

ROYAL COURT
(Samedi Division) 105.

5th June, 1997

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

Between:	David William L. Dixon	Plaintiff
And:	Jefferson Seal, Ltd	Defendant
	(Action 95/89)	
Between:	Jane Margaret Richardson	Plaintiff
And:	Jefferson Seal, Ltd	Defendant
	(Action 95/87)	
Between:	Patricia d'Auvergne Lumley-Brown	Plaintiff
And:	Jefferson Seal, Ltd	Defendant
	(Action 95/197)	
Between:	Reeb Investments Limited	Plaintiff
And:	Jefferson Seal, Ltd	Defendant
	(Action 95/198)	
Between:	Eileen Catherine Moore	Plaintiff
And:	Jefferson Seal, Ltd	Defendant
	(Action 95/199)	
Between:	Patricia Margaret Louise Mayo	Plaintiff
And:	Jefferson Seal, Ltd	Defendant
	(Action 95/200)	
Between:	Pamela Dawn Simon	Plaintiff
And:	Jefferson Seal, Ltd	Defendant
	(Action 95/201)	

Application by the Defendant for an order that the reports of Rea Brothers (Investment Management) Limited (undated) and Jonathan Morley-Kirk, dated 6th May, 1997, being the Plaintiffs' expert witnesses in these proceedings, be struck out wholly or in part pursuant to the inherent jurisdiction of the Royal Court on the ground that the reports or parts thereof are prejudicial or embarrassing to a fair trial of this action.

Advocate M. St. J. O'Connell for D.W.L. Dixon and
J.M. Richardson.
Advocate N.M. Santos Costa for P.D. Lumley-Brown,

Reeb Investments Limited, E.C. Moore,
P.M.L. Mayo and P.D. Simon.
Advocate A.D. Hoy for Jefferson Seal, Ltd.

JUDGMENT

5 THE DEPUTY BAILIFF: This is an application to strike out wholly or in part certain sections of an undated report of Rea Brothers (Investment Management) Limited and a report dated 6th May, 1997, of Mr. Jonathan Morley-Kirk.

The application by Mr. Hoy was signed on 29th May, 1997, and we presume gave counsel for the other side one working day before this Court appearance.

10 The summons asked the Court to find pursuant to its inherent jurisdiction. Mr. Hoy has not filed an affidavit.

15 Mr. O'Connell and Mr. Costa, but Mr. O'Connell particularly, expressed some indignation at the lack of consultation before this action commenced.

20 In passing I would say that it is difficult to see how one can strike out the whole or part of an expert's opinion as it is not part of the pleading. We assume that Mr. Hoy wishes us to edit certain matters. Obliquely, Mr. Hoy asks us to rule on whether these are experts with regard to the matters referred to in their report. He based his argument on a finding of this Court in Stanton Ltd -v- Louis & Ors (5th October, 1992) Jersey Unreported. Mr. Hoy argued his main case on two main bases. 25 First, that there was included detailed information on parties not before the Court on 21st June and, secondly, that generally there are matters of opinion not admissible in law.

30 As to whether or not these are experts in the sense of R.S.C. (1997 Ed'n) O.38 r.4, we must leave for trial. We are not prepared to enter into that discussion at this stage. O.38 4/2 reads as follows:

35 *"Their function (inter alia) (expert witnesses) is to explain words, or terms of science or art appearing on the documents which have to be construed by the Court, to give expert assistance to the Court, (e.g. as to the laws of science, or the working of a technical process or system) or to inform the Court as to the state of public knowledge with regard to the matters before it: see British Celanese Ltd -v- Courtaulds Ltd (1935) 152 L.T. 537, H.L. "The opinion of scientific men upon proven facts may be given by men of science within their own science" (United States Shipping Board -v- Ship, St. Albans [1931] A.C. 632,*

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5 P.C.). In no case is it competent for them to express their opinion upon any of the issues, whether of law or fact, which the Court or a jury has to determine (per Neville J. in *Crosfield & Sons -v- Techno-Chemical Laboratories Ltd* (1913) 29 T.L.R. 378)".

10 The point is made in the case of Alliance & Leicester Building Society & Ors. -v- Edgestop Ltd & Ors. (28th June, 1993) Unreported Judgment of the High Court of England, which was heard before Mummery J. The two points that Mummery J made in that Judgment are of note as far as we are concerned. He says at p.1:

15 *"The parties were given leave to adduce expert evidence relating to two matters, the practice of surveyors and the practice of lenders".*

And then at p.2:

20 *"It is explicit in the terms of the order that what is adduced must be expert evidence. It is implicit in the order that any expert evidence adduced about the practice of surveyors and lenders must relate to the issues in the action. The court did not grant leave to adduce expert evidence on matters irrelevant to the issues".*

25 We can see that that is not precisely on all fours with the point which we have to decide today but it is helpful. We also have to say that we have limited time to formulate a decision because the time for the setting down this case is rapidly
30 approaching.

35 We would say this in answer to the arguments which have been put to us this morning: if there is a pattern and the twenty-nine cases show that pattern then, in our view, that information is relevant to the issue that we have to decide. What, however, we feel to be inappropriate is the background information relating to individual clients, not parties to the action. Let us take an example - and we will protect her name in the way that we would suggest it might be protected when the matter comes before the
40 Court at the hearing. Mrs. M.C.H. has her personal background detailed in the letter of instruction and the expert expresses her personal dealings under several headings: 'Type of Client' (then there are some details); 'Name of Client' (more details); 'Portfolio Review' (more details); and then a 'Conclusion' with
45 some more details. In our view none of that personal detail is relevant to what the Court has to decide. Mr. Beadle can be cross-examined on these questions at trial, if need be. However, in saying that there is nothing unacceptable in an over-view which shows a pattern where there were other clients involved in these
50 transactions and which gives general details of their involvement as opposed to their personal detailed financial background and their detailed dealings with the Defendant.

5 To make that point clear, the names can be represented by initials. The details of their personal background in our view is not relevant. If it is necessary (as we think it is) to show that there were other dealings to show a system then there is nothing which we would strike out on that basis.

10 We decline to make any other alteration to the reports. Mr. Hoy asked us to go into some detail picking out certain lines here and taking out certain words there but because of the limited time if anything offends in that regard then it must be dealt with at trial.

Authorities

Royal Court Rules 1992 as amended: Rule 6/18.

RSC (1997 Ed'n) O.38 r.4.

Stanton Ltd -v- Louis & Ors. (5th October, 1992) Jersey
Unreported.

Sutton -v- West Yorkshire Passenger Transport Executive & Ors.
[1985] 2 All ER 134.

Alliance & Leicester Building Society & Ors. -v- Edgestop Ltd &
Ors. (28th June, 1993) Unreported Judgment of the High Court
of England.