ROYAL COURT 70

Judgment reserved: 21st March, 1995.
Reserved Judgment delivered: 18th April, 1995.

Before: Sir Peter Crill, K.B.E., Commissioner,
Jurat Mrs. B. Myles.
Jurat C.L. Gruchy.

Between	Les Pas Holdings, Ltd.,	Plaintiff
And	H.M. Receiver General and The Greffier of the States	Defendants

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Representation of the Defendants.

H.M. Solicitor General for the Defendants
Advocate R. J. Michel for the Plaintiff.

On the 27th January, 1989, Advocate R. A. Falle, the Seigneur of the Fief de la Fosse, transferred to a Jersey company, Les Pas Holdings Limited, such rights as he might have had in the foreshore of the Fief. Advocate Falle had acquired the Fief in 1986 and had already laid claim to the seignorial foreshore which includes areas designated by the States for development and in fact some parts have already been built upon. On the 15th December, 1989, the plaintiff company, Les Pas Holdings Limited, served a summons on the Crown and the States *pour exhiber titre*. By agreement the matter did not proceed until the action was tabled on the 6th January, 1995. The negotiations and the reasons for the delay need not concern the Court. The principal dispute which will be heard in due course is whether title to the foreshore was ducal, now royal, or seignorial. Conflicting opinions having been obtained from English counsel and exchanged between the parties and no doubt they will be much canvassed in the substantive action.

BACKGROUND

The Representation before the Court is brought by the defendants asking for a declaration that it would be proper for

Advocate W. J. Bailhache to represent the defendants. The Court must now go back a little. On the 1st January, 1994, Mr. M. St. J. Birt became the Attorney General and Miss Stephanie Nicolle the Solicitor General. On the 15th April, 1994, the present Bailiff, Mr. P. M. Bailhache, who assumed office as Deputy Bailiff at the end of 1993, but retained the office of Receiver General, was succeeded in that office by Group Captain Richard Green. The new Receiver General reserved the Crown's rights to appoint its advocate to appear on the Crown's behalf. On the 13th May, 1994, Advocate Bailhache was confirmed as counsel for the States at the request of the Attorney General. Advocate Bailhache who was the adviser, and still is, to the Waterfront Enterprise Board, cleared his appointment with that body. At that time Bailhache & Bailhache, of which Advocate Bailhache was a partner, began negotiations with Advocate Labesse for an amalgamation of the two practices. Advocate Falle had been a partner in Advocate Labesse's firm, from 1988 when his firm, Bois & Bois, amalgamated with Perrier and Labesse and took the joint name Bois Labesse which remained until the 31st October, 1992. Les Pas Holdings Limited was incorporated through Bois Labesse in 1988. When Advocate Falle left the practice he took that Company's business with him as his client and removed its papers (save perhaps for one file).

Mr. Birt had until October, 1993, been acting as counsel for the company but upon his appointment as Attorney General had to relinquish his instructions. At the end of 1993, Advocate Falle in a letter of the 29th December, 1993, to the retiring Solicitor General, Mr. T. C. Sowden, (now the Magistrate), recorded the open exchange of information at least up to that time.

The Court must now return to the negotiations between Bailhache & Bailhache and Bois Labesse. These were successful and the new firm opened its doors, so to speak, on the 1st September, 1994. On the 25th October, 1994, Bois & Bois wrote to the Solicitor General indicating its objections to Mr. Bailhache's acting for the defendants. That letter is as follows:-

"Dear Miss Nicolle,

Fief de la Fosse

I refer to your letter dated 20th October, 1994, and your two letters of 21st October, 1994, addressed to Advocate Falle concerning the above. Advocate Falle is away from the office on leave until Monday 31st October 1994 at which time I shall place the letters before him.

Whilst writing I express my surprise that Crown Advocate Bailhache has been chosen to take over the conduct of the litigation from you as I am aware of the following areas which would place Crown Advocate Bailhache and/or his merged practice of Bailhache Labesse in a clear conflict of interests:-

a. *Les Pas Holdings Limited, the Plaintiff company, is a former client of Messrs. Bois Labesse now merged with Crown Advocate Bailhache's practice. Whilst Advocate Falle was a partner in Bois Labesse he naturally discussed the company's claim openly with his partners indeed it was Bois Labesse who instructed both Jersey counsel and United Kingdom counsel.*

The merged firm of Bailhache Labesse therefore clearly has knowledge acquired whilst acting for the company which is confidential. It would therefore be wholly inappropriate for the merged firm to now take instructions to defend an action brought by its former client. The guide to the Professional Conduct of Solicitors published by the Law Society of England states at annex 15A (a copy of which is enclosed) that solicitors should be aware that where as the result of an amalgamation a conflict of interest arises, the general rule remains that the new firm must cease acting for both clients. It must be clear from this general rule that an Advocate must refuse new instructions in circumstances where accepting the same would place him in a conflict of interest.

b. *Crown Advocate Bailhache's senior partner Advocate J. P. Labesse in the merged firm of Bailhache Labesse is a trustee holding shares in the Plaintiff Company.*

c. *Bailhache Labesse acts for Ann Street Brewery Company Limited which as you are aware is a shareholder in the Plaintiff Company.*

d. *Messrs. Bailhache & Bailhache, now Bailhache Labesse has for some considerable time acted for Advocate Falle personally.*

e. *Crown Advocate Bailhache acts for the Waterfront Enterprise Board. It may be, however, that WEB has specifically consented to Crown Advocate Bailhache taking instructions from the Crown on this matter as required by clause 14 of the Jersey Law Society's code of conduct.*

f. *The Plaintiff company recently consulted with Mr. J. Le C. Bisson, now Crown Advocate Bailhache's partner seeking Mr. Bisson's opinion how he envisaged the Plaintiff Company's claim progressing through the courts.*

I have no doubt that Advocate Falle will wish to expand on my above listed observations and to contact Crown Advocate Bailhache in relation thereto but I would be grateful if you could comment thereon in order that I may place your comments before Advocate Falle on his return from leave.

I look forward to hearing from you.

Yours sincerely,

Daniel Young
p.p. Bois & Bois"

Mr. Bailhache replied to it on the 7th November, 1994, as follows:-

"Dear Mr. Young,

Fief de la Fosse

I refer to your letter dated 25th October, addressed to Her Majesty's Solicitor General in connection with the above matter.

I have considered everything which you say in your letter, and it is only right that I say straight away that I do not consider that there is any conflict of interest which does or should prevent me from continuing with the instructions which have been sent to me. By way of courtesy only I comment on the various matters raised in your letter as follows:-

(a) I understand it is true that Les Pas Holdings Limited is a former client of Messrs. Bois Labesse. However, it was not a client of Bois Labesse at the date of the merger with my former practice, because as I understand it, Advocate Falle was the partner at Bois Labesse who had charge of this particular file, and on his departure from Bois Labesse to form Messrs. Bois & Bois, he took the file and the responsibility for the matter with him. On the other hand, I was retained by Her Majesty's Attorney General several months ago (and certainly well before the merger) to act for the Crown and the Public. At the date of the merger, the position therefore was that Messrs. Bailhache & Bailhache were retained to act for the Crown and the Public and Messrs. Bois Labesse were not retained by Les Pas Holdings Limited. You refer to the Guide to the Professional Conduct of Solicitors published by the Law Society of England and in particular to annexe 15A. That document is well known to me. It is clear from clause 1 that the rule which requires the new firm to cease acting for both clients is a rule which applies where as a result of an amalgamation a conflict of interest arises. For the reasons I have given, I do not think any conflict of interest arises here. Les Pas Holdings Limited was not a client of either firm at the date of the amalgation.

You say in your letter that Advocate Falle discussed the claim of Les Pas Holdings Limited openly with his Partners at Bois Labesse. If that is so, those Partners no doubt have a duty to Les Pas Holdings Limited not to breach the privilege which attaches to that information, assuming they can now remember it. I have no intention whatever of discussing the case with those of my partners who were formerly partners in Bois Labesse and I give my undertaking that neither I nor any

partner nor employee who works with me on this case will discuss with them any information which they may have as a result of their discussion which you say took place with Advocate Falle. If called upon to do so by you, each of the former partners in Bois Labesse will provide whatever reasonable undertakings you seek to satisfy you they will not volunteer to me any privileged information they may hold (if any).

(b) *I regret I cannot see the relevance of the suggestion that Advocate Labesse is a trustee holding shares in Les Pas Holdings Limited. Assuming that Advocate Labesse does hold such shares, the prejudice if any must lie not with your client Company but with the Crown because it could be said on the Crown's behalf that there was concern that a shareholder in the Plaintiff Company might have access to information about the conduct of the case by the Defendants. As I understand it the Crown are not concerned by that possibility, and I see no prejudice to Les Pas Holdings Limited nor any conflict of interest which would arise as a a result of a holding of shares in Les Pas by Advocate Labesse. Furthermore I am advised by Advocate Labesse that, although he is relaxed about remaining as trustee, he would be prepared to resign if the trusteeship is perceived by either side to cause a difficulty.*

(c) *As I understand it you are acting for Les Pas Holdings Limited and would take instructions from that Company. Ann Street Brewery Company Limited, for which my firm acts, does not as far as I am aware have any authority to give instructions or to receive information about the activities of Les Pas Holdings Limited. In this litigation Les Pas is the client and not Ann Street. I really cannot see any conflict of interest here.*

(d) *I am aware that my former Partner, Advocate Gould, acted for Advocate Falle personally although I have no recollection as to the detail of the retainer save that I believe that it concerned principally the parting of the ways of Advocate Falle and his erstwhile Partners in Bois Labesse. Once again I cannot identify the conflict of interest which you say arises. The files which Advocate Gould held for Advocate Falle have been placed into store, and I have no intention of examining them in the context of the litigation with Les Pas Holdings Limited. I give my undertaking that I will not do so. I have no idea what those files contain save the generality mentioned in this paragraph, but I cannot see that any conflict could arise given that Advocate Gould was acting for Advocate Falle personally.*

(e) *It is true that I act for the Waterfront Enterprise Board. With respect it would be the right of the Waterfront*

Enterprise Board to object to my receiving instructions if it felt it appropriate to do so. It is hardly a ground upon which Les Pas Holdings Limited can object.

(f) Mr. Bisson assures me that he has not been retained by Les Pas Holdings Limited.

I shall be pleased to discuss this matter further with Advocate Falle on his return, if he would wish me to do so. I am sure that he will want to take a professional and not an emotional approach to this matter. If there is no ethical difficulty, which I believe the position to be, I have no doubt he will advise Les Pas Holdings Limited to desist from further complaint.

Yours sincerely

W. J. Bailhache"

His letter contains one minor inaccuracy because he was appointed to act for the Crown in November, 1994, and not in May, 1994. Whilst Bois Labesse was still an entity in March, 1994, Mr. John Bisson, a partner, was consulted by Mr. I. D. Smail, the Executive Director of the plaintiff Company, and Mr. George Carter, a Director of the Company, on the matter of Advocate Falle's possible costs. Mr. Bisson advised that the plaintiffs should not proceed unless they were able to contemplate costs in the region of £1M upwards. This was the only direct contact with Bois Labesse by the plaintiff Company after Advocate Falle left but Mr. Falle in his first affidavit said that he frequently discussed the law on the subject of this case and other matters relating to it of a similar nature with Advocate Labesse, the then senior partner in Bois Labesse and now the senior partner in Bailhache Labesse.

At one stage Advocate Clapham was asked by the plaintiffs to give an "independent opinion". He did so and advised in a friendly letter to Mr. Bailhache that he should decline to act. As Mr. Bailhache had declined to submit the matter to the Jersey Law Society for its adjudication, it is difficult to see how it could be thought that Advocate Clapham's advice could prevail. Mr. Clapham did, nevertheless, make a number of pertinent observations, one of which was that if Advocate Bailhache discovered some information as a result of the plaintiffs' having been clients of Bois Labesse he had a duty to make use of it. Advocate Clapham might have cited the case of Advocate Vibert (in re an Advocate (1978) JJ193 CofA) in support of that opinion. However in a letter from the Solicitor General to Advocate Bailhache of the 7th February, 1995, she made it clear that if he came unwittingly on information he would have to withdraw if the information was material and would create a conflict. That was a risk the defendants had to take. On the other hand the Bâtonnier, at least in the opinion of Advocate Mrs. Pearmain, took the opposite view to Mr. Clapham. A further complication was that Advocate Gould, a

partner in Bailhache & Bailhache, had detailed knowledge of Advocate Falle's personal and financial affairs as he acted for him in other matters. Advocate Labesse was, and still is, a shareholder in the plaintiff Company in his capacity as Trustee of a Trust.

THE LAW

So much for the background, the Court must now look at the Law.

Both counsel agreed that the Court could derive little help from the codes of conduct either of the Law Society of Jersey or of the Bar of England and Wales, or indeed in respect of the professional conduct of English solicitors. Only in so far as the these rules reflect the common law has the Court been able to have regard to them. Moreover, there are no Jersey authorities on the point at issue but there is a useful Guernsey case, that of Cockram v. Loyalty Brokers Limited (25th June, 1992) Judgment of the Royal Court of Guernsey. That case went to the Court of Appeal of Guernsey on the question of costs only and, accordingly, the judgment of the Guernsey Royal Court may be looked at for assistance. That case, and the English cases referred to in it which will be mentioned shortly, may be taken to lay down three propositions accepted by the Royal Court of Guernsey. The first is that it is, in the words of the judgment, ***"essential that members of the public have free access to members of the Bar to represent them in cases before the Court and of necessity this may involve them instructing further advocates who have some knowledge of the opponents in litigation".*** Secondly, the English cases have been accepted by the Royal Court of Guernsey, particularly that of In re A Firm of Solicitors (1992) 2 WLR at page 809. Thirdly, the Royal Court accepted that each case must be considered on its facts but added that in Guernsey, because of the small size of the community and the Bar, that called for possibly greater flexibility ***"in such situations than in a larger jurisdiction".*** This Court was not referred to any French decisions and since, as it has already said, there were no Jersey authorities on the point at issue, it is satisified that it would be proper for it to have regard to the English cases and as well as the Guernsey case. Accordingly it adopts the English principles as laid down by the learned Guernsey Royal Court in the Cockram case. It follows that it is not necessary to go through in detail the main English cases which are common to both sides.

Although the facts of the instant application cannot be brought within the Code of Conduct and Etiquette of the Jersey Law Society the Court hopes that those rules will be expanded because the Court agrees with the observations of Hoffman J. as he then was, in In Re a Solicitor (1987) 131 SJ 1063 where the learned judge says : ***"I accept the Court has jurisdiction to decide whether the solicitor is acting in breach of his duty to a client or former client but I would not like it to be thought that the Court can be substitute for the ethics and guidance committee and invited to give rulings on all***

aspects of professional conduct." Secondly, towards the end of his judgment Hoffman J. said:-

> *"I emphasise that all that I am concerned with is whether the solicitors can be said to be acting in breach of their duty to Mr. Saunders as their client, or former client. In deciding that question, I bear in mind that the solicitors are officers of the Court, and that the Court can exact from them a higher standard of professional honour than it might from persons in other occupations. Even applying those standards, however, it seems to me that there must be large areas of discretion in which solicitors could not be criticised, either for continuing to act for a particular client, or for refusing to act for him. These are often delicate matters which must be left to their own judgment and conscience. For present purposes, however, it is sufficient for me to say that I decline to give the directions sought in the originating motion."*

The Court agrees with, in particular, the penultimate sentence of this extract. Furthermore, in Rakusen v. Ellis Munday & Clarke (1912) 1 Ch 831, Cozens-Hardy M.R. cited certain remarks of Warrington J. who said in the court below that it had been admitted on both sides that the Court was dealing with solicitors of the highest position whose honour and integrity were beyond any imputation. Unhappily, in this case Advocate Falle in his second affidavit has impugned the reputation and integrity of Advocate Bailhache in a manner which the Court feels is quite unjustifiable.

Four points seem to have emerged from the English cases.

1. The test is whether a breach of the duty owed by Bailhache Labesse to the plaintiff Company may reasonably be anticipated. Re A Firm of Solicitors (1992) 1 All ER 352 *per* Staughton LJ at page 366 at letter J and Sir David Croom-Johnson at page 369 letter d.

2. Parker LJ in the same case at page 362, letters b to c, inserted the well-known concept of "the reasonable man". He said: *'if a reasonable man with knowledge of the facts would say "if I were in the position of the objector I would be concerned that however unwittingly or innocently information gained while the solicitor was acting for me, might be used against me", the Court in my judgment can and should intervene. Were it not to do so the Court would be permitting to exist a situation of apparent unfairness and injustice. That this should be avoided is in my view every bit as much a matter of public interest as the public interest is*

in not unnecessarily restricting parties from retaining the solicitor of their choice"'.

3. "Chinese walls" may not remove the fear of some risk. Sir Nicholas Browne-Wilkinson VC in Lee and Co. Limited v. Coward Chance (1990) 3 WLR 1278 at p.1284 letter d. He added at letter f on the same page ***"When one has sensitive information in a firm or in any other group of people, there is the element of seepage of that information through casual chatter and discussion, the letting slip of some information which is not thought to be relevant but may make the link in a chain of causation or reasoning."*** In Re a Firm of Solicitors (1992) 1 All ER 353 the Court held (Staughton LJ dissenting) that if there was such a conflict of interest it was only in very special cases that the court would consider that a Chinese wall would provide an impregnable barrier against the leakage of confidential information.

4. The somewhat wider test applied in North America and New Zealand is not the law of England. Sir Nicholas Browne-Wilkinson VC *op. cit.*

The Court sees no reason why it should be the law of Jersey.

As regards the conflict between the need for justice to be done and the public interest, Staughton LJ makes the following interesting comments at page 366 of Re a Firm of Solicitors (1992) 1 All ER 353 at letter c. He agreed with the observations of Sir Nicholas Browne-Wilkinson VC in the Coward Chance case and added:-

> ***"for to hold otherwise would be inconsistent with the Rakusen case. Alongside the need for justice to be seen to be done there is a countervailing public interest that the choice of solicitors open to the public should not be unduly and unnecessarily restricted. In the Rakusen case it was argued that such restriction would work great hardship in small towns where there were few solicitors (see 1912 1 Ch. 831 at 833). The same may occur in a large city where there are many solicitors but only a few of them have experience in a recherché and specialised field. To deprive a litigant of his chosen solicitor may cause him inconvenience, expense and dismay which may be why (as we are told) it is not uncommon practice for his opponent to attempt to do so in the United States. It is a step which should only be taken on solid grounds."***

There was some discussion about whether the reasonable man was to be taken to be "the man on the Clapham ominbus" but as the Solicitor General pointed out, rightly so in the Court's opinion, the

elected judges of the Royal Court are the body to make that determination. It is they who are to be taken to have the knowledge of the reasonable man and to apply the proper standards.

THE ARGUMENTS

The plaintiff's main objections are not only that information relevant to the substantive case might fall into Advocate Bailhache's hands (since there has been a 95% exchange of information on the law and facts that might be taking too sensitive a view), but that the conduct of the defendant's case might be influenced by what might be disclosed of the plaintiff's financial and general commercial affairs.

Mr. Michel put it like this: the future of the foreshore is a sensitive matter because, if the plaintiffs succeed, the defendants might, at best, be liable to pay substantial damages or compensation and, at worst, not only have to do this but possibly have to remove such works as have been carried out already on the Seigneur's foreshore. Either of these painful events might have serious consequences politically and financially for the Island. If the plaintiffs exhausted their resources as result of having to compete, legally speaking, with the financial resources of the Island, they would be placed at a greater disadvantage. Something like that was read into the Solicitor General's letter to Advocate Falle of the 6th April, 1994, (but explained in a later letter of the 4th October, 1994). It is true that the earlier letter might be said to indicate that, compared to the unlimited resources of the States, the plaintiff Company might be of little financial substance. Mr. Falle took that, to be a threat. The Court does not share that interpretation of the Solicitor General's letters nor does it agree that the defendants have been dilatory in dealing with the instant case as the plaintiffs have alleged in the correspondence.

The defendants accepted that the Court could assume the full extent of disclosure as set out in Advocate Falle's first affidavit of the 6th February, 1995. These matters are:-

(i) Retainer of professional persons(paragraph 5);

(ii) Complete financial record(paragraph 6);

(iii) Legal and other research into the law and custom(paragraph 9);

(iv) Incorporation of Les Pas Holdings(paragraph 10);

(v) Funds and financial accounts of Les Pas Holdings(paragraph 11);

(vi) Minutes of board meetings(paragraph 12);

(vii) Correspondence with legal advisers (Bois Labesse) (paragraph 13);

(viii) Correspondence with legal advisers (Ogier & Le Cornu) (paragraph 14);

(ix) Counsel's Advice (paragraph 15);

(x) Files and records of the promoters (paragraph 16);

(xi) Information recorded on legal advisers' files, electronic equipment, etc. (paragraph 17);

(xii) Material emanating from Richard Falle's resignation from Bois Labesse (paragraph 18);

(xiii) Plaintiff company's budgetary considerations discussed by directors with J. Le C. Bisson (paragraph 19);

(xiv) Discussions on procedural and legal points and generally with Advocate Labesse (paragraph 20);

(xv) Richard Falle's personal letters and files with Bailhache & Bailhache (paragraph 31);

The defendants accept also that of these matters four items were communicated by the plaintiff Company to Bailhache Labesse collectively or individually. These are:-

1. Sensitive financial information.

2. Enquiries about the likely cost of the litigation.

3. Discussions with Advocate Labesse.

4. The personal files of Advocate Falle.

Nevertheless the defendants say that the factual and legal issues between the parties do not give rise to factual disputes of a sensitive nature. Moreover Advocate Bailhache would accept any conditions imposed by the Court and gives such undertakings (he has already offered some) as the Court might require. Since the main issue is that of title to land the defendants submitted that it was hard to see how the information held by Bailhache Labesse, or which might inadvertently be acquired by them and by Advocate Bailhache in particular, would prejudice the plaintiff Company.

In his first affidavit Advocate Bailhache, at paragraph 10, said that his former partners would give undertakings to the Court not to discuss with him or anyone else in the firm any knowledge they may have about the plaintiff Company's claim. Two of the conveyancing

clerks of Bois Labesse left the firm on the 1st September, 1994, and the remaining clerk had left the building by the same date but had remained technically employed until some time in October. On page four of his first affidavit Advocate Bailhache disclosed, at paragraph (ii), that he had been told by Advocate Labesse that many years before he had advised Advocate Falle to relaunch his proceedings before the prescriptive period of forty years. Furthermore on the 3rd November, 1994, or thereabouts Advocate Labesse had sent an unsolicited note to Advocate Bailhache on the subject of the Fief de la Fosse. He had little recollection of it as he had sent it back immediately. That episode indicates how difficult it is to police Chinese walls. One strange feature of the instant case was a meeting between Advocate Bailhache and Mr. Ian Stevens, the Chairman and Managing Director of what was then the Ann Street Brewery Limited now the Jersey Brewery Company Limited, a shareholder in the plaintiff Company. Mr. Stevens had been Chairman of the plaintiff Company since September 1994. In November 1994 he was invited by Advocate Bailhache to luncheon to discuss the client relationship of the Brewery with Bailhache Labesse (which for reasons that are not germane to the instant case had deteriorated). Mr. Stevens was accompanied by Mr. John Yetman, the Financial Director of the Brewery. After dealing with the client relationship matter, Advocate Bailhache then discussed Bois & Bois' letter of the 25th October, 1994, which according to Mr. Stevens' affidavit, supported by Mr. Yetman, Advocate Bailhache said was questionable and possibly mischievous. According to both affidavits he took Mr. Stevens and Mr. Yetman through the letter point by point. In his second affidavit in reply to Advocate Falle's first affidavit Advocate Bailhache said that he had checked personally the Bailhache Labesse computer and had been unable to find any financial records of the plaintiff Company on it. He undertook not to discuss the case with his ex Bois Labesse staff members whether employed by Bailhache Labesse or not. This is an extension of his earlier undertaking about his partners. Advocate Bailhache was concerned that in Mr. Falle's first affidavit there was an implied suggestion that he had acted dishonourably. The Court is satisified that Advocate Bailhache did not at any time so act but his discussion of Bailhache & Bailhache's letter of the 27th October, 1994, with Mr. Stevens and Mr. Yetman was an error of judgment that could be open to misinterpretation. Advocate Labesse told Advocate Bailhache that he (Advocate Labesse) would be totally incapable of giving "any meaningful assistance" to either party. Advocate Bailhache further undertook in that affidavit not to seek out any information. In so far as he has an advocate's duty to do so he has been discharged from that duty by both defendants. Advocate Falle's personal files were in the store at St. Martin. Unfortunately Advocate Bailhache forgot that he had given an undertaking in his letter to Bois & Bois of the 7th November, 1994, concerning these files and inadvertently, in order to verify a reference in Advocate Falle's affidavit, examined the relevant file at his house. It dawned on him, in the course of doing so, that he had broken his undertaking to Bois & Bois and he regretted that very much. Advocate Bailhache copied the two documents which he had read and lodged them with the Judicial Greffier. The Court did not consider it

necessary to examine those documents. The Court, as it has already been said, has found that Advocate Bailhache did not act dishonourably and the Court has no reason to doubt that he would not abide by his undertaking and his partners likewise. Nevertheless the Court considers that the plaintiffs have a justified fear that if Advocate Bailhache were to continue to act for the defendants some potentially damaging information, not necessarily linked to the legal or factual argument but to the general commercial and financial business affairs of the plaintiff Company might fall, unwittingly, into Advocate Bailhache's hands.

CONCLUSION

Accordingly the Court finds that as the hypothetical reasonable man it cannot authorise Advocate Bailhache to continue to act for the defendants and accordingly the defendants' representation fails. The Court wishes to add this. It considered whether the size of the Bar in Jersey would have justified it in holding that, as in Guernsey, it should approach the instant case with a greater degree of flexibility than that adopted by the English Courts. The Court felt unable to do so. In its opinion the principle of justice being seen to be done outweighs the right of a litigant to choose his own advocate notwithstanding the relatively small size of the Jersey Bar.

Authorities

Cordery on Solicitors (8th Ed'n; 1990): pp. 11-12; 64-68.

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In re: a Solicitor (1987) 131 S.J. 1063.

Lee & Co. Ltd. -v- Coward Chance [1990] 3 W.L.R. 1278; (1991) Ch 259.

McMaster -v- Bryne [1952] 1 All E.R. 1362.

Allison -v- Clayhills (1907) 97 LT 709.

Moser -v- Cotton (1990) 134 Sol.Jo. 1190 CA.

Ott -v- Fleishman [1983] 5 WWR 71.

Demerara Bauxite -v- Hubbard [1923] AC 673.

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Barber -v- Stone (1881) 50 L.J.Q.B. 297.

Rakusen -v- Ellis Munday & Clarke [1912] 1 CH. 831.

Davies -v- Clough (1937) 8 Sim 262.

Rawlinson -v- Moss (1861) 30 L.J.Ch. 797.

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Morton -v- Asper (1987) 45 D.L.R. (4th) 374.

D. & J. Constructions Pty. Ltd. -v- Head (1987) 9 N.S.W.L.R. 118.

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Cockram -v- Loyalty Brokers Ltd. (25th June 1992). Judgment of the Royal Court of Guernsey.

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