

ROYAL COURT
(Samedi Division)

6th January, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Herbert and de Veulle

Action 95/70

Between	Pirunico Trustees (Jersey) Limited	Plaintiff
And	Jefferson Seal Limited	Defendants

AND

Action 95/87

Between	Jane Margaret Richardson	Plaintiff
And	Jefferson Seal Limited	Defendant

AND

Action 95/89

Between	David William L. Dixon	Plaintiff
And	Jefferson Seal Limited	Defendant

AND

Action 95/197

Between	Patricia D'Auvergne Lumley-Brown	Plaintiff
And	Jefferson Seal Limited	Defendant

AND

Action 95/198

Between	Reeb Investments Limited	Plaintiff
And	Jefferson Seal Limited	Defendant

AND

Action 95/199

Between Eileen Catherine Moore Plaintiff
And Jefferson Seal Limited Defendant

AND

Action 95/200

Between Patricia Margaret Louise Mayo Plaintiff
And Jefferson Seal Limited Defendant

AND

Action 95/201

Between Pamela Dawn Simon Plaintiff
And Jefferson Seal Limited Defendant

AND

Action 95/250

Between John Stuart Clements,
Lawrence Dorian Ranger and
Attendus Treuhandgesellschaft
(suing as the trustees of the J.D. Hawe
Settlements, numbers 1 and 3) Plaintiffs

And Walbrook Trustees (Jersey) Limited First Defendant

And Jefferson Seal Limited Second Defendant

And Jefferson Seal Limited
(joined at the instance of the
First Defendant) Third Party

AND

Action 95/263

Between BNP Jersey Trust Corporation Limited Plaintiff

And Jefferson Seal Limited Defendant

Appeal by Jefferson Seal Limited against Order of Judicial Greffier of 2nd December, 1996.

Advocate N.M. Santos-Costa representing the Plaintiffs in actions 95/70, 95/197 to 201 inclusive and 95/263.

Advocate M. St. J. O'Connell representing the Plaintiffs in actions 95/87 and 95/89 and the First Defendant in action 95/250.

Advocate A.D. Robinson representing the Plaintiff in action 95/250.

Advocate A.D. Hoy representing Jefferson Seal Limited in all ten actions.

JUDGMENT

THE DEPUTY BAILIFF: There are two summonses before us this morning the second of which has been adjourned. The first is an appeal from a judgment of the Judicial Greffier of 2nd December of last year.

5 The action against Jefferson Seal Limited conveniently falls into two groups, those actions brought by individual investors and those brought by trustees. The Judicial Greffier, at p.4 of his judgment, said this:

10 *"All the parties were agreed that, although there would be certain common areas in each case, namely the nature of the duty of care and the implied contractual duty owed by a*
15 *stockbroker to an investor, each case had different elements such as the nature of the instructions given by the investor to the stockbroker, the degree of knowledge and experience of the investor with, particularly, a possible differentiation between the professional trustees and the individual investors and other individual variations".*

20 What Mr. Hoy has done this morning is to repeat the arguments that he made before the Judicial Greffier. Sadly for Mr. Hoy this Court now confirms strongly every aspect of the Greffier's decision. There is, however, one aspect which requires some comment. Mr. Hoy asked for and was refused an exchange of statements of witnesses of fact.

25 The learned Judicial Greffier said this in his judgment:

30 *"I was already aware that this was now a standard procedure in England. Whilst deciding that the Royal Court and, therefore, the Judicial Greffier, had an inherent jurisdiction in relation to procedural matters which was sufficiently wide to enable the ordering of the exchange of such witness statements, I came to the view that it would not be appropriate for me to exercise that inherent jurisdiction in this or any case without the approval and agreement of the Full Court. Witness statements which are produced for the purpose of litigation are, of course, privileged documents and to Order their exchange would be to set aside the normal rule in relation to privilege. Furthermore, the element of surprise in relation to the*
35 *evidence of parties to litigation is and remains a part of our judicial system. It has already been reduced in relation to the area of discovery of documents and I have on a number of*
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occasions, and did on this occasion again, order the exchange of expert reports, which required a setting aside of the normal rule in relation to privilege in the case of such reports. In my view, although the Royal Court has an inherent jurisdiction to order the exchange of witness statements, a proper provision should be made for this by Rule of Court if it is deemed to be appropriate rather than by judicial decision and, in particular, by judicial decision by the Greffier".

Mr. Hoy, if I may say so, swimming valiantly against a strong incoming tide, cited many cases to us where the Court had used its inherent jurisdiction which was described by the Court of Appeal in the case of Finance & Economics Committee -v- Bastion Offshore Trust (9th October, 1991) Jersey Unreported CofA; (1991) JLR N.1, as being a virile and viable doctrine.

We appreciate the maxims that "*la Cour est toute puissante*" and "*master of its own procedure*" but we respectfully agree with the learned Greffier when he implies that it would be inappropriate to introduce so fundamental a change into our system without full consultation with the Rules Committee and if deemed appropriate by the formulation of a new Rule of Court similar, perhaps, in substance to Order 38 of the Rules of the Supreme Court. We make no recommendation. We would merely say in passing that for Mr. Hoy to argue that the benefit of the new rule would be that everyone in this case could put their cards on the table when he will not disclose whether his clients are supported by insurers seems to us to be somewhat inconsistent.

In the circumstances we dismiss the appeal, we will not disturb the order for costs made by the Judicial Greffier and the defendant must pay the costs of and incidental to this day's hearing.

We go on to say that we would urge upon the parties to resolve outstanding procedural matters without delay because it is important, it seems to us, that the individual investors should have their day in Court as soon as can possibly be arranged in accordance with the schedule that has been set out.

One further matter, the note that was made on 11th November, 1996, can now - if the parties wish it - be made into an act of Court because the Court was at the time sitting in Chambers.

Authorities

Royal Court Rules (1992) (as amended): Rule 6/11.

RSC (1997 Ed'n): O.38/2A.

Finance & Economics Committee -v- Bastion Offshore Trust (9th October, 1991) Jersey Unreported CofA; (1991) JLR N.1.

Stanton -v- Mourant (9th October, 1992) Jersey Unreported.

Ashmore -v- Corp of Lloyds [1992] 2 All ER 486.

Khan -v- Armaguard Limited [1994] 3 All ER 545.