ROYAL COURT
20th March, 1992

47.

Before the Judicial Greffier

BETWEEN	**Adrian R. Stanway Trustee in Bankruptcy of Roger Murray Bush**	PLAINTIFF
AND	**Roger Murray Bush**	FIRST DEFENDANT
AND	**Rosario Lorenzo Bush née Doniz**	SECOND DEFENDANT
AND	**Lloyds Bank Plc**	PARTY CITED
AND	**Jose Lorenzo Perez**	INTERVENOR

Application by the Plaintiff for an Order that the action be stayed pending the outcome of proceedings before the Bournemouth County Court.

Advocate J.C. Gollop for the Plaintiff.
Advocate T.J. Le Cocq for the First and Second Defendants and for the Intervenor.

JUDGMENT

JUDICIAL GREFFIER: On 21st March, 1990 Mr. Stanway was appointed as Trustee in Bankruptcy of the First Defendant by the Bournemouth County Court. On 27th April, 1990 the learned Bailiff signed an Order of Justice in which the Plaintiff was seeking, inter alia, a declaration that half the monies held in a joint bank account in the names of the First and Second Defendants with the Party Cited were vested in the Plaintiff.

Subsequently, on 7th February, 1992 the Intervenor brought a Representation before the Royal Court in which he sought, inter alia, leave to intervene in the original action and a declaration that the monies held in the said joint bank account with the Party Cited (hereinafter referred to as "the disputed monies") were his property.

At the start of the hearing on 25th February, 1992 the parties through the intermediary of their advocates agreed that the Intervenor be permitted to intervene in the original action

and that the original action and the Representation be consolidated on certain terms.

The Plaintiff's case was that the Jersey Court is a forum non-conveniens because there was another available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, namely the Bournemouth County Court. The principles relating to this have been set out in the cases of:-

(a) the Representation of Allied Irish Bank (C.I.) Limited (1987-1988) JLR 157; and
(b) Noel -v- Noel (1987-1988) JLR 502.

In both of those cases the Royal Court set out at some length the principles which were set out in the previous leading English cases and adopted those principles. In particular, on pages 168-174 of the Allied Irish Bank Judgment the learned Deputy Bailiff quoted in extenso from the Spiliada Maritime Corp. v. Cansulex Limited, The Spiliada [1986] 3 ALL E.R. at pages 853-856. I do not propose to set out that quotation in this Judgment but I will be applying those principles together with the other principles which are set out in the Allied Irish Bank and the Noel Judgments.

The Plaintiff's arguments for the Bournemouth County Court being the appropriate forum are as follows:-

(a) The bankruptcy of the First Defendant is an English bankruptcy which is controlled by the Bournemouth County Court and the Plaintiff, the First Defendant and the Second Defendant are all resident in England and the Party Cited has its registered office in England and is an English plc.
(b) The Plaintiff has commenced proceedings in the Bournemouth County Court against Davis Walker & Company which is a firm of lawyers who hold some assets in England on behalf of the First and Second Defendants. In those proceedings the Plaintiff is trying to obtain those assets for the bankruptcy.
(c) The Plaintiff has issued a notice of application in those proceedings seeking an Order that unless the Respondents (Davis Walker & Company) on behalf of the Intervenor shall within fourteen days issue an application for a declaration that the Intervenor is beneficially entitled to one half of the assets held in the joint bank account of the First and Second Defendants with the Party Cited in Jersey and one half of the assets held by the Respondents in England, the Respondents do take all reasonable steps necessary to obtain the release of the said assets to the Plaintiff as Trustee in Bankruptcy of the First Defendant.
(d) The Plaintiff's advocate argued that by means of this summons the Plaintiff was seeking to force the Intervenor to commence proceedings in relation to the ownership of the disputed monies in the Bournemouth County Court.

(e) That the Bournemouth County Court was able to make an Order dealing with both the monies held by the Respondents and also the disputed monies whereas a Jersey Court could only make an Order in respect of the disputed monies.
(f) That the disputed monies may have come to Jersey via England.
(g) That the evidence of the Plaintiff and the First and Second Defendants would be more readily available in England and that the First Defendant could be examined in the bankruptcy in England.
(h) That the jurisdiction of Jersey would not be a better jurisdiction than that of England from the point of view of Mr. Perez who was a Spanish national living in Portugal and, indeed, would be equally available to Mr. Perez.

Advocate Le Cocq, on behalf of the First and Second Defendants raised the following arguments by way of objection to the application:-

(1) He argued that although the power to stay an action was a matter of the inherent jurisdiction of the Court, that was not a power, in this particular case, which was vested in the Judicial Greffier.
(2) Secondly, he argued that the application was not one to be made by a Plaintiff but rather by a Defendant or a person in the position of a Defendant.
(3) Thirdly, he argued that the Plaintiff's argument was inconsistent with the application of the Plaintiff for service out on the Defendants inasmuch that service out would only normally be granted where the Court was satisfied ex parte on the application of the Plaintiff, that Jersey was the forum conveniens.
(4) Finally, he argued that in any event Jersey was the best forum for the action.

In the recent case of Benest -v- Kendall, Executor of the Estate of Peter Langlois, (24th February, 1992) Jersey Unreported, I reviewed the matter of the inherent jurisdiction of the Royal Court and, in particular, of the Judicial Greffier in the light of the decision of the Court of Appeal in Bastion Offshore Trust Company Limited -v- the Finance & Economics Committee of the States of Jersey (9th October, 1991) Jersey Unreported. On pages 5 and 6 of that Judgment I quoted a lengthy section from the Bastion Judgment which concluded with the words -

> ***"We are deciding now that, quite apart from Rule 6/14(1), the Greffier has an inherent jurisdiction (if he saw fit) to order the Committee to supply a further and better statement of its case or part of it."***

In the final paragraph on page 6 and the first paragraph on page 7 of the Benest -v- Kendall Judgment I said -

"In my view, the striking out of an Order of Justice reason of an inordinate delay in the prosecution of the action is a matter which falls within the inherent jurisdiction of the Court. In the section which I have quoted above, the Court of Appeal held that the Judicial Greffier, in relation to the matter of further and better particulars and the further and better statement of the case, had precisely the same inherent jurisdiction as that of the Inferior Number. In a number of previous Judgments I have expressed the view that, in relation to interlocutory matters, with the exception of matters relating to injunctions, other than where they are varied by consent, and with possible other exceptions, the Greffier has all the powers of the Court as these have been delegated to him by the Royal Court.

Thus, I see no reason why this application should not be brought under the inherent jurisdiction, as opposed to under the Rule, and as to why I should not have the power to deal with the same, subject to the normal right of appeal to the Inferior Number."

It is clear that the Greffier has the power under Rule 7/5 to postpone or adjourn a trial or hearing of an action for such time and on such terms, if any, as he thinks fit. It is also clear from other rules that the Greffier has the power either to strike out an action or defence or to give summary Judgment in favour of the Plaintiff. Accordingly, I cannot see that this particular case would fall within the possible other exceptions mentioned in the quotation above from the Benest -v- Kendall case and thus I find that I am able to exercise the inherent jurisdiction of the Court in granting a stay in such a case as this.

In support of his argument that this application was not one to be made by the Plaintiff, Advocate Le Cocq pointed out a number of sections from the Spiliada case where that is quoted in the Allied Irish Bank case. On the fourth line on page 168, on the first line on page 170, on the thirty-eighth and forty-first lines on page 171, on the thirteenth line on page 172 and on the thirty-ninth line on page 172 are references to the Defendant as the person who would apply. He also quoted from the beginning of section 11/1/7 on page 87 of the 1991 "White Book" as follows:-

"Discretion and forum conveniens - The question which is the appropriate Court, or "Forum conveniens," is a matter to be considered by the Court in exercising its discretion under this Order. The test is whether the interests of justice are best served by proceedings here or abroad. The same question arises when an application is made to stay proceedings, already begun and validly served within the jurisdiction, on the ground that a foreign Court is the forum conveniens. Decisions on such applications are helpful provided that it is remembered that the question, and burden of proof, in such

cases is the opposite to that in applications under O.1 the applicant for a stay must show that it would be right deprive the plaintiff of the right to sue in England, whi. under O.11 the plaintiff is asking for the exercise of t. discretion of the Court in his favour and must show that t. English Court is the forum conveniens."

The principles set out in that section are equally applied i Jersey when applications for service out are considered.

On 1st May, 1990 Advocate Gollop swore an affidavit i support of the application for service out. Paragraph 10 of tha affidavit reads as follows:-

"10. THAT I verily believe that the only matter weighin against the making of the Order for service out of th jurisdiction is the fact that it might well be mor convenient for the First and Second Defendants if th proceedings were to take place in England, where the Firs and Second Defendants presently reside. Against such a argument I would respectfully ask the Court to take int consideration the following additional matters:-

(a) The Plaintiff's duty is to collect any assets of th First Defendant by the most convenient and leas expensive means wherever they may be situate; and

(b) That it would be of considerable inconvenience to th Plaintiff and he would be put to far greater expense i he were to have to bring proceedings in England and the follow up such proceedings with enforcement proceeding in the Island of Jersey."

When I considered the matter on 2nd May, 1990 I was clearl convinced by Advocate Gollop on this point as I made an Order fo service out.

Advocate Le Cocq is now arguing that having once urged th Court that the balance of convenience lay in relation to a tria in Jersey, the Plaintiff is being inconsistent in now urging that the balance of convenience lies in relation to a trial in England

Advocate Gollop, on the other hand, argues that th proceedings were only brought in Jersey in order to obtai injunctions restraining the disposal of the disputed monies until such time as appropriate proceedings were brought in England. I am bound to say that that submission is inconsistent with his affidavit dated 1st May, 1990. The application for a stay is inconsistent with the application for service out. I am also bound to say that one and three quarter years elapsed between that affidavit and the commencement of proceedings in Jersey on the one hand and the application which is about to be made in the Bournemouth County Court on the other hand.

In a very real sense, the matter as to whether this is an application which can properly be made by a Plaintiff is linked directly with the matter of consistency. A Plaintiff chooses the venue in which he will sue. If he needs an Order for service out he must satisfy the Court that the venue which he chooses is the forum conveniens. If he does, then in my view, there must be a very good reason why he should seek to change his mind. In this case I have not been presented with any coherent reason for the change of mind. Furthermore, I am aware that in a number of past cases, the Royal Court has declined to allow a conservatory action to be brought in Jersey seeking injunctions without seeking any substantial remedy. In this case, initially the Plaintiff sought a substantial remedy which was declaratory Judgments as to the right to have half the disputed monies transferred to him. However, now the Plaintiff is seeking to say that he does not want the Royal Court to give those declarations because he will go off to another jurisdiction and ask them to make the declarations there. This appears to me to be a very strange way of approaching the matter.

However, although my comments set out in the last paragraph weigh very heavily in favour of my dismissing the application, I have nevertheless gone on to consider, before making my decision in relation to the matter, the question as to which is the forum conveniens.

Advocate Le Cocq argued that there were actually no current proceedings in England between the same parties on the same matter. Neither the Second Defendant nor the Intervenor are currently parties to the application which is to be made in the Davis Walker & Company matter in the Bournemouth County Court. Advocate Le Cocq is right in this and furthermore, I am bound to say that it would seem very odd to me to seek a declaratory Judgment in an English Court about assets situate in Jersey in a case such as this in which the Plaintiff has been unable to show that any significant transfers were made in England or governed by English Law. In this I distinguish the Allied Irish Bank case in which the crucial transfer had been made in England and was governed by English Law. Advocate Le Cocq also argued that the Bournemouth County Court was an Inferior Court to the Royal Court of Jersey inasmuch that it was at a lower level in the comparative system. It appears that the matter is only before the Bournemouth County Court because that Court ordered the initial bankruptcy. There is no provision for reciprocal enforcement of Orders of County Courts unless they are first transferred to the English High Court. I am bound to say that the Bournemouth County Court appears to me to be a very strange venue for the decision of the matter and that the tacking of the proceedings on to the Davis Walker & Company proceedings appears even stranger.

If for a moment I put aside all these difficulties and consider the hypothetical situation of an action brought in the

English High Court then the position would be as follows. The factors weighing in favour of Jersey would be as follows:-

(i) That the proceedings were commenced in Jersey some time ago and that pleadings have been submitted by all parties; all that is needed is for the Plaintiff to answer the Intervenor's pleading and then the matter can be set down for hearing. On the other hand suitable proceedings have not even been commenced yet in England.

(ii) The relevant monies are in Jersey and the relevant branch of the bank is here so that officials would not have to travel to England to give evidence.

(iii) The Plaintiff has previously chosen this jurisdiction to bring the action and all other parties have accepted this jurisdiction.

(iv) An Order made in Jersey will be immediately enforceable without the need for other proceedings (as was noted by Advocate Gollop in paragraph 10(b) of his affidavit of 1st May, 1990).

(v) There may well be matters of Jersey Law involved in relation to the trial of the case.

The matters which weigh in favour of England are as follows:-

(i) That the Plaintiff and the First and Second Defendants are situate in England; however, the First and Second Defendants have effectively lined up with the Intervenor and have made no objection to the Jersey jurisdiction and furthermore there do not appear to be any points of English Bankruptcy Law which arise as the argument is in relation to the beneficial ownership of the disputed monies and so this factor is of limited value.

(ii) Advocate Gollop argued that the English Court could deal with both matters; however that is far from clear as the different monies may have arrived from different routes and been dealt with in different ways.

(iii) Advocate Gollop argued that the monies might well have passed through England; that may be so but was unclear at the time of the hearing and in any event it was unclear as to whether any trusts would have been created initially under English Law.

(iv) Advocate Gollop argued that the First Defendant could be examined in England and compelled to answer questions under the bankruptcy procedure; however, he has already been examined, and has backed the Intervenor's case and it is probable that he will be a willing witness for the Intervenor so this factor is of virtually no value.

Balancing these factors, I am bound to say that even if the other factors had not been present the Plaintiff would have failed to have satisfied me that the hypothetical forum of the English High Court was a better forum for the trial of this matter.

However, the combination of the inconsistency of the Plaintiff in relation to the matter of forum conveniens, the unsatisfactory nature of seeking to first choose a particular jurisdiction and then choose another, the factor that no parallel proceedings are actually taking place in England in which all these parties are involved, the factor of the unsuitability of the Bournemouth County Court together with the failure to satisfy me that England is a better forum than Jersey are overwhelming and accordingly the application is dismissed. Even if I had found that England was not a better forum it may well be that the other factors taken together would still have out-weighed that or that the factor of inconsistency would alone have decided the issue in favour of the Defendant.

Finally, I will need to be addressed by both counsel on the matter of costs although the Defendant has clearly been successful in resisting the application.

Authorities

Royal Court Rules, 1982, Rules 7/5; 4/1.

Noel -v- Noel [1987-88] JLR 502.

In the matter of the Representation of Allied Irish Banks (CI) Ltd. [1987-88] JLR 157.

Spiliada Maritime Corporation -v- Cansulex, Ltd., The Spiliada [1986] 3 All ER 843.

R.S.C. (1991 ed.) O. 23; 11/1/7

Rothmer & others -v- Hill Samuel (Channel Islands) Trust Co. Ltd. & others (9th January, 1991) Jersey Unreported.

Benest -v- Kendall, Executor of Estate Langlois (24th January, 1992) Jersey Unreported.

Bastion Offshore Trust -v- Finance & Economics Committee (9th October, 1991) Jersey Unreported.

Paramount Airways -v- Ryco Trust (27th June, 1990) Jersey Unreported.