

In the Royal Court of Jersey

(Samedi Division)

17th November, 1988

Before: The Deputy Bailiff and

Jurats Bonn and Orchard

BETWEEN

**D. J. Woolley**

PLAINTIFF

AND

**Offshore Management Limited**

and

**Salvors International Limited**

DEFENDANTS

**JUDGMENT**

DEPUTY BAILIFF: On the 5th July, 1974, the plaintiff brought an action against Offshore Management Limited and Salvors International Limited, by means of an Order of Justice.

The action claimed that the defendant companies had contracted with the plaintiff, trading as Seawise Salvage Company and Titanic Salvage Company to carry out the salvaging of the ship 'Queen Elizabeth I' and to undertake an initial survey with a view to forming plans for salvaging the ship 'Titanic'. The action alleged breach of contract on the part of the defendant companies and violence on the part of two representatives of the defendant companies. The action sought special and general damages and costs.

Upon hearing the plaintiff and upon hearing the defendant companies through the intermediary of their advocate, the Court ordered that the action be placed on the pending list, but directed that the action be stayed

until the plaintiff had furnished security for costs in the sum of five hundred pounds.

The plaintiff failed to pay the sum of £500 by way of security for costs.

No date was fixed by the Court by which the £500 should be paid; it was open to the defendant companies to apply by summons for a date by which the sum should be paid to be fixed on pain of having the action dismissed.

Neither of the defendant companies did so.

Accordingly, the action remains on the pending list, but the stay likewise remains and the security for costs has not been paid.

On the 17th January, 1976, the plaintiff wrote to the Court (the Judicial Greffier) to say that the £500 would be deposited with the Court when injunctions had been served by his Hong Kong solicitors to stop the cutting up of the Queen Elizabeth. However, no payment has ever been made.

There followed, through the years, a certain amount of correspondence and other papers, addressed, inter alia, to the Judicial Greffier, which took the matter no further because the security for costs remained unpaid and, consequently, the action remained stayed.

The plaintiff now applies to the Court for a revocation of its order of the 5th July, 1974, requiring the payment of security for costs and staying the action until payment is effected.

Thus the plaintiff asks that the action becomes active on the pending list, so that Rule 6/7(3) of the Royal Court Rules, 1982, should come into operation and the defendant companies should, if they wish to defend the action, be required to file an answer to the original action within twenty-one days.

It would be the intention of the plaintiff, when the time limit for filing an answer had expired and no answer had been filed, to ask the Court to pronounce judgment against the defendant companies. (Rule 6/7(5)).

However, the present application has been made ex parte and no notice of the application has been given to the defendant companies. In the ordinary way, we would have adjourned the application and ordered that the defendant companies be convened.

But, upon enquiry, we have learned that both defendant companies have been dissolved by due process of law, and, therefore, no longer exist. Accordingly, it is no longer possible to convene the defendant companies and no judgment can be given against them.

It may well be that the plaintiff considers that he has a right of action against individuals who were behind the defendant companies. But the plaintiff, in 1974, was in a position to choose his defendants. He brought an action against the two defendant companies. He did not join any individual as an additional defendant. We are quite unable to substitute any individual as defendant in the place and stead of the defendant companies.

In any event, any action against an individual in the place and stead of the defendant companies is prescribed as time-barred. An action in tort (the alleged violence) is prescribed by a lapse of three years from the commission of the original tort. An action founded on contract is prescribed by the lapse of ten years from the date of the original contract. In this case the contract is alleged to have been entered into in April, 1972, that is to say upwards of 16 years ago.

The sum of £500, ordered to be paid in 1974, has, through the intervening years, with the changes in the value of money which have occurred, become almost nominal and yet the plaintiff has failed to effect payment.

The plaintiff has been guilty of inordinate delay.

The Court is of the opinion that this action, now against non-existent companies, should probably be dismissed. But the Court is bound by the Royal Court Rules.

Rules 6/20(1) provides that where, at the expiration of five years from the date on which an action was placed on the pending list, no application has been made to have the action set down for trial or hearing, the Court may, of its own motion, after giving not less than 21 days' notice in writing to all the parties to the action, order that the action be dismissed.

The Court is minded, of its own motion, to dismiss this action. Accordingly, the Court directs the Judicial Greffier to write to the plaintiff today, at his address in London, giving him notice that the Court will sit again on Thursday, the 15th December, 1988, at four o'clock p.m., to consider a dismissal of the action. The plaintiff will have the opportunity to show cause why this should not be done. As the plaintiff is present in Court today, he already has notice of the further hearing and the Greffier's letter will be merely in confirmation and to comply with the letter of the Royal Court Rules. Accordingly, no excuse for non-appearance on the day fixed will be acceptable.

The present application is dismissed.