

24<sup>th</sup> November, 1988.

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IN THE ROYAL COURT OF JERSEY

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Before Commissioner Ralph Vibert O.B.E

Jurat the Hon. J.A.G. Coutanche, Lieut Bailiff  
Jurat G.H. Hamon

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BETWEEN	Selab Securities Limited	First Plaintiff
AND	5 Retraite de la Mielle Limited	Second Plaintiff
AND	Orthez Holdings Limited	First Defendant
AND	Antler Properties Limited	Second Defendant

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Advocate T.J. Le Cocq for the Plaintiffs  
Advocate R.J. Michel for the Defendants

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This case concerns a flat which forms part of the current development at La Mielle, on the sea front at Beaumont.

The connection between the two Defendant Companies is that the whole site was acquired by the second Defendant, Antler Properties Ltd. ("Antler") through its subsidiary La Mielle Holdings (St. Aubin) Ltd. ("La Mielle"). La Mielle then appointed the first Defendant, Orthez Holdings Limited ("Orthez"), another Antler subsidiary, as the developer of the site, and a complex agreement was entered into between these two companies. Antler, La Mielle and Orthez are thus different arms of the owning and developing group. The flat in question was conveyed by La Mielle, on a lease of 999 years, to a subsidiary of Orthez, 5 Retraite de la Mielle Limited ("5 Retraite"), the second Plaintiff.

The link between the Defendant and Plaintiff Companies came about by the sale by Orthez of its share in 5 Retraite, and thus its rights in connection with the flat, to Newdevko Limited ("Newdevko") for £720,000, later adjusted to £710,000. Newdevko Ltd., a Company belonging to Mr. Roger M. Bale, caused the shares in 5 Retraite to be transferred to another Company in the same ownership, Selab Securities Limited, ("Selab"), the first Plaintiff.

A dispute has arisen between the developers of the site, that is the vendors of the flat, and the purchasers who claim that the flat has not been built in accordance with the specifications agreed. Proceedings were instituted by the Plaintiffs by way of Order of Justice but the Defendants have issued a summons, asking that the proceedings be stayed until the matters in dispute are resolved by arbitration. It is this summons with which we are now concerned.

The Defendants base their contention on an arbitration clause contained in one of the agreements relating to the transaction. The Plaintiffs maintain that as some of the parties to these proceedings were not party to that agreement, those parties cannot be required to go to arbitration and that, as it

would be undesirable to have two hearings on the same matter, with possibly different conclusions, there should be no stay of the Court proceedings in respect of any of the parties.

It is therefore necessary to consider the written agreements in which the intentions of the parties are recorded. They are described as the Building and Lease Agreement, the Share Vending Agreement and the Guarantee.

The Building and Lease Agreement was entered into on the 20th June, 1986 between La Mielle, Orthez, S Retraite and Antler. Amongst many provisions, Orthez undertook to build the flat in accordance with specifications, and La Mielle agreed to grant (and did by deed later grant) a lease of the flat to S Retraite. This was in effect an "in house" agreement, preparatory to sale, equipping S Retraite with what were deemed to be its necessary rights for the proper building of the flat and its enjoyment for 999 years.

The Share Vending Agreement was entered into on the 26th June, 1986, between Orthez and Newdevko, whose rights were later transferred to Selab. Orthez undertook to convey the shares in S Retraite to Newdevko, with the benefit of the Building and Lease Agreement above summarised.

The arbitration clause is contained in clause 6.4 of the Share Vending Agreement, as follows:-

"Whereas upon the execution of this Agreement the Purchaser shall have an interest in the performance of the obligations and undertakings of the Developer to the Company under Clause 1 of the Building and Lease Agreement if any dispute shall arise between the Developer and the Purchaser either arising out of this Agreement in connection with the Completion of the Flat or concerning the performance of the Developer's said obligations and undertakings of Clause 1 of the Building and Lease Agreement then either party hereto may give written notice to the other of such dispute and (if the same cannot be agreed within twenty-one days of such notice) the same may be referred by either party to the arbitration and final decision of a person agreed between the parties hereto or failing such agreement within seven days after either party shall have given to the other written request to concur in the appointment of an arbitrator to an arbitrator nominated by the President for the time being of the Chartered Institute of Arbitrators and the award of such shall be final and binding upon the parties."

The Guarantee was entered into by Antler in favour of Newdevko on the 27th June, 1986. It guaranteed the obligations of Orthez under the Share Vending Agreement.

The general principles affecting the Court's response to a request of this kind, that proceedings be stayed pending arbitration, have been clearly established. They flow from the general rule that 'la convention fait la loi des parties'. If the parties have agreed, in their contractual arrangements, that any dispute will be, or may be, referred to arbitration, and one of the parties so wills, there is a presumption that the Court will stay the Court proceedings. But the Court has a discretion. There may be good reasons why matters should not be referred to arbitration, matters relating for example to the conduct of the parties, or to the nature of the matter to be tried.

There was agreement between Counsel on these principles, and we are grateful to them for the authorities cited clarifying this position, particularly helpful cases being two heard in this Court - Cleveland Bridge -v- Sogex (International) (1982) J.J. 101, and G.K.S. (Jersey) Ltd. -v- R.R.B. (1982) J.J. 359.

Plaintiffs

The contention of the ~~Defendants~~ is that the Share Vending Agreement, in which the clause as to arbitration is contained, was entered into by Orthez, the first Defendant, and by Selab, the first Plaintiff, but not by 5 Retraite, the second Plaintiff, nor by Antler, the second Defendant. And therefore that there is no base for the exercise of the Court's discretion, at least in respect of those parties. The Court not only should not, but cannot, stay the Court proceedings, because two of the parties have not agreed to arbitration.

It is true that it is only an agreement of the parties to refer to arbitration that raises the question whether the dispute should be so referred. But we consider that the three agreements we have mentioned are so interlocking that they must be regarded as together representing the will of both Defendants and both Plaintiffs.

Selab and Orthez explicitly subscribe in the Share Vending Agreement, to the arbitration clause, relating as it does to the building agreement. 5 Retraite, it is true, is not a party, but that Company is the very subject of the agreement of the Share Vending Agreement. It might have been tidier conveyancing if the arbitration clause had been repeated in the building agreement itself. But the intention of the parties - that is of the vendors and developers on the one hand and of the purchasers on the other - is quite clear, namely that a building dispute could be referred to arbitration by either party.

As to Antler, the Plaintiffs correctly joined the guarantor Company as defendant. They might otherwise have lost their guarantee. But the fact that they did so, and that the guarantee was contained in a separate document, and not in that which contained the arbitration clause, cannot mean that the principal Defendant, Orthez, is thereby disentitled to claim that the parties to the dispute have agreed on arbitration.

We therefore hold that the principal parties have agreed that either of them may refer a dispute to arbitration, and therefore that we are called on to exercise our discretion.

There is nothing, in our view, in the conduct of the Defendants which requires us to rebut the presumption that the agreement of the parties, to submit to arbitration, should prevail. And the nature of the dispute - whether the flat is as big as planned, and whether certain specifications have been followed and, if not, what are the consequences - is very suitable in our view for expert arbitration.

We therefore order that the action be stayed pending the determination of the dispute by arbitration, and that the arbitrator or any party have leave to make application to the Court for any directions, order or relief as may be thought required.

IN THE ROYAL COURT OF THE ISLAND OF JERSEY  
(Samedi Division)

BETWEEN

AND	SELAB SECURITIES LIMITED	<u>First Plaintiff</u>
AND	5 RETRAITE DE LA MIELLE LIMITED	<u>Second Plaintiff</u>
AND	ORTHEZ HOLDINGS LIMITED	<u>First Defendant</u>
AND	ANTLER PROPERTIES LIMITED	<u>Second Defendant</u>

PLAINTIFFS' AUTHORITIES

*\* referred to in the Judgment.*

- \* (1) G.K.N. (Jersey) Limited v. RRB (1982) JJ 359.
  
- \* (2) Cleveland Bridge and Engineering Company Limited v. Sogex (International) Limited 1982 JJ 101.
  
- (3) "Commercial Arbitration", Mustill and Boyd, Pages 47 - 53 (inclusive), Pages 105 to 108 (inclusive) and Pages 409 - 434 (inclusive).
  
- (4) Halsbury 4th Edition, Volume 2, Paragraphs 555 - 567 (inclusive).
  
- (5) Rules of the Supreme Court (1988 Practice) Volume 2, Pages 1496 to 1506 (inclusive).
  
- (6) Taunton Collins v. Cromie 1964, 2 ALL ER 332.
  
- (7) Halifax Overseas Freighters Limited v. Rasno Export (The "Pine Hill") (1958) 2 LLOYDS REP. 146.
  
- (8) Turnock v. Sartoris (1889) 43 CHD 150.
  
- (9) Bonnin v. Neame (1910) 1 CHD 732.
  
- (10) Radio Publicity (Universal) Limited v. Compagnie Luxembourgeoise 1936-2 ALL ER 721.

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

(Samedi Division)

BETWEEN

SELAB SECURITIES LIMITED

FIRST PLAINTIFF

AND

5 RETRAITE DE LA MIELLE LIMITED

SECOND PLAINTIFF

AND

ORTHEZ HOLDINGS LIMITED\*

FIRST DEFENDANT

AND

ANTLER PROPERTIES LIMITED  
(previously ANTLER PROPERTY CORPORATION LIMITED)

SECOND DEFENDANT

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DEFENDANT'S AUTHORITIES

*\* referred to in the Judgment.*

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1. Royal Court Rules, 1982, Rule 7/5.
2. The Supreme Court Practice, 1988, Vol. 2. pp. 1496 - 1506.
3. Russell on the Law of Arbitration, 20th Edit. 1982. Chap.11.
4. The Law and Practice of Commercial Arbitration in England. pp. 411 - 433.
5. Handbook of Arbitration Practice. pp. 14 - 17.
6. SCOTT -v- AVERY (1843 - 1860) All E.R. Rep. 1.
- \* 7. CLEVELAND BRIDGE -v- SOGEX (INTERNATIONAL) (1982). J.J. 101.
- \* 8. GKN (JERSEY) LTD -v- R.R.B. (1982) J.J. 359.

CRILLS  
(RJM/10492/6)

(11) Ford v. Clarksons (1971) 1 WLR 1412;

(12) Jersey Steel Company Limited v. Holdyne Limited (1972) JJ 2009.