

ROYAL COURT  
22nd July, 1991 104A

Before the Judicial Greffier

|         |                                    |                  |
|---------|------------------------------------|------------------|
| BETWEEN | Vekaplast Heinrich Laumann K.G.    | PLAINTIFF        |
| AND     | T.A. Picot (C.I.) Limited          | FIRST DEFENDANT  |
| AND     | Vekaplast Windows (C.I.) Limited   | SECOND DEFENDANT |
| AND     | Vekaplast Windows (Export) Limited | THIRD DEFENDANT  |
| AND     | Terence A. Picot                   | FOURTH DEFENDANT |

Application for the original Plaintiff to be substituted by a new Plaintiff which is now the owner of all the original Plaintiff's assets pursuant to a conversion procedure under German law. Rule 6/10(9) applied.

---

Advocate C.M.B. Thacker for the Plaintiff and for the new Plaintiff Mr. T.A. Picot as a director of the First, Second and Third Companies and also appearing personally.

---

JUDGMENT

JUDICIAL GREFFIER:

Rule 6/10(9) of the Royal Court Rules, 1982, as amended, reads as follows -

- "(9) *At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application -*
- (a) *order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;*
- (b) *order any of the following persons to be added as a party, namely -*

- 
- (i) *any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or*
  - (ii) *any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter;*

*but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as the Court may direct."*

In this particular case the action had been commenced by Vekaplast Heinrich Laumann K.G. and was a passing off action. I had before me evidence in the form of the affidavit of Doctor Wilhelm A. Franke, a German lawyer, that Vekaplast Heinrich Laumann K.G. was a limited partnership and that this had been converted into the equivalent of a limited liability company known as Veka GmbH by means of a statutory procedure under German law. The affidavit indicated that all the assets of the company had been transferred through this statutory procedure to the limited liability company and this during the summer of 1990. The affidavit also indicated that the previous partnership had ceased to exist. Advocate Thacker who represented both the previous limited partnership and also the limited liability company was asking that I apply the terms of Rule 6/10(9)(b)(i) in order to add Veka GmbH as an additional plaintiff and that I apply the terms of Rule 6/10(9)(a) in order to remove Vekaplast Heinrich Laumann K.G. as a plaintiff thus effecting a substitution on the Court record. Mr. Picot opposed this for a number of reasons as follows -

- (a) that it was not absolutely clear from the affidavit that all the former assets had been transferred to the limited liability company and that I should not grant the application unless this was so;

- (b) that under Jersey law items of personal property which were the object of litigation could not be transferred; and
- (c) that as a transfer of trade mark registration required an application, the transfer by virtue of German Law was not effective in relation to the rights to intellectual property without an appropriate transfer being made in Jersey.

Mr. Picot probably would have advanced further arguments along these lines but I indicated that I first needed to make a decision as to which criteria I should follow in order to determine this issue.

Mr. Picot came up with the ingenious argument that as Rule 6/10(9) was part of a section whose heading was "third parties", this section only applied to third party proceedings. I dismissed this line of argument for two reasons as follows:-

- (a) firstly, because the wording of 6/10(9) is in almost identical form to that of Order 15 Rule 6(2) of the Rules of the Supreme Court 1965, and the latter sub-rule clearly applies to all forms of action and not only to third party proceedings; and
- (b) because the mention in the last sentence of 6/10(9) of a plaintiff together with the absence in the rest of the text of the word "third party" indicates that the sub-rule is not meant to be limited in the way suggested by Mr. Picot.

As Rule 6/10(9) corresponds so closely with Order 15 Rule 6(2) I took the view that the White Book was authoritative in relation to

(1)

the interpretation thereof. Section 15/6/2 on page 189 of the 1991 White Book commences as follows -

*"ADDING OR SUBSTITUTING PLAINTIFFS - the tendency of modern practice is to allow the amendment where the defendant can be safeguarded as to costs, and the addition or substitution is necessary to enable the question at issue to be determined. So a plaintiff or plaintiffs whose presence is necessary can always be added. "The question whether the new plaintiff has a cause of action or not will not be considered on the application to add him, the object of the Rule being, not that the party's case should be so framed as to succeed, but that it should be so framed that it can be adjudicated on whether in his favour or not" (per Fry J. in Long v. Crossley (1879) 13 Ch.D. 388, p.391)."*

I therefore took the appropriate test to be as indicated in the words within the section 15/6/2. Accordingly, I took the view that I did not have to determine the issue as to whether or not the transfer of the intellectual rights had been effected as that would be a matter of proof at trial. Following the test, "that it should be so framed that it can be adjudicated on whether in his favour or not", I was of the opinion that the application for substitution of plaintiffs ought to be permitted.

Apart from the technical considerations above it appears to me to be pure common sense that the rights in intellectual property of the limited partnership have not simply disappeared with the dissolution of the partnership but must continue to exist. Indeed, the affidavit before me was evidence that they had probably been transferred.

I also noted that under the terms of Rule 6/10(9) the Court had the power to order a substitution of its own motion and independent of an application.

However, I was aware that the defendants might wish to try to raise points of prescription as against the limited liability company in relation to the period for which damages could be claimed. It appeared to me that this also was a matter that ought to be dealt with by the trial judge and accordingly I indicated in

the Act that the defendants would be able to plead prescription if they so wished.

However, it was clear to me that alterations were required to the new plaintiff's Order of Justice in order to plead the transfers of the intellectual property rights and therefore I ordered that an amended Order of Justice be filed accordingly and gave the defendants leave to file an amended answer.

I also left over the question of the matter of costs as between the original plaintiff and the defendants to be dealt with by the trial judge. Although normally in such a case the costs would have been in the cause, as the defendants had unsuccessfully resisted the summons I ordered that they pay one half of the costs of the hearing in any event and left the remaining costs in relation to the application in the cause. I also made the usual order as to costs in relation to the amendments.

### Authorities

Royal Court Rules, 1982 : Rule 6/10(9)

R.S.C. (1965 Ed'n) : 0.15 r.6(2)

R.S.C. (1991 Ed'n) : 0.15 r.6(2)

McCarthy -v- Agard (1933) 2 K.B. 417.

Pearlman Veneers -v- Bartels (1954) 3 All ER 659.

The Liverpool (1959) 1 WLR 297.

Mercer Alloys & Anor -v- Rolls Royce (1972) 1 All ER 211 C.A.

Singh -v- Atombrook Ltd (1989) 1 All ER 385.

Limited Partnerships Act 1907.

Salomon -v- Salomon and Company (1897) A.C. 23.

MacCaura -v- Northern Assurance (1925) All ER 51.

Jersey Law of Property (April, 1991) :Chapter 3:Intangible Movables.  
:Chapter 4:Intellectual Property.

Code of Law of the Island of Jersey, 1771 : p.p. 157-171 : p.p. 99-101

Le Geyt: Manuscrits sur la Constitution, les Lois, et les Usages de  
cette Ile : p.p. 189-92.

Poingdestre:Les Lois et Coûtumes de l'Ile de Jersey  
(Jersey,1928):p.p.251-4.

Code of 1771 (Amendment)(Jersey) Law, 1962 (Commencement) Act, 1962.

Code of 1771 (Revision)(Jersey) Law, 1965.

Code of 1771 (Revision)(Jersey) Law,1965 (Commencement) Act 1967.

Statute Law Revision (No 3.) (Jersey) Law, 1966.