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ROYAL COURT
(Samedi Division)

42.

5th March, 1997

Before: The Judicial Greffier

Between:	Josephine Anne Labia, née Heuston	Plaintiff
And:	Jefferson Seal Limited	Defendant

Application by the Defendant for an order that this action be stayed for such period and upon such terms as the Court deems just.

Advocate M. St. J. O'Connell for the Plaintiff;
Advocate A.D. Hoy for the Defendant.

JUDGMENT

THE JUDICIAL GREFFIER: On the 19th February, 1997, I heard the application of the Defendant for an order that this action be stayed effectively until after judgment was given in seven actions which are due to be heard between 23rd June, 1997 and 25th July, 1997 (hereinafter referred to as "the seven actions").

This is one of the numerous actions brought against the Defendant relating to the apparent failure of the Confederation Life 9.875% 2003 Bond. The seven actions are all brought by individual investors or their companies. This action was commenced by an Order of Justice which was served on 7th January, 1997, and which first came before the Royal Court on 17th January, 1997. The Plaintiff accepted that there was now no question of the Court being asked to accelerate procedural matters in relation to this action forward in order that its trial could take place in June or July 1997 alongside the seven actions.

The main line of argument of the Defendant was that the decisions in the seven actions might well lead to a situation in which this present action could be settled between the parties and, if it did, then costs would be wasted in this action's being pursued through various procedural steps prior to the decisions being given in the seven cases. There was a second line of argument, but the Defendant did not rely very heavily on this, that the commencement of additional actions against the Defendant

relating to the failed Bond and the continuation of pleadings and other procedural steps in relation to those additional actions was imposing an additional burden upon the Defendant which it could not easily bear.

The Defendant's advocate drew my attention to the cases of Amos -v- Chadwick (1877) 4 Ch. D. 869 and Bennett -v- Lord Bury and Others (1880) 5 C.P.D. 339. In the first of these cases there were seventy-eight separate actions with similar facts and in the second of these cases there were thirty-eight similar actions with similar facts and it was held in each case that it was appropriate for all except one of the actions to be stayed pending the determination of one action as a test case. However, the Plaintiff's advocate raised the serious possibility of an appeal being lodged against the decisions in the seven actions. If this were to occur and some time were to elapse before the appeal was disposed of then the present action could be delayed for a number of years.

The Plaintiff's advocate submitted that none of the seven actions was a test case and would dispose of this action. I am well aware from other interlocutory summons which I have heard, that the Plaintiff is correct in relation to this. The parties in the various cases have tried very hard to see whether one action could be run as a test case but this is not possible because, although there are some common elements to each case, namely a contractual link with the Defendant, advice tendered in relation to the purchase of the relevant Bond, a history of decline of the investment rating of the Bond and the alleged eventual total loss of the Bond, there are other factors in each case which differ such as the precise contractual relationship between the parties, the degree of sophistication as investors of the individuals involved, the instructions given by each individual to the Defendant as to the type of investment which they wanted, the date on which the investment was made, and the advice which was given by the Defendant. The Plaintiff's advocate also submitted that if the Defendant got into difficulties in relation to time periods for pleadings and other interlocutory matters then this was a factor that could be taken into account in relation to applications for an extension of time in which to deal with different interlocutory matters.

I have no doubt that the Royal Court, including its Greffier, has an inherent jurisdiction to stay actions in appropriate circumstances. The cases of Amos -v- Chadwick and Bennett -v- Lord Bury & Others are authority for the proposition that where there are numerous similar cases and a test case which will effectively dispose of most of the issue of liability in all cases is available, it would normally be appropriate to stay all actions other than the test case. In general, where another set of proceedings which will soon come to trial will effectively dispose of a matter, courts will usually look sympathetically

upon an application to stay the said matter pending the trial of the other proceedings. However, in this particular case, no test case is available and the seven actions will not dispose of this action.

In exercise of my discretion in this matter, I am able to take into account the number of additional cases against the Defendant which have been commenced. Apart from the seven actions, there are three other actions involving investors who are Trustees which have been proceeding for some time, and only this action and one other action have been commenced this year. Accordingly, it does not seem to me that there is currently an enormous flood of new cases against the Defendant the pressure of which will prevent the Defendant from preparing for the trial of the seven actions. If there were to be a sudden influx of numerous additional cases then I might have to look again at this issue but, in any event, the Court is able, by allowing extensions of time, etc, to ensure that the Defendant is not overrun.

Taking all the facts into account, I was satisfied that the interests of justice lay in the present action continuing through the pleading and interlocutory stages towards trial. The Plaintiff in this case is an individual investor and the Royal Court has previously expressed the view that the actions relating to individual investors should be proceeded with as soon as possible so that, if they are successful, they will not be kept out of their money for an additional lengthy period. Accordingly, I dismissed the application for a stay and ordered that the Defendant be condemned to pay the costs of and incidental to the application for this.

Upon giving my decision on this matter, the Defendant's advocate sought to make an application for a stay of the order which I had made. I immediately indicated that as the order which I had made had simply refused a stay that a stay of that order pending appeal would be meaningless. However, I allowed the Defendant instead to make an application for an extension of time to file the Answer in this action until after the termination of an appeal against my refusal to grant a stay. I refused this upon the basis that the filing of an Answer by the Defendant was the next step in this action and if I had granted such an application then I would effectively have been granting a stay of the action pending an appeal against my decision to refuse a stay of the action and this would, in my view, have been a nonsense.

Authorities

Amos -v- Chadwick (1877) 4 Ch. D. 869.

Bennett -v- Lord Bury & Others (1880) 5 C.P.D. 339.