5 pages.

COURT OF APPEAL 115

18th June, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, Single Judge.

Between	Lesquende Limited	Plaintiff/Respondent.
And	The Planning and Environment Committee (formerly the Island Planning Committee) of the States of Jersey	Defendant/Appellant.

IN THE MATTER OF an appeal by the Defendant/Appellant against so much of the Order of the Royal Court of 17th February, 1997, as held that the decision of the Board of Arbitrators should have taken into account the zoning of the Plaintiff/Respondent's land for use for Category A housing.

Application by the Plaintiff/Respondent, under Rule 16 of the Court of Appeal (Civil)(Jersey) Rules, 1964, for an enlargement until 29th August, 1997, of the time appointed by Rule 8(3) of the said Rules for a Respondent to lodge with the Judicial Greffier four copies of the 'Respondent's Case'.

Advocate S.J. Habin for the Plaintiff/Respondent.
Advocate W.J. Bailhache for the Defendant/Appellant.

JUDGMENT

THE DEPUTY BAILIFF: This is an application by the Respondent for an enlargement of time under Rule 16(1) of the Court of Appeal (Civil) (Jersey) Rules, 1964, as amended. By Rule 16(1) *"The Court or a judge thereof shall have power to enlarge the time appointed by these Rules, or fixed by an order enlarging time, for doing any act or taking any proceeding, on such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed".*

The Appellant filed its notice of appeal on the 14th March, 1997, following the judgment of the Royal Court dated 17th February, 1997.

The Appellant's case was delivered to the Respondent and filed with the Judicial Greffier on 3rd June, 1997. There can be no criticism of the Appellant filing in this way. Rule 8(1) of the Court of Appeal (Civil) (Jersey) Rules, 1964 expressly provides that an appellant's case can be filed *"at any time before the expiration of four months".*

By Rule 8(3): *"A respondent shall, within one month after delivery to him of the appellant's case, lodge with the Judicial Greffier four copies of the contentions to be urged and the authorities to be cited by him at the hearing of the appeal".* This is the respondent's case which thereafter and within two days the respondent is to deliver to the appellant.

An appeal is ready for hearing when the appellant's case and the respondent's case have been lodged with the Judicial Greffier (or the time for lodging the latter has expired). If the Rules are to be complied with in this case, the date for the lodging of the Respondent's case would be 3rd July, 1997. After 3rd July, 1997, one of the parties (assuming that both cases have been filed) would apply to the Greffier for a date to be fixed for the hearing which would, in normal circumstances, not be heard until fourteen days after a day is fixed for the hearing of the appeal. That is normally the end of the matter and if matters were to proceed in the manner set out, it might well be possible to hear this appeal at the 22nd-26th September, 1997, Sitting.

In a circular letter dated 24th July, 1996, the Assistant Greffier stated that applications should ideally be made *"at least four weeks before the sitting of the Court at which it is desired to have the appeal heard".* That is tailor-made to allow the Court time to read the papers in all the appeals to be heard before them. The Court would of course be prepared, in my view, to consider an application lodged less than four weeks before the Sitting if there is room on the List for the appeal to be heard.

Mr. Habin in his argument submits that he will be unable to lodge his case by 3rd July and will be unable to do so before Friday, 29th August, 1997, which is, of course, not four but three weeks before the scheduled September sitting.

The Respondent in its summons sets out three reasons why it is unable to reach the deadline of 3rd July, 1997, as required by Rule 8(3).

1. The Respondent has instructed new specialist counsel in England. Time, it is argued, is required to enable him to be fully instructed.

2. Advocate Voisin has a committal hearing of some importance before the Police Court between 25th June and 9th July.

3. Advocate Voisin has already pre-booked four periods of holiday between 7th June and 7th September totalling forty-three working days.

Advocate Voisin has sworn an affidavit and this is, in the terms of the application and in my view, satisfactory in the light of the words of the Practice Direction of 3rd September, 1986, which repeated the words of a judgment of a Single Judge of the Court of Appeal delivered on 1st September, 1986:

> *"I think I would like to suggest to counsel that it would be better in future if applications for extensions of time are indeed supported by affidavits of the parties themselves. It*

makes the Court's task easier, and indeed counsel's task easier".

In considering whether to enlarge the time limit allowed by Rule 8(3) I have an absolute discretion but of course there must be criteria governing how I exercise it. The judgment of Hickman -v- Hickman (8th July, 1988) Jersey Unreported upholds the decision of Waring -v- Holderness and Crann (9th December, 1985) Jersey Unreported. From the Hickman judgment Advocate Voisin has helpfully extracted four main factors and these have been enlarged before me by Advocate Habin at this hearing today:

1. The length of the delay.

2. The reasons for the delay.

3. Whether there is an arguable case on the appeal.

4. The degree of prejudice to the Respondent.

On the question of the length of the delay Advocate Habin has pointed out that a request for a delay was notified to the Appellant on 3rd June. The delay requested is in fact twelve weeks from 3rd June. In Waring -v- Holderness and Crann the question of counsel's leave commitment was not considered a factor to be taken into account. Whether or not the fact that Advocate Voisin committed himself to these leave dates before the judgment appealed from was delivered has merit is in my view a moot point. The change of English counsel may of course be a factor affecting the issue. Whether there is an arguable case on appeal is really a question only for the Appellant.

I must of course look most closely at the degree of prejudice to the Appellant if I grant this delay. In A.C. Gallie Ltd -v- Davies and Walker (14th April, 1986) Jersey Unreported CofA; (1985-86) JLR N.2, the Court cited with approval these words from a High Court case, reported in O.3/5/1 of the R.S.C. (1985 Ed'n) at p.15:

> *"The object of the rule is to give the court a discretion to extend time with a view to the avoidance of injustice to the parties (Schafer -v- Blyth [1920] 3 KB 143, p.143) .... "When an irreparable mischief would be done by acceding to a tardy application, ... the person who has failed to act within the proper time ought to be the sufferer, but in other cases the objection of lateness ought not to be listened to and any injury caused by delay may be compensated for by the payment of costs" (per Bramwell LJ in Atwood -v- Chichester (1878) 3 QBD 722, p.723, CA)."*

Advocate Habin seems to suggest that there is no prejudice whatsoever to the Appellant by reason of a delay in hearing the appeal. Not so says Advocate Bailhache. Both parties concede before me that the point at issue in the appeal proper is extremely important and will have a great bearing not only on the compensation that will have to be paid, but also on the way that the reconvened Board will face its task if the appeal succeeds. Advocate Vibert was then Chairman of the Board and has apparently written to the Crown asking that, because of a medical problem, he might be relieved from any further hearings. The two other

members of the Board have not made any application as yet, but I must note that the hearing took place in 1994 and memories inevitably fade with the passing of time. Furthermore, there is the question of matters already running up to Privy Council; it might well be that the interests of justice are best served by this appeal being heard early so that if a further appeal were contemplated, dependent of course on the result of the appeal, then the Privy Council would deal with two matters at one time.

Advocate Voisin's affidavit I have to say gives no indication that I can see as to why new counsel has had to be appointed at all. Advocate Habin gave us an understandable reason but that is not the point; it is not technically before us.

In my view the quicker this appeal is heard the better. In the circumstances I am minded to allow the Respondent - for the reasons that he has set out - an extension of time to file his case no later than 4.00 p.m. on 29th August, 1997. But I will go on to say this: I have asked the Greffier to anticipate that Advocate Bailhache may well on that day apply to have the case listed for hearing. The Greffier will then pencil in two days for the hearing in September. The Act of Court will deal only with the extension of time but my feelings on the importance of hearing this appeal without further delay will no doubt be noted by the parties.

The costs of the Defendant/Appellant of and incidental to today's hearing will be paid by the Plaintiff/Respondent on a taxed costs basis.

Authorities

Court of Appeal (Civil) (Jersey) Rules 1964.

Court of Appeal (Civil) (Amendment) (Jersey) Rules 1990.

Practice Instruction (3rd September, 1986).

RSC (1997 Ed'n) O.3/51.

Hickman -v- Hickman (8th July, 1988) Jersey Unreported.

Waring -v- Holderness and Crann (9th December, 1985) Jersey Unreported.

AC Gallie Ltd -v- Davies and Walker (14th April, 1986) Jersey Unreported CofA; (1985-86) JLR N.2.