

ROYAL COURT  
(Samedi Division)

62.

16th May, 1991

Before: Commissioner F.C. Hamon and  
Jurats Vint and Herbert

---

Between: David Anthony Overland Plaintiff

And: John Henry Roe Cridland Defendant  
Trading as Classic Trading Company

And: Michel DeClerq Third Party

---

Advocate A.P. Begg for the Defendant.  
The Third Party was not represented and did not appear.

---

JUDGEMENT

COMMISSIONER HAMON: This application is a continuation, both logical and inevitable, of a judgement that we gave on the 13th December, 1990. In that judgement we allowed the Third Party to file an Answer out of time within twenty-one days of judgement. We were satisfied that the Third Party had all the necessary documentation available to enable him to file an Answer. The Third Party was represented at the hearing by Advocate Labesse. The Order made was an "unless" Order and we stipulated that unless the Answer were so filed within the

extension period, judgement on liability would be granted in favour of the Defendant against the Third Party.

On the 9th January, 1991 both the Judicial Greffier and Advocate Begg received a similar letter from Advocate Labesse. It directly quoted the words of the Third Party:

"In view of the high costs of law suit, Mr. de Clerq decided not to defend himself in Jersey".

Mr. Labesse, having no further interest in the matter has withdrawn.

Despite the fact that Mr. Labesse had formally withdrawn on the 8th April, 1991 the Greffier made an Order to request him to serve a copy of today's summons on the Third Party of the date of this hearing. We must assume that the Third Party, aware of all matters, made a conscious effort not to take part in these proceedings. Indeed his letter of 9th January, 1991 is emphatic.

The matters raised in the summons are now pared down to two.

We are satisfied that when (and if) the action against the Defendant by the Plaintiff proceeds, our judgement of the 12th December will give the Defendant the right to claim an indemnity from the Third Party in any sum awarded. The main action, may, it appears, never come to Court.

The second matter is this. The action concerns the non-delivery of an expensive motor car called a Ferrari F.40. If the Third Party had delivered the motor car then the Defendant would have passed the motor car on to the Plaintiff (first

point) and claimed his commission (second point). The two points, although dependant one on the other for cause and effect are severable.

There was, in the absence of any other evidence, a contract. That contract was not fulfilled. As the learned Bailiff said In Grunhalle Lager International Limited -v- Tascan Trading Limited (1981) JJ 1 at page 5:

"Our view of the matter from the legal works to which we have referred, and which we think accords to common sense, is that a frustrated party is entitled to both his disbursements made in reliance and his expected net profits, provided that there is no overlapping".

Mr. Begg, in his address to us this morning, gave us, as we would expect, every possible assistance. His argument is attractive in the simplicity of its solution.

A motor car is to be purchased by the Plaintiff for £380,000. The Third Party has offered the motor car to the Defendant for £320,000, there is a £60,000 commission. When the contract date passes then the commission is due. The Third Party cannot complain, he has declined to enter into the proceedings and he knows that the application is for the assessment of damages against him. The problem arises because we are bound (although not hide bound) by the Rules of this Court. Let us examine those Rules: In relation to a Third Party Action Rule 6/10 allows the Royal Court to make an Order in three cases:

1. Where a Defendant claims against a person not already a party to the action any contribution or indemnity.

AUTHORITIES REFERRED TO:

Johnson -v- Ribbins (1977) 1 All ER 806.

Stott -v- West Yorkshire Road Car Co. Limited (1971) 3 All ER 534.

4 Halsbury 12: paras 1174 and 1175.

4 Halsbury 41: paras 869 to 881.

Grunhalle Lager International Limited -v- Tascan Trading Limited  
(1981) JJ 1.

Rules of the Supreme Court (1991 Edition, Vol. 1)

- (i) Section 12/1
- (ii) Section 12/1/1/
- (iii) Section 12/8
- (iv) Section 12/7 - 8/1
- (v) Section 12/7 - 8/2
- (vi) Section 12/7 - 8/3

Middle East Engineering Limited -v- Edwards (1980) JJ 264.

