in each group member of a group of companies to the plaintiff and that he would waive his loan account; a payment was to be made by the plaintiff to the defendant of a total consideration of £1 for the transfer of all the defendant's shares, and to indemnify the defendant in respect of any other claims.

That meeting, the Order of Justice alleges, is not accepted by the defendant and as regards the main issue which would have come up this afternoon for the first time (19th July), it will be placed on the pending list. However, the plaintiff has applied to this Court to ask us to use the Court's inherent jurisdiction to rule that the nature of this case is such that it should be regarded as a "cause de brièveté"; that we should order the defendant to file his answer within seven days; and that the case should be heard on Monday week - that is to say the 29th July - and on such other subsequent days in that week as may be required.

First of all, the Court has to be satisfied that it has the power to make that order and we are so satisfied and if authority were needed for it, I need only cite the very short decision of the Court of Appeal (although its full reasons have not yet been given) in the case of Finance & Economics Committee -v- Bastion Offshore Trust Company, Limited (28th June, 1991) Jersey Unreported C. of A. It is quite true that that case concerned the giving of further and better particulars, but there is a passage by the President, Sir Patrick Neill, Q.C., which says this:

"That is to say that the inherent jurisdiction is not fettered; it covers both applications for further and better particulars and for a further and better statement of the case".

In other words the inherent jurisdiction of this Court is in no way fettered, even though there are rules of procedure which are there to assist the parties, I have no doubt, in order to ensure that none of them are taken by surprise. If we felt that in this case the defendant had been taken by surprise by this application this afternoon, and if it were granted, would

be at a grievous disadvantage on the 29th July, we might well have said there was substance in the submission of Mr. Sinel for the defendant that the rules, that is to say the various summonses and requirements set out in those rules, should have been observed, but we are satisfied that this is a case of a company which is in financial danger and that danger could be avoided by an early hearing - for example looking at the affidavit of Mr. Warwick, it is obvious to us that the jobs of a number of employees are at risk if a rescue is not effected.

We cannot say that injustice would be done to Mr. Callaghan in the sense that he would be taken by surprise, because Mr. Bailhache has submitted virtually the whole of his case this afternoon in the form of affidavits and it is perfectly clear to us what it is that Mr. Callaghan has to meet and, as Mr. Bailhache has pointed out in his reply, Mr. Sinel was at pains (which he is entitled to be), to point out to us in great detail what the defence was going to be and what the answer in fact would be before the Court when the case came up. So we do not think that his client is taken by surprise by this application.

The other point is whether we are satisfied that this really is a "cause de brièveté". Looking at Le Gros' "Traité du Droit Coutûmier de l'Ile de Jersey", at p.164, there are two matters about which we would have to be satisfied: first, that the defendant should have a reasonable time to prepare his defence, and for the reasons which we have already stated, we think seven days would be sufficient because he seems already to be in possession of most of the facts on which he is going to rely, - except that is, on one possible point. Mr. Sinel has submitted that although Mr. Bailhache has urged that the claim is based on an oral agreement, that oral agreement, even if made, was itself dependent on company accounts which were

misrepresented to his client, but that again would be an oral misrepresentation.

We have an affidavit from the group accountant, a Mr. Holehouse, which makes it quite apparent to us that the financial affairs of the company require very careful attention, to put it at its lowest.

Mr. Sinel suggested that the valuation of the property was much higher than the figure submitted by Mr. Bailhache, but in fact the figure of £1.7m was already included in the draft balance sheet, unaudited, in April, so it has been available for a very long time.

Secondly, we have to be satisfied as to the point set out by Le Gros, citing the case of Mr. François Phillippe Le Brun c. Monsr. Elie Le Bas, Ex. 1880, Mars 8, where the Court said this (op.cit., p.165):

" "Considérant qu'il s'agit entre les parties de la revendication de la possession d'un immeuble loué, la Cour a jugé que la cause, de sa nature, requiert expédition". "

We think that, just as much as the possession of a let property lends itself to being heard on the shortened list as a "cause de brièveté", so the position of a company which, it is said, is in difficulties unless something is done very soon by the injection of money, which Mr. Warwick a one-third shareholder in the group is prepared to do subject to certain conditions, is also a matter which is of sufficient urgency for us to find, if we so wished, that this was something which could be treated as a "cause de brièveté".

Therefore, having considered the matter and read the affidavits carefully and listened to what you have had to say,

Mr. Sinel, nevertheless we are prepared to make the order asked for and accordingly we make the order that this is a matter which will be regarded as "cause de brièveté", that the answer will be filed within seven days and that the case will be heard on the 29th July, and on such subsequent days as may be necessary. The costs shall be in the cause.

Leave to appeal is refused, Mr. Sinel.

Authorities

C.S.Le Gros: Traité du Droit Coutûmier de l'Ile de Jersey
(Jersey, 1943): De l'Ajournement et de l'Incivilité de
l'Ajournement (pp. 160-166).

Finance and Economics Committee -v- Bastion Offshore Trust
Company, Limited (28th June, 1991) Jersey Unreported,
C. of A.

4 Halsbury 37: para. 14 (p.22-23): Inherent Jurisdiction of the
Court.