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ROYAL COURT
(Samedi Division)

30th May, 1989

Before: The Bailiff, sitting alone, by virtue of the provisions of Rule 3/6 of the Royal Court Rules, 1982, as amended.

Between:	Kenneth Ancrum Forster, trading as Airport Business Centre	Plaintiff
And:	The Harbours and Airport Committee of the States of Jersey	First Defendant
And:	M.R. Lanyon	Second Defendant

Application by the Defendants for an Order that the action be struck out, as an abuse of the process of the Court.

Advocate P.C. Sinel for the Plaintiff
Advocate C.E. Whelan for the Defendants.

JUDGMENT

THE BAILIFF: I have before me an application by the defendants made by way of a summons to strike out an action brought in this Court by means of an Order of Justice by Mr. Kenneth Ancrum Forster, trading as Airport Business Centre against the Harbours and Airport Committee as the first defendant and the Airport Commandant, Mr. M.R. Lanyon, as the second defendant.

The application is brought in pursuance of the powers conferred on the Court to strike out any action, for a number of reasons, one of which is that the action is an abuse of the process of the Court.

Quite properly, Mr. Whelan for the first and second defendants did not seek to suggest that the word "abuse" meant other than misuse and did not have connotations of wrong conduct.

The background to this case is that Mr. Forster was the tenant of the Harbours and Airport Committee at the Airport. On the 23rd June, 1988, the Committee served upon Mr. Forster a notice to quit the accommodation he occupied there.

The matter came before the Petty Debts Court in the ordinary way. Mr. Forster sought to avail himself of the procedure under which he could claim that the notice was bad or had been served upon him without legal reason in accordance with Article 2 of the Loi (1946) Concernant L'Expulsion des Locataires Réfractaires.

The learned Magistrate gave his judgment on that point and came to the conclusion that for reasons which I need not go into, the plaintiff in this action was shut out from pursuing that point before the learned Magistrate. That decision of the learned Judge is under appeal and a date has been fixed for the hearing of that appeal on the 18th October of this year. Although I said that the notice to quit was served on Mr. Forster in June, 1988, he himself issued the Order of Justice I have mentioned on the 30th August, 1988, and he asked in effect for a declaratory judgment; he asked that:

"The Court declare that;

(a) the Plaintiff has a valid and subsisting lease in respect of the premises known as B.209 and B.210 Jersey Airport, expiring on the 12th day of May, 1990 with option exercisable at the sole discretion of the Plaintiff for a further three years.
(b) That during the continuance of his lease as set out above the Plaintiff may continue to trade in the manner set out in paragraph 8 hereof".

In that paragraph he claims an express agreement that during the currency of the plaintiff's lease he should be allowed to place prebooked hire car arrangements and to afford hire car companies the facilities to sign up prebooked customers in the Airport Business Centre.

In addition to the declaratory side of the judgment the plaintiff claims general damages, costs and interest.

It is common ground that no Court can exercise greater powers than those conferred upon it, particularly if that Court is the creation of a statute, unlike the Royal Court, which has a number of facets of its inherent jurisdiction because it is a Court that is founded on the common law and has been in existence for a very long time. But the same is not true of the Petty Debts Court, or to give it its proper title 'la Cour pour le recouvrement de menues dettes'. That Court was set up by an Act of the States of 1852 which was repealed and replaced by the law of 1891 'sur la Cour pour le recouvrement de menues dettes'. It is apparent to me from reading the powers conferred upon the Court by Article 1 that it is limited to dealing with a number of matters set out in that Article. I quote it in full:

"Tant les causes pour le recouvrement de dettes, où la somme en litige n'excédera pas mille livres sterling, excepté celles pour le recouvrement d'arrérages de rentes, de dîmes et de douaires, que les actions en réparation pour dommage matériel, causé soit par imprudence, négligence ou impéritie où le dédommagement réclamé n'excédera pas mille livres sterling, seront traitées devant le Magistrat nommé en vertu de la Loi passée par les Etats le 4e jour d'août 1864 et confirmée par Ordre de Sa Trés Excellente Majesté en Conseil, en date du 1er novembre 1864".

There are the limited powers conferred upon the Magistrate and therefore he can award damages for a fixed sum, if such is claimed, but he cannot award damages at large or general damages. He can award costs and he can award interest. Those are the limits of his powers except for some further powers given to him in the case of refractory tenants. The law which gave power to the Magistrate for the first time was the law of 1887 which was the "Loi autorisant l'Expulsion de Locataires Réfractairs" of that date and Article 1 of that law says:

> "Toute cause en expulsion de locataire sera traitée devant le Juge de la Cour pour le recouvrement de menues dettes, si le loyer annuel est de dix livres sterling ou au-dessous. Au-dessus de cette somme, la cause sera traitée pardevant la Cour Royale, à la Cour du Samedi, tant en vacance qu'en terme".

That law was itself replaced by the law of 1946 to which I have already referred, but I have to now quote Article 1 of that law which is:

> "Toute cause en expulsion de locataire sera de la compétence de la Cour pour le recouvrement de menues dettes (ci-aprés désignée "la Cour"), à moins que le locataire n'occupe le biensfonds en question en vertu d'un contrat passé devant Justice".

Therefore there was a change it seems to me of emphasis and to some extent of wording between the law of 1887 and the present law.

I have heard a great deal of most interesting argument about whether the present law confers upon the Petty Debts Court the exclusive jurisdiction to deal with matters affecting the expulsion of refractory tenants, or whether side by side with the powers undoubtedly conferred upon it under the law of 1946, there exists the ordinary residual powers of the Royal Court which can be exercised a choice presumably of either party, and that is a most interesting argument but one I do not feel it necessary for me to decide. I say this because it has been accepted in the Jersey cases, perhaps without the very full and interesting argument which Mr. Sinel has advanced before me that the Petty Debts Court is the proper place for dealing with matters affecting the leases of property and delays which can be accorded to people

in case an eviction order is given and so on and that of course would include matters of law, such as the interpretation of what the tenancy was and what rights, if any, the tenants had under the lease.

It is quite clear from the local cases which were cited to me - Paisnel -v- Taylor (1968) 257 Ex. 154: 170; Vine -v- Lamb (1969) 257 Ex. 437: 490; Le Roux -v- Le Gallais (1956) 250 Ex. 50: 136; that the Royal Court has taken the view that it does not concern itself with matters of expulsion (provided it is not a contract lease of course); those matters are solely within the control of the Magistrate, but it does not end there, unfortunately. My interpretation of the authorities which have been shown to me leads me to say that whilst there is a general principle to avoid duplication of proceedings that only applies where the same relief can be obtained in either of the tribunals concerned. As I have just said, there are limits to what the Magistrate is entitled to do and to award. He cannot for example, as Mr. Sinel quite rightly said, give a declaratory judgment, or award damages, or grant an injunction.

In the instant case, the plaintiff is applying to this Court for a declaration regarding his lease, assuming that if the lease were to continue until the date he says it does, he can exercise certain powers under it.

It seems to me that those are matters which could be duplicated between this Court and the Magistrate's Court and in those circumstances it would not be right for me to allow the matter to continue in this Court. The authorities are quite clear (I don't think I need to cite them) that where there are these duplication possibilities, the Court should not encourage them.

Therefore, I am going to allow the application of the defendants and say that the question of the lease and the terms of that lease (and that is in fact what the Prayer is about, the first part of the Prayer at any rate, in the Order of Justice) should be disposed of by the Judge of the Petty Debts Court, always assuming of course that Mr. Forster is successful in his appeal here and the matter is dealt with.

Therefore, Mr. Whelan, I am going to give you your striking out order, not because the plaintiff has done anything wrong, but because there would be a duplication and because the practice has been - and I am not prepared to disturb it - that the Magistrate deals with matters of this nature.

But there is much in what Mr. Sinel says that in order for justice to be done he should not be shut out from the possibility of obtaining damages in accordance with the principles set out in the interesting case cited and relied on by both parties: the Royal Bank of Scotland -v- Citrusdal Investments Ltd (1971) 3 All ER 558. I looked at that case during the luncheon adjournment, and have come to the conclusion that having gone so far with you, Mr. Whelan, I cannot go all the way. I think therefore I am going to order a stay of the rest of your summons, that is to say to strike out the claim for damages until the issue of the lease and the extent of that lease and the terms of that lease have been decided, if they fall to be decided, by the Petty Debts Court. Costs in the cause.

Authorities

Loi (1891) sur la Cour pour le Recouvrement de Menues Dettes.

Loi (1946) Concernant l'Expulsion des Locataires Réfractaires.

Loi (1887) autorisant l'Expulsion de Locataires Réfractaires.

Paisnel -v- Taylor (1968) 257 Ex. 154; 170.

Vine -v- Lamb (1969) 257 Ex. 437; 490.

Le Roux -v- Le Gallais (1956) 250 Ex. 50; 136.

Supreme Court Practice, 1988 Edn: para 15/16/4 & 5.

Barraclough -v- Brown (1897) AC 615.

Punton -v- Min. of Pensions & National Insurance (1964) 1 All ER 448.

Bull --v- A.G. for New South Wales (1916) 2 AC 564.

Thames Launches Ltd -v- Corporation of Trinity House (1961) 1 All ER 26.

Halsbury's Laws 4th edn. Vol. 37 paras. 446 & 434.

Williams -v- Hunt (1905) 1 KB 512.

Wright -v- Bennett (1948) 1 All ER 227.

The Royal Bank of Scotland -v- Citrusdal Investments Ltd (1971) 3 All ER 558.

Stephenson -v- Garnett (1898) 1 QB 677.

Janov -v- Morris (1981) 3 All ER 780.

Royal Court Rules, 1982, as amended, Rule 6/13.

Rules of Supreme Court, Order 18/19/17.

Francis -v- Yiewsley and West Drayton UDC (1957) 2 QB p.136.

Pyx Granite Co Ltd -v- Ministry of Housing and Local Government (1960) AC p.260.

Barwick -v- South Eastern and Chatham Ry. Cos (1921) 1 KB p.187.