16 pages.

ROYAL COURT

61.

(Samedi Division)

20th April, 1990.

Before: F.C. Hamon, Esq., Commissioner, and
Jurats Bonn and Orchard

Between:	Le Nosh Limited	Plaintiff
And:	F. Stirling (formerly Shaw)	First Defendant
And:	P. Titterington	Second Defendant
And:	Amulet Limited	Third Defendant

Advocate A.P. Begg, appearing on behalf of
Advocate P.C. Sinel, for the Plaintiff,
Advocate P.C. Harris for the First and
Second Defendants,
Advocate A.P. Roscouet for the
Third Defendant.

JUDGMENT

COMMISSIONER HAMON: On the 12th February, 1987, the Plaintiff in this action entered into a lease with the Third Defendant in this action for the ground floor shop premises at No. 27, The Parade, St. Helier. The lease was a "paper" lease for nine consecutive years to terminate on the 12th February, 1996.

Adjacent to these premises and forming part of the same "corps de biens fonds" is a parking area. On the 13th July, 1989 (some two years after the lease of the shop premises had commenced), the parties

entered into what was termed a lease of car parking spaces. The lease (if lease it was) was created by letter which we set out here in full:-

"14th July, 1989

Dear Mr Stirling,

Re: Lease of car parking spaces

I refer to our conversations on the above matter and enclose herewith my Company's rental cheque in the sum of £480 in respect of the months of May, June and July, 1989.

I confirm the agreed terms as follows:

1. The parking spaces let by Amulet Ltd to Le Nosh Ltd are numbers one, two and three at 27 The Parade St Helier, and the period of the tenancy is the month of July 1989.

2. The total rent is £160 (one hundred and sixty pounds) per four week period.

3. The Agreement includes an option for this Company to renew the tenancy for a further month on the same terms.

Please would you confirm your agreement to the above by signing the attached copy of this letter.

Yours faithfully

Simon Knapp
LE NOSH LIMITED.

Agreed. Signed A.F. Stirling
AMULET LIMITED

Witness: Janette Newsome, Flat 2, 24 Victoria Str., St. Helier".

A dispute arose over the rental for the parking spaces but it resolved itself and the rental was renewed on the 28th July for a further four week period from the 31st July; on the 22nd August for a further four week period from the 28th August, and on the 19th September for a further four week period from the 25th September.

On the 27th September the Defendant returned the Plaintiff's cheque of £160. The letter stated:

> "We are enclosing herewith your cheque for £160 which in your letter dated the 19th September is for parking at The Parade.
>
> As you were aware, an arrangement was entered into which covered your parking for three months with a further month (four weeks period) if required. This you had, and no further arrangement was made.
>
> We confirmed to you yesterday that you have no rights to continue parking at 'The Parade'. The car park at 27 The Parade is a private area and we state again that you nor your Company have any rights to park at the rear of 27 The Parade, St. Helier".

On the 29th September (in a letter dealing with matters of disputed payment on the main lease) the following appeared in capital letters:

> "ALSO NOTE THAT FROM MONDAY 2ND OCTOBER, 1989, A POST WILL HAVE BEEN FITTED TO PREVENT YOU FROM PARKING IN THE CAR PARK AT 27 THE PARADE WHERE YOU HAVE NO RIGHT TO PARK.
>
> THIS CAR PARK IS PRIVATE PROPERTY AND SHOULD ANY OF YOUR VEHICLES BE FOUND ON THIS PROPERTY AFTER MIDNIGHT ON SUNDAY 1ST OCTOBER THEY WILL ONLY BE RELEASED BY MYSELF AT MY CONVENIENCE".

The letter is signed by the Second Defendant as Managing Agent of the Third Defendant.

It was in his letter of reply of the 2nd October that Mr. Sinel referred to the perpetually renewable lease. We had never heard of such conception although Mr. Begg went to some lengths to explain to us that its concept is not unbeknown to English Law.

The argument works on this basis. We find it ingenuous. Because the Agreement of lease of the 14th July, 1989, contains an option for the company to renew the tenancy for a further month on the same terms then, when the tenancy is renewed at the option of the company on the same terms these include the option to renew for a further month. We therefore find a self-perpetuating lease which may come to an impasse at the end of nine years (Brown -v- Alexander (1891) 214 Ex 349) but rolls on, in the words of Winston Churchill,

"full flood, inexorable, irresistible, benignant, to better lands and better days" until then.

The Defendant clearly did not find the argument either ingenuous or attractive. It put up a metal post - or 'metal impediment' as Mr. Sinel called it. This was removed, reinstated and removed again. Mr. Sinel accused the Defendant of "Rachmanism". The Defendant commenced an action in the Petty Debts Court on the 30th October by writing a letter to the Viscount asking that the Plaintiff be evicted under the provisions of the "Loi (1946) concernant l'expulsion des locataires refractaires". The Plaintiff replied with an Order of Justice which came before the Court on the 1st December. It is that Order of Justice which concerns us today. The Petty Debts Court action is stayed pending a decision by this Court. There is some dispute as to whether the procedures under the 1946 Law have been complied with.

We had an immense amount of authority given to us by counsel, much of it helpful. The issues are so clear, however, that we are not going to expand on the authorities at great length except where we find them particularly germane to illustrate the point that we wish to make. We want to make it clear that we have considered all the authorities given to us and the extracts read to us by counsel.

The Order of Justice is unusual in its form.

The Third Defendant is the company; there are two other Defendants, Mr. F. Stirling (formerly Shaw) is the First Defendant and Mr. P. Titterington is the Second Defendant.

We have no alternative but to set the Order of Justice out in extenso. It reads as follows:-

"IN THE ROYAL COURT OF THE ISLAND OF JERSEY
(SAMEDI DIVISION)

BETWEEN Le Nosh Limited PLAINTIFF

AND F Stirling (formerly Shaw) FIRST DEFENDANT

AND	P Titterington	SECOND DEFENDANT
AND	Amulet Limited	THIRD DEFENDANT

ORDER OF JUSTICE

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1. The Plaintiff is a Limited Liability Company incorporated under the laws of the Island of Jersey. The Plaintiff has possession of a certain ground floor shop situate at 27 The Parade, St. Helier, Jersey this by virtue of a valid and subsisting nine year paper lease commencing on 12th February 1987 by and between the Plaintiff and the Third Defendant.

2. The Third Defendant is a Company incorporated in the Island of Jersey, Registered Office Portman House, Hue Street, St. Helier, Jersey, Channel Islands. The First Defendant is a director and the beneficial owner of the Third Defendant. The Second Defendant is the managing agent of the Third Defendant.

3. The Plaintiff runs a wholesale and retail sandwich and catering business from its premises at 27 The Parade aforementioned. In or about the month of March, 1989, the Second Defendant acting at the instigation of and/or upon the instructions and with the knowledge and acquiescence of the First and Third Defendants made an unfounded, malicious, anonymous complaint to the Public Health Committee of the Island of Jersey claiming that the Plaintiff conducted its aforementioned sandwich business in an unhygienic manner. The said complaint was investigated by Officials of the States of Jersey Public Health Committee who concluded that the complaint was without foundation.

4. On the 13th July, 1989 the Third Defendant agreed to let three car parking spaces situate at the rear of the Plaintiff's premises on a monthly basis, renewable at the Plaintiff's option, to the Plaintiff. On or about the 14th July, 1989 the Plaintiff signed an agreement of lease with the Third Defendant relating to three car parking spaces owned by the Third Defendant. The said agreement of lease was signed by the First Defendant on behalf of the Third Defendant and Simon Knapp (director and part beneficial owner of the Plaintiff) for and on behalf of the Plaintiff.

5. The Plaintiff contends that the said Agreement of Lease is perpetually renewable at the Plaintiff's option. The First, Second and Third Defendants purport to have cancelled the Plaintiff's lease in respect of the three car parking spaces mentioned in Paragraph 4 hereof. The Defendants have in recent months taken to returning the Plaintiff's proferred rental in respect of the three aforementioned car parking spaces aforesaid.

6. Not one of the Defendants has served notice to quit upon the Plaintiff pursuant to Article 1 of the Loi 1919 Sur La Location de Bien Fonds or otherwise. In view of which failure the Defendants have no right to take action to exclude the Plaintiff, its directors, servants or agents from making use of the aforementioned car parking spaces. For the avoidance of doubt the Plaintiff contends that the Defendants have no right to serve any such notice to quit.

7. The aforementioned parking spaces are of great use and benefit to the Plaintiff in the conduct of its aforementioned sandwich business.

8. On or about the 1st October, 1989 the Second Defendant acting at the instigation of and/or upon the instructions and/or with the knowledge and acquiescence of the First

and Third Defendants placed a metal pole in such a position as to prevent the Plaintiff from having access to the aforementioned car parking spaces.

9. The Plaintiff removed the aforementioned pole and returned same to the Third Defendant via the Second Defendant.

10. The Third Defendant is in the habit of making excessive and unwarranted financial demands upon the Plaintiff in respect of such items as water rates and insurance premiums. These matters have been the subject of correspondence between the parties hereto and their legal advisers.

11. On the 27th October, 1989 the Plaintiff received a letter signed by the Second Defendant stating inter alia that "On Saturday, 28th October, 1989 I will be fitting a security parking post at 27 The Parade to prevent yourself and your employees from occupying spaces that you have no right to occupy".

12. On the 28th October, 1989 the Second Defendant acting at the instigation of and/or with the knowledge and acquiescence of the First and Third Defendants again placed a metal pole in such a way as not merely to prevent the Plaintiff from having access to the aforementioned parking spaces but so as to prevent the Plaintiff being able to remove its vans from the aforementioned parking spaces. The Plaintiff was obliged to remove the metal pole.

13. By reason of the matters aforesaid the Plaintiff has suffered a loss and is likely to suffer further losses.

WHEREFORE the Plaintiff prays that the Defendants shall be convened before the Royal Court of the Island of Jersey so that the Court may be asked inter parties to grant an interim injunction restraining the Defendants or any one or more of them, their sevants or agents from:

(a) Placing a metal pole or any other object in such a manner as to impede the Plaintiff's access to the three car parking spaces herein mentioned and from acting in such a manner as to hamper impede or interfere with the Plaintiff's access to and usage (by itself, its directors, servants and agents) of the three car parking spaces herein mentioned and this pending resolution by lawful means of the dispute between the parties relating to the lease to the Plaintiff by the Third Defendant of the aforementioned three car parking spaces.

(b) making malicious and/or unfounded and/or unwarranted complaints to the States of Jersey Public Health Committee and/or any other Committee, authority or body or person about the activities of the Plaintiff.

The whole pending further order of the Court.

WHEREFORE the Plaintiff prays that the Defendants be convened before the Royal Court of the Island of Jersey so that in their presence and after proof of the hereinbefore alleged facts the Plaintiff may be granted the following relief:-

(A) Confirmation of the interim injunctions herein contained.

(B) Damages.

(C) A declaration that the Plaintiff's lease in respect of the aforementioned car parking spaces is perpetually renewable at the Plaintiff's instance.

(D) The costs of an incidental to this action on such basis as the Court shall decide.

(E) The costs of and incidental to the obtention of the interim injunctions herein contained on a full indemnity basis.

Dated this 31st day of October, 1989

"Philip Sinel"

.....

ADVOCATE FOR THE PLAINTIFF

PCS & CO
(ADV PCS)"

We have four summonses before us today. The Plaintiff asks that the interim injunctions should be granted with an order for costs. It has twice applied 'ex parte' and both the learned Bailiff and Deputy Bailiff have refused to grant these injunctions.

Mr. Harris appears for the First and Second Defendants. He asks that each of these Defendants be dismissed from the action which should, insofar as they are concerned, be struck out under Rule 6/13 as disclosing no reasonable cause of action.

Miss Roscouet also presses hard for a striking out under Rule 6/13 on the basis that the Order of Justice discloses no reasonable cause of action but she also says that it is an abuse of the process of the Court.

Miss Roscouet (in accordance with the Practice Direction of this Court) swore an affidavit in support of her application under Rule 6/13(d). She based her affidavit on the fact that on two separate occasions the granting of the injunctions in the Order of Justice, (which remain unchanged) have been declined by the Bailiff and Deputy Bailiff. As she says at paragraph 5 of her affidavit.

> "In the premises I consider the Plaintiff's action to be an abuse of the process of this Court in that the Plaintiff is requesting the Court for a third time to grant injunctions which have been refused by two Judges of this Court pursuant to two separate ex parte applications by the Plaintiff".

We do not regard that as a ground for us to establish an abuse of the process of the Court. We can see nothing wrong at all in the Plaintiff having failed twice before a Single Judge now applying inter partes for a judgment on the same matter. One can see similar analogies as, for example, where a litigant fails before a Single Judge of Appeal but proceeds, on the same matter, to an application before the Full Appeal Court. Whether the injunctions should be granted at all of course, is another matter with which we need to concern ourselves. The case is certainly not 'res judicata' as was suggested by Miss Roscouet. The doctrine of 'res judicata' applies only where a final decision has been pronounced by a judicial tribunal of competent jurisdiction over the parties to and the subject matter of the litigation. An ex parte application on the question of the imposing of injunctions cannot in these circumstances be regarded as 'res judicata'.

Let us firstly deal with the application of the First and Second Defendants. The Order of Justice, badly drafted as it is, (and Mr. Begg representing Mr. Sinel in this action candidly admitted that it was defective but had much to say on the consequences of that defectiveness) contains three components.

The first concerns the questions of the perpetual lease and the car parking spaces.

The second concerns the placing of the metal posts.

The third concerns the sending of what was described as an "unfounded, malicious, anonymous complaint" to the Public Health Committee concerning the business run by the Plaintiff from the premises.

The basis of Mr. Harris' argument was that there was no cause of action against either the First or Second Defendants.

He reminded us that we said in Lazard Brothers & Co (Jersey) Limited -v- Bois and Bois, Perrier and Labesse (15th November, 1988) Jersey Unreported at p.9:

"It is in our view settled and incontrovertible law that the contract made by an agent within the scope of his authority for a disclosed principal is in law the contract of the principal and the principal and not the agent is the proper person to sue or be sued upon such a contract".

Mr. Begg, in an attempt to counter this gave us an extract from Halsbury (4th Ed'n) Vo. 1 Agency which reads (at paragraph 861):

"Any agent, including a public agent, who commits a wrongful act in the course of his employment, is personally liable to any third person who suffers loss or damage thereby, notwithstanding that the act was expressly authorised or ratified by the principal, unless it was thereby deprived of its wrongful character".

We can see no difficulty in distinguishing both passages. One sounds in contract; the other in tort. We can see no reason for any concern on either hypothesis.

It may be that, if we find that the putting up of a metal post is an allegation that has to be answered then, because it is a tortuous act, the First and Second Defendants will have to answer to it. If we allow paragraphs five and six to stand then we have no hesitation in saying that the person to be actioned in this contractual matter is the Third and not the First and Second Defendants.

What relief is claimed under the Order of Justice? Paragraph 13 thereof says:

"By reason of the matters aforesaid the Plaintiff has suffered a loss and is likely to suffer further losses".

The first prayer asks that the Defendants be convened so that two injunctions may be imposed. The first restraining them from impeding the car parking pending resolution of the disputed agreement.

The second restrains all the Defendants from making malicious and/or unfounded and/or unwarranted complaints to the Public Health Committee or any other Committee about the activities of the Plaintiff.

The second prayer asks (once the interim injunctions have been granted) for four grounds of relief:

A) Confirmation of the interim injunctions

B) Damages

C) A declaration that the Plaintiff's lease in respect of the aforementioned car parking spaces is perpetually renewable at the Plaintiff's instance

D) Costs of both applications.

The question that most concerns us is the question of "damages". Rule 6(4) of the Rules of Court is clear in this regard:

"6/4 (1) Special damage must be specifically claimed.

(2) Where damage is general, it must be pleaded that the damage has been suffered but the quantity of the damage shall not be specifically claimed".

If the Plaintiff has suffered monetary loss then the amouunt of such loss that has been sustained up to the date of trial must, in our view, be pleaded and particularised otherwise it cannot be recovered. Because of the vagueness of the pleadings we might have been in some doubt on this matter had not Mr. Begg referred us to London -v- Northern Bank Ltd -v- Newnes (1900) 16 T.L.R. 433, which is authority (should it be necessary having regard to the Rules) for the statement that: "No particulars are ever ordered of general damage".

It is quite clear therefore that the Plaintiff is claiming general damages. These, of course, comprise all items of damage other than past pecuniary losses calculable at the date of the trial, whether they be pecuniary or not.

The general damages then would not appear to be concerned with the loss of revenue (if such there was) by reason of the interference with the placing of the metal pole but must be concerned with the

allegations of the written complaint made under paragraph 3. It is impossible to know what the Plaintiff alleges under paragraph 3. Is it a libel, actionable per se, within the law of defamation? It would, in any event, be extremely difficult to obtain an injunction to restrain the Defendant from further publishing the words complained of - and we have no idea what they were - until the hearing of the action. But in any event the injunction sought is not to prevent republication of the libel (if such it is) but to prevent the Defendants from "making malicious and/or unfounded and/or unwarranted complaints to the States of Jersey Public Health Committee and/or any other Committee, authority or body or person about the activities of the Plaintiff".

Mr. Begg talked of "slander" and "interference with business". We cannot regard the pleading of paragraph 3 as anything other than failing to disclose a reasonable cause of action and we order that it be struck out. With it, of course, goes injunction (b).

What are we to make of paragraphs 4, 5, 8, 11 and 12 and the relief claimed under A, B and C?

We are not prepared to strike out the question of the "perpetually renewable lease".

As was stated by the learned Bailiff in Lablanc Ltd -v- Nahda Investments Ltd (1985-86) JLR N4: "the party is not to be driven lightly from the public seat of justice". As we said in Lazard Brothers & Co. (Jersey) Limited -v- Bois and Bois, Perrier and Labesse we would only add the words used in Dyson -v- Attorney General (1910) 1 KB 419: "except in cases where the cause of action was obviously and almost incontestably bad".

We have no sympathy with the concept of a perpetually renewable lease. The fact that such a concept exists under English Law impresses us not at all. In any event we feel that the interpretation of the written agreement of lease by the Plaintiff goes beyond the bounds of common sense but is not so obviously senseless as to move us to exercise our discretion in the Defendants' favour.

One further matter concerns us. There was a working lease of the car parking spaces: as so often happens a dispute has arisen. The Plaintiff says the lease is still extant; the Defendant says that it is not. The Defendant has placed posts to prevent the Plaintiff from exercising what it considers to be its right. It is alleged that the posts were placed by the Second Defendant. The First Defendant is also implicated. That is a tortuous act. While we are not prepared to allow the First and Second Defendant to be actioned in contract we cannot help but allow them to be actioned in tort.

We have had regard to Odgess on the Common Law of England (3rd Ed. 1927) where, at page 316 we read these words:

> "No right is perfect unless the person on whom it is conferred has adequate means of enforcing it.
> If no sufficient remedy be provided by the law, the person aggrieved will have to rely upon his own efforts. An individual ought not, as a rule, to be entrusted with the power to remedy his own wrongs, for three reasons:
> (i) because he cannot safely be allowed to decide as to the fact of a wrong having been done to him; few men can be impartial judges in their own cause;
> (ii) because he may lack the power of compelling recognition of his right or redress of his wrong;
> (iii) because if he possesses that power, he may exercise it arbitarily or with unnecessary force. The State therefore, undertakes the task of determining the nature and extent of the right alleged to have been invaded, and of deciding whether or not a wrong has been done; it vindicates the party aggrieved against the aggressor; and assesses the amount of compensation due to him, or determines what other relief should be accorded. This is effected in most cases by an action in law".

There are, of course, certain cases where a man is permitted to take the law into his own hands - self-defence is only one - but none of these need concern us here. Until matters are resolved in a Court of Law then it is not right for the Defendants, or any one of them, to take the law into his (or its) own hands. Had the parties had

recourse to Roman Law they would perhaps have found that self-help was discouraged. We do not know where the Common Laws of Jersey fall in this regard.

Because the contention of the Plaintiff concerning the Agreement of lease is that it is perpetually renewable at the Plaintiff's option we are not prepared to grant an injunction based on that contention, particularly as we have great doubt that it will succeed at trial. This does not mean that we would expect the Defendants to take any steps to impede the Plaintiff's parking until matters are resolved.

The question of the expulsion of the Plaintiff is at present in the Petty Debts Court. As the Court of Appeal on 24th January, 1990, in Forster -v- Harbours and Airports Committee said (at p.11):

> "But on the real issue which is in contention between the parties, that is to say whether the Plaintiff should be expelled from the premises at the Airport, exclusive jurisdiction is now vested in the Petty Debts Court and the Royal Court would, in my view, not be entitled to make an Order for expulsion.
>
> If that is the real question between the parties, it seems to me that the Bailiff was right in holding that the matter should in the first instance go to the Petty Debts Court. That Court can decide whether or not this Plaintiff has a tenancy for a greater term than from month to month".

We therefore stay all further proceedings in this Court pending a decision by the Petty Debts Court. We grant neither of the injunctions. We strike out paragraph 3. We strike out any reference to the First and Second Defendants which fall to be decided under the law of contract. We reserve the question of costs to the adjourned date.

Authorities cited:

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

Chestertons -v- Leisure Enterprises (Jersey) Limited (1985-86) JLR 271.

Dyson -v- Attorney General (1910) 1 KB 419.

Rules of the Supreme Court (The White Book) (1988 Ed.) Orders 18 & 19.

Halsbury's Laws of England (4th Ed.) Vol. 1, paras. 861, 2 and 3.

Halsbury's Laws of England (4th Ed.) Vol. 37, paras. 430 to 435 inclusive.

Lablanc Limited -v- Nahda Investments Limited (1985-86) JLR N.4.

Charles Le Quesne (1956) Limited -v- TSB Channel Islands Limited (1987-88) 2 JLR N.1.

Poole -v- Poole (16th March, 1988) Jersey Unreported.

Lazard Brothers & Company (Jersey) Limited -v- Bois & Bois, Perrier & Labesse (15th November, 1988) Jersey Unreported.

Nagle -v- Fielden and others (1966) 1 All ER 689.

Forster -v- Harbours and Airports Committee of the States of Jersey (24th January, 1990, and 6th April, 1990) Jersey Unreported.

Godfray -v- Bunbury (1885) 210 EX 214.

Brown -v- Alexander (1891) 214 EX 349.

Jersey Automatic Co Limited -v- H.A. Gaudin & Co Limited (1980) JJ 159.

Wood -v- The Establishment Committee of the States of Jersey (15th May, 1989) Jersey Unreported.

Channel Islands and International Law and Trust Company Limited and others -v- Pike and others (16th May, 1989) Jersey Unreported.

Bailhache -v- Williams (1968) JJ 997.

Granite Products Limited -v- Renault (1961) JJ 163.

Wallis -v- Taylor (1965) JJ 455.

Basden Hotels Limited -v- Dormy Hotels Limited (1968) JJ 911.

Ferbrache -v- Bisson (1981) JJ 103.

Corby and another -v- Le Main (1982) JJ 157.

AG -v- Colomberie Investments (9th October, 1989) Jersey Unreported.

CMH Macrae -v- Jersey Golf Hotels Limited (1972-73) JJ 2313.

Odgess on the Common Law of England (3rd Ed. 1927) at p.316.

London -v- Northern Bank Ltd -v- Newnes (1900) 16 TLR 433.