

ROYAL COURT
(Samedi Division)

83

2nd May, 1996

Before: The Deputy Bailiff, and
Jurats Potter and de Veulle.

<u>Between:</u>	ANZ Grindlays Bank PLC	<u>Plaintiff</u>
<u>And:</u>	Hussein Salemeah Abdel Fattah	<u>Defendant</u>
<u>And:</u>	Lloyds Bank PLC	<u>Party Cited</u>

Application for summary judgment under Rule 7 of the
Royal Court Rules, 1992, as amended.

Advocate A.R. Binnington for the Plaintiff
The Defendant did not appear and was
not represented.

JUDGMENT

THE DEPUTY BAILIFF: On 26th April, 1996, the Judicial Greffier received a letter from Advocate Michel, who was up until then, acting for Mr. Fattah in this case which reads as follows:

5 "I have to advise you pursuant to the provisions of Rule
15/4 of the Royal Court Rules, 1992 as amended, that I am
no longer instructed by the Defendant in relation to these
proceedings. I am not aware as to whether or not the
10 Defendant proposes to instruct other lawyers to represent
him in relation to these proceedings. I have so advised
Messrs. Mourant du Feu and Jeune and the Bailiff's
Secretary".

15 Mr. Binnington appeared alone in this Court before us this
afternoon and has satisfied us beyond peradventure that he is able
to apply for summary judgment.

5 Although a defence was in fact filed to the original Order of
Justice in 1990, when all the transactions were denied, we have
two very helpful and very detailed affidavits before us most
carefully prepared by Mr. David Silver, a partner of Clyde & Co.
Mr. Silver's affidavits make it clear that from the Dubai
proceedings it has been adjudged that the transactions were not
carried out, as was alleged, with Sheikh Omar's consent and the
Dubai Court has now concluded the matter against the Defendant.
10 That, in our view, would be a clear *res judicata* in this matter,
should it have been disputed.

15 The other two matters which Mr. Binnington very usefully and
carefully brought to our attention was the fact that the tracing
element makes it clear - and again we have followed paragraph 25
of Mr. Silver's affidavit - that what is left in the accounts in
Jersey must be the proceeds of the money from Dubai.

20 The other point that Mr. Binnington drew to our attention was
the fact that the accounts were joint accounts but Mrs. Fattah has
played no part in the proceedings; she is aware of the proceedings
because the Judicial Greffier at one stage ordered substituted
service on Mr. Fattah's lawyer in Jersey and for the details of
the proceedings to be sent by post to Mr. Fattah and Mrs. Fattah;
25 however Mrs. Fattah has taken no action whatsoever on the
proceedings and we are certain that she has no realistic claim to
any of the moneys in dispute.

30 There is one small point which, again, Mr. Binnington, very
helpfully, drew to our attention and that is that Rule 7/1 of the
Royal Court Rules 1992, as amended appears to deny summary
judgment where there is a claim by the plaintiff based on an
allegation of fraud. The wording of the Rule of Court is exactly
35 similar to the provisions of Order 14/1 and it is suggested - and
we agree with that suggestion - that the reasoning behind the
reluctance of the Court to give summary judgment on an allegation
of fraud is that in England it was possible in such a trial to ask
for the matter to be transferred for trial by jury, and of course
40 in allegations of fraud, the standard of proof is very much higher
than it is in other matters. However, there is an exception to
the general rule and O.14/1/1 states:

45 *"A claim is "based on an allegation of fraud," so as to be
outside the scope of O.14, only if the action is framed in
deceit, see Barclays Bank Ltd. v. Cole [1967] 2 Q.B. 738
C.A., applied in Stafford Winfield Cook & Partners Ltd. v.
Winfield [1981] 1 WLR 458; [1980] 3 All ER 750. Thus,
where an action for damages is expressly pleaded as a
claim for breach of contract and/or breach of fiduciary
50 duty, e.g. recovery of commission and expense from a
commission agent in respect of fabricated orders, O.14
applies even though the allegations made against the*

defendant imply all the factual ingredients of the test of fraud or deceit but without any specific claim for "fraud" (Newton Chemical Ltd. v. Ansenis [1989] 1 WLR 1219 CA)".

5 It is clear from the reply that was filed on 11th April, 1991, that the Plaintiff also alleges that there is a breach of a fiduciary duty by the Defendant which allows the Plaintiff to trace into and recover the assets held by the parties cited and we agree that that is a perfectly reasonable and acceptable way of
10 proceeding.

 On that basis, having had any points of difficulty candidly and carefully pointed out to us by Mr. Binnington, we are very happy to give to Mr. Binnington the terms of his request as set
15 out in the Order which he has filed with us and which we will incorporate into this Judgment. Mr Binnington will have his costs of and incidental to today's hearing.

 We also order, as part of this Judgment, that the summonses
20 which were issued by the Defendant shall be struck out.

DRAFT ORDER

Upon hearing counsel for the Plaintiff and upon reading the First and Second Affidavits of David Silver, the Defendant not having appeared, IT IS HEREBY ORDERED AS FOLLOWS:

1. THAT the interim injunctions contained in the Order of Justice dated 14th September, 1990, be and are hereby confirmed;
2. THAT the Defendant do account to the Plaintiff in respect of the proceeds of the three deposits referred to in the Order of Justice in the sums of 35 million dirhams, 25 million dirhams and 25 million dirhams respectively and restore the same to the Plaintiff.
3. THAT it is declared that the sums standing to the credit of the account with the Party Cited in the names of H.A. and S.A. Fattah numbered 15593022 or for the benefit of that account are held upon constructive trust for the benefit of the Plaintiff.
4. THAT further to 3 above, the Party Cited do forthwith pay to the Plaintiff or to its order all sums standing to the credit of the account of H.A. and S.A. Fattah held by the Party Cited.
5. THAT the Defendant do pay the costs of and incidental to the proceedings herein on a full indemnity basis.

Authorities

Royal Court Rules 1992, as amended: Rule 7/1.

R.S.C. (1991 Ed'n) O. 14/1.