

(Samedi Division)

11th May, 1993

59A.

Before: The Deputy Judicial Greffier

<u>Between</u>	Arya Holdings Limited	<u>Plaintiff</u>
<u>And</u>	Minories Finance Limited	<u>Defendant</u>

Taxation Hearing

**Advocate R.J. Michel for the Plaintiff.
Advocate A.J. Dessain for the Defendant.**

JUDGMENT

THE DEPUTY JUDICIAL GREFFIER: On the 31st March, 1992, the Court dismissed the defendant's application to strike out the plaintiff's Order of Justice, as amended (1) on the grounds that it (a) it disclosed no reasonable cause of action; or (b) it was frivolous or vexatious; or (c) was an abuse of the process of the Court; or (2) pursuant to the Court's inherent jurisdiction; and condemned the defendant to pay to the plaintiff the costs of the application and of the adjournment granted on the 9th October, 1991.

The issue to be determined is whether the costs of English lawyers who were assisting with the action should be allowed on the taxation relating to this striking out application.

Mr. Michel's arguments may be summarised in this way: because the Court is being asked to determine complex areas of Jersey and English law in this action and because of the importance of the action to the client, it was not unreasonable to retain English lawyers to advise and assist. Mr. Dessain, on the other hand,

said that there was no conflict of laws except in one small area relating to prescription, that this was a striking out application the principles of which are not uncommon and therefore it was not necessary that English lawyers be retained.

The test to be applied is set out in the judgment of the Judicial Greffier in Furzer -v- Island Development Committee (1990) J.L.R. (Part 2) 179, where he says, at page 8 of that judgment:-

"Accordingly, I find that the correct test for me to apply in relation to taxed costs is that of taxation on the party and party basis as set out in Order 62, Rule 28(2). That is to say "there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed". I take the words "necessary or proper" to mean more than simply necessary but less than the test of taxation on the common fund basis of "there shall be allowed a reasonable amount in respect of all costs reasonably incurred". Although the authorities lead me to this conclusion they do not give clear guidance as to precisely where the line is between those two positions. I can only apply the test of necessary or proper as seems right".

As stated by the Court at paragraph 2 on page 2 of its judgment, the law on striking out is well settled in Jersey. It is a matter, therefore, on and with which local lawyers should be competent to advise and deal.

Having considered the authorities and the submissions made to me, I have no doubts that it was more convenient for the plaintiff to have the advice and assistance of English lawyers, but I still have doubts whether the retention of English lawyers on this striking out application was necessary and proper. I therefore have to resolve those doubts in favour of the defendant and I disallow the costs of the English lawyers.

However, following the Judicial Greffier's judgment in A.C. Mauger & Son (Sunwin) Limited -v- Victor Hugo Management Limited (21st October, 1991) Jersey Unreported, I propose to allow Mr. Michel's costs in consulting and corresponding with those English lawyers.

Finally, I make no order as to the costs of the taxation hearing.

Authorities

The Official Solicitor -v- Clore (1984) J.J. 82 C.of.A.

Strachan and Company -v- Heseltine (4th April, 1989) Jersey
Unreported C.of.A.

Rahman -v- Chase Bank (C.I.) Trust Co. Ltd. (2nd July, 1990)
Jersey Unreported; (1990) J.L.R. (Part 2) 136.

Furzer -v- Island Development Committee (9th August, 1990) Jersey
Unreported; (1990) J.L.R. (Part 2) 179.

A.C. Mauger & Son (Sunwin) Ltd. -v- Victor Hugo Management Ltd.
(21st October, 1991) Jersey Unreported.

Milner -v- Pyper (7th September, 1992) Jersey Unreported.

Johnson & Ors. -v- Reed Corrugated Cases Ltd. [1992] 1 All E.R.
169.

Re Testament Crane: Table des Décisions: 1959-63: p.74; (1960) 1
P.D. 186.

R.S.C. (1993 Ed'n) O.62: p.p. 1063/64, 1069/1088, 1092/96,
1099/1100, 1141/44.

Jones -v- Jones (No. 2) (1985-86) J.L.R. 40.

Lindgren t'dg as Naval Production -v- Jetcat Ltd. (1985-86) J.L.R.
66.