5 pages.

ROYAL COURT
(Samedi Division) 128.

6th July, 1995

Before: The Deputy Bailiff
Jurat the Hon. J.A.G. Coutanche
Jurat E.W. Herbert

Between: (1) Mervyn Stratford
and Susan Jane Stratford (née Baker)
(2) M.E. Bull and J.M. Bull
[(3) Tracy Mucklow
(4) Malcolm Shaw
(5) B. de la Mare
(6) E.J.A. Clucas]
(7) 1 Maison Victor Hugo Limited
(8) 3 Maison Victor Hugo Limited — Plaintiffs

And: (1) Victor Hugo Management Limited
(2) Victor Hugo Property Limited — Defendants

Advocate B. Lacey for the Plaintiff.
Advocate G.R. Boxall for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: We need to deal with a preliminary point of some importance before we deal with the main applications to adjourn this four week trial. There were delivered to us in Court this morning ten voluminous files in a building dispute which commenced by Order of Justice in January, 1992. The Order of Justice now before us is the Re - Re - Amended version of 28th June, 1995. The pleadings match the bundles in their length and complexity. There is what is called a "Scott Schedule" which runs into fourteen pages. There are fourteen experts' reports on the Plaintiffs' bundle and five on the Defendants' bundle. Until it sat, the Court had no knowledge of the action whatsoever.

We reminded Counsel of the letter of the Judicial Greffier dated 20th September, 1991, that accompanied Practice Direction 91/1 that was circulated to all members of the profession on that date.

The relevant sections are:-

"(a) the time period for the lodging of documents is reduced from ten days before the beginning of the week in which any civil case is to be heard to two clear working days before any civil case is to be heard; ....

The Court has specifically instructed me to write to you in order to warn you that failure to observe the Direction may result in the Court vacating the date and that costs may be awarded against the defaulting party and also in order to inform you that the Court intends, unless there are exceptional circumstances, rigidly to enforce the Direction."

Advocate Lacey told us that if we retired to read the "Scott Schedule" we would have an understanding of the matters in dispute. We did so. I have ordered that the time spent on reading this schedule as wasted costs to be paid, in any event, by Counsel for the Plaintiffs personally. It is hoped that members of the profession will note this and order their affairs accordingly.

Each side brings a separate action to adjourn.

We have an application by the Plaintiffs to adjourn part of the Plaintiffs' claim being the area which the experts refer to as "the podium deck" and Counsel refer to as "the garden slab". Perhaps the "garden slab" has a more kindly sound and we shall refer to it as such. The dispute centres around the development of the property No. 1. Maison Victor Hugo and No. 3. Maison Victor Hugo at Gréve d'Azette. There is no need for us to enter into the complexity or otherwise of ownership; suffice it to say that certain shares in the company give certain rights of exclusive ownership and occupation to an apartment, garage space and store and there are rights of common ownership. The garden slab is a garden area suspended on a concrete platform beneath which is the car park. This has leaked since 1990 and the problem has been to find a solution to rectify these leaks. There were earlier arbitration proceedings between the builder and the developer to establish liability. The Plaintiffs claim that the entire area needs to be re-tanked or sealed to provide a waterproof membrane. Some remedial work had been attempted by the Defendants but in March, 1995, with this action three and a half months away, the Plaintiffs were put on notice that work was about to be undertaken to render the garden slab water-tight. Because no details were given, interim injunctions were obtained *ex parte*, but these were discharged by the Royal Court on the 19th April, 1995, on the basis that damages were a sufficient remedy. The works have been put in hand and there is still dispute that the remedial works

will not clear the defect. Apparently, when the application was made in April to raise the injunction, Advocate Lacey raised her concern.

The judgment of the Court of 19th April, 1995, reads:-

> *"She argued that there would be a further aggravation suffered by the Plaintiffs if the principal action had to be adjourned because the effectiveness of the works proposed to be carried out by the Defendant could not be adequately tested before the beginning of July. She pointed out that the summer was approaching and that it was unlikely that there would be sufficient rainfall to cause the remedial works proposed by the Defendant to be tried out. Miss Lacey also expressed concern that the remedial works to be carried out by the Defendant, which were to be carried out at considerably less expense than the works which the Plaintiffs considered to be necessary, might make it difficult for the findings of an arbitrator who examined the state of the building works in 1992, to be taken into account in the context of the principal proceedings."*

We hasten to point out that this is not an adjournment brought about because the Plaintiffs have been dilatory although Advocate Boxall pointed out that had the injunction and its ramifications not caused the horse to stumble the course would have been finished in time. There are still apparently two or three weeks left.

Advocate Boxall argued strenuously that the garden slab is not a single piece and there is no interconnection between one piece and the other. He said that 98% of the area where leakages had occurred had been treated and effectively dealt with using the same generic course of treatment and only 2% remained to be dealt with on the same basis.

Even on the 28th June, 1985, however, matters were not hopeful. Mr. David Grave, the expert of D.J. Hartigan & Associates Ltd., wrote in conclusion to a very detailed five page report on this problem:-

> *"As regards the programme for the remedial works, I understand that REL still anticipate completing their works by the end of this week. This may be possible if no further extension of the scope of the works is required. I cannot realistically envisage the works as a whole being complete and ready for testing in anything less than the two weeks mentioned in conversation by Mr. Lawns; my own estimate would be three weeks."*

Advocate Boxall urged us to order that the trial continue. He felt that he would be prejudiced by delay. We heard from Mr. Grave. He was examined and cross-examined. He is, of course, the Plaintiffs' main expert. At worst, Mr Grave felt that there was still a month before he could be satisfied that the work carried out to date will have cured the leaks. The Defendants may, in his view, have treated the known leaks but the new works had a chance of producing leakage to unrevealed defects. The garden slab must be treated as a whole.

We cannot in the circumstances allow the trial to continue with a part of the claim (and a substantial part) still unquantified and which has enough material in it to found a complex action of its own. There might well be duplication of witnesses' evidence, duplication of effort and escalating costs. The purpose of the Law is to obtain finality. We can only express surprise that neither Counsel saw fit to ask for a summons for directions before the trial opened.

We now have to turn to Advocate Boxall's application to adjourn.

This concerns the windows on the sea side. On Monday, 3rd July, two days before trial, Advocate Boxall received a report that Advocate Lacey had received from Mr. Martin S. Harrison that he had designed new windows. He had sent the specifications out to tender. That letter was given to us and to Advocate Boxall at trial. The Defendant has always said that the defect in the windows could be rectified; the Plaintiffs have always argued for replacement. There can be no quantum until the tenders are received and accepted. Even then, the Planning and Environment Committee (we presume) will have to approve.

One very good argument made by Advocate Boxall is that he could not consider payment into Court, or settlement, until he knows the quantum. He was prepared however, if the trial on the garden slab was to proceed, to waive any disquiet that he might have over the report by Mr. Harrison, one of only three experts on the subject in the United Kingdom. That is presumably what is called a "tactical argument". Mr Boxall could argue his case, while consulting his as yet unknown expert and preparing that part of his defence, if the garden slab argument were included but not if it were excluded. That argument could have been formulated by Lewis Carrol but because we have adjourned the garden slab argument we must in our view and in order to do justice to this case and to reach finality adjourn everything.

The case, quite frankly, is not ready for trial. Numerous costs have been incurred and we are quite certain that the anxiety to the parties has been very great. We will sit for as long as necessary but only when all the matters that we have to decide are ready for a clear adjudication.

Authorities

R.S.C. (1995 Ed'n) O.35, r.3: paras 35/3/1 & 2.

4 Halsbury 37: paras 508-509.

Stanton Ltd v. Mourant, du Feu & Jeune (9th October, 1992) Jersey Unreported.

Vaucluse Court Ltd v. Takilla Ltd (9th October, 1991) Jersey Unreported; (1991) JLR N.5.