

ROYAL COURT  
(Samedi Division)

105.

Before: The Deputy Bailiff and  
Jurats Le Ruez and Jones

6th June, 1996

---

Between: Roger St. Clare Porteous Plaintiff  
And: Danlerov Holdings Limited First Defendant  
And: Reginald George Oliver Second Defendant  
And: Baltine Photo Video Supplies Limited Third Defendant  
(formerly Baltine (Import/Export) Limited)

---

Advocate M. Thompson for the First Defendant.  
Advocate R. J. F. Pirie for the Plaintiff.

---

JUDGMENT

**THE DEPUTY BAILIFF:** This is in all respects an appeal by the First Defendant against an order of the Judicial Greffier given on 2nd April, 1996 to give leave to the Plaintiff to re-re-amend his Order of Justice by joining an additional party as a defendant.

5

The Order of Justice in this action was signed on 3rd January, 1991, and with it came injunctions after the Bailiff had considered an affidavit made by the Plaintiff and dated 21st August, 1990.

10

The case involves a company of which the Plaintiff says he gave the shares as security for a loan of £4,500. The company was later sold on for £40,000 because the First Defendant disputes the loan and claims that it purchased the shares. In his affidavit of 21st August, 1990, the Plaintiff states that the sum of £40,000

15

had been mentioned in communications. That the sale price of the shares (without legal basis according to the Plaintiff) was confirmed at £40,000 is apparently evidenced by the bank statement of a Mr. D.A. Overland who was the *alter ego* of the First Defendant. Discovery of documents was made as long ago as January, 1993. It is Mr. Overland that the Plaintiff now wishes to join as a party.

The whole thrust of the Plaintiff's action over seven years, (despite knowledge of Mr. Overland's involvement in the First Defendant and despite the fact that the affidavit made by the Plaintiff in 1990 is littered with references to Mr. Overland) has been against the First Defendant. The other Defendants are the company in which the shares were sold, and the director of that company.

The principal amendment to the Order of Justice (there are of course other substantial amendments) is shown by this extract, all of it new pleading: part of the extract does not make sense, but we set it out as it was filed.

*"Without the knowledge of the Plaintiff, who at all material times believed he was dealing with the Fourth Defendant in his own personal capacity, the Fourth Defendant did not pay the said sum of Four thousand five hundred pounds (£4,500) himself, but instead procured the said sum personally from his own funds but instead procured that the said sum was paid direct to the bank's Advocates by a limited liability company incorporated in the Island of Jersey and known as Danlerov Holdings Limited (hereinafter called "the First Defendant") which was at all material times beneficially owned and controlled by the Fourth Defendant such that it can and at all material times could be properly described as his alter ego. In the alternative the Fourth Defendant was at the material time acting as agent for the First Defendant and the said agreement of loan was made with the First Defendant, which agreement was made upon the terms herein set out".*

The trial had been set down for 4th March, 1996. It has already had a chequered history. On three previous occasions trial dates have been vacated. The trial date was again vacated because the First Defendant's lawyers wrote to say that the First Defendant - let us call it Danlerov Limited: that name is an anagram for Overland - would no longer have its litigation costs underwritten by Mr. Overland. Danlerov requested the Plaintiff to allow it to withdraw its Answer under Rule 6/24(1) and to take a pyrrhic judgment.

It was at that point that the Plaintiff brought his summons to join Mr. Overland as Fourth Defendant.

The Judicial Greffier heard the parties (not of course Mr. Overland) and gave a reasoned judgment on 2nd April, 1996.

5 This appeal is by way of a rehearing but we attach real weight to the Judicial Greffier's finding.

10 Advocate Thompson raised the question of the lack of an affidavit. He based that point on Order 15 Rule 6 which states that where an application is made to add a party to proceedings, that party must *"except with the leave of the court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter, or as the case may be, the question or issue to be determined as between him and any party to the cause or matter"*.

15 Our Rule 6/29, similar in all other respects, has no such stipulation. Although Advocate Thompson asked for such an affidavit (it was not forthcoming) after the Judicial Greffier's judgment had been delivered the matter was apparently raised at the hearing before the Greffier. We cannot see that the failure to file an affidavit, not made a requirement under our Rules and not insisted upon by the Judicial Greffier at the hearing is an absolute prerequisite to an application under Rule 6/29.

20 Advocate Thompson also raised the question of whether it was an abuse of process to allow what is virtually a separate action at such a late stage. He relied on the case of Lawrance v. Norreys (1890) Ch.D. 213 which is dealt with in the White Book (see page 5 of the Judicial Greffier's judgment) in this way:

25 *"There will be difficulty, however, where there is ground for believing that the application is not made in good faith. Thus, if either party seeks to amend his pleading by introducing for the first time allegations of fraud, or misrepresentation or other such serious allegation, the Court will ask why this new case was not presented originally; and may require to be satisfied as to the truth and substantiality of the proposed amendment (Lawrance v. Norreys (1890) 39 Ch. D. 213; see judgment of Stirling J. p. 221, and of Bowen L.J. p. 235)"*.

30 The summary of the Judicial Greffier's judgment is in these words:

45

*"The First Defendant urged me to find that the Plaintiff was acting mala fide in seeking the amendment as referred to in the section from section 20/5-8/6 and that the Plaintiff was not acting in good faith as mentioned in the quotation from 20/5-8/10.*

50

5 Clearly, the Plaintiff will have major obstacles to  
overcome in order to prove his case, not the least of  
which will be the manner in which the Order of Justice has  
been worded for five years and the terms of his affidavit  
dated 21st August, 1990. Although he now seeks to proceed  
in the alternative, he will have to give evidence as to  
who were the parties to the alleged loan. However, Mr.  
Overland was not before me in relation to the Summons and  
the prescription period in relation to the claim against  
him has not expired. There is a danger of my allowing  
myself to be drawn into considering arguments at this  
stage which ought only to be heard if a striking out  
application were to be brought by Mr. Overland. The  
Plaintiff also says that he only learned of the fact that  
the proceeds of sale of the relevant shares went directly  
into Mr. Overland's bank account when discovery occurred.

0 I am satisfied that, in accordance with Rule 6/29(b)(ii),  
Mr. Overland is a person between whom and the Plaintiff  
there exists a question or issue arising out of or  
relating to or connected with any relief or remedy claimed  
in the present action which it would be just and  
convenient to determine as between the Plaintiff and Mr.  
Overland as well as between the parties to the present  
action. Although the Plaintiff's case against Mr. Overland  
has its difficulties, I am not prepared to go so far as to  
say that it is being brought mala fide and is, therefore,  
not brought in good faith".

0 Despite Advocate Thompson's attractive argument we cannot  
fault the Judicial Greffier. We agree that Advocate Pirie's client  
may have much to answer: the Plaintiff may face a striking out  
application, but we cannot say that there is such bad faith shown  
by the Plaintiff as to debar him. We therefore uphold the  
15 Greffier's decision.

Authorities

R.S.C. (1995 Ed'n) O.15, r.6.

Royal Court Rules 1992, as amended: 6/29.

Lawrance -v- Norreys (1890) 39 Ch.D. 213.

Rahman -v- Chase Bank (3rd June, 1994) Jersey Unreported CofA.