

ROYAL COURT

MAY 21ST, 1991

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Before the Judicial Greffier

BETWEEN Bastion Offshore Trust Company Limited APPELLANT

AND Finance & Economics Committee  
of the States of Jersey RESPONDENT

Application by the Appellant for further and better particulars of the statement of the Respondent's case and for a further and better statement of the nature of part of the Respondent's case.

Advocate W.J. Bailhache for the Appellant

Advocate S.C. Nicolle for the Respondent

JUDGMENT

Judicial Greffier:

On 17th January, 1991 I dismissed the application of the Appellant for further and better particulars of the Respondent's case upon the basis that there was in my view no jurisdiction either under the Royal Court

Rules or under the inherent jurisdiction of the Court to grant such further and better particulars.

On 20th March, 1991, the Bailiff sitting as a single judge of the Royal Court overruled my decision and ordered that the matter of further and better particulars be referred back to me.

During the course of this second hearing before me, it became clear that amongst the request for further and better particulars were certain requests for a further and better statement of the nature of the Respondent's case. The question as to whether or not there was any power in the Royal Court to order a further and better statement of the nature of the Respondent's case was not raised before me on 17th January, 1991 and was not raised specifically before the Bailiff on 20th March, 1991. I therefore found it necessary to determine this point of law.

Beginning with the penultimate paragraph on page two of the Bailiff's judgment of 20th March, 1991, he said:-

"If it is the case that in civil cases, i.e. cases between citizen and citizen, each party should know precisely the facts upon which the opponent is going to rely, how much more important it is, in my opinion, for an Appellant against an administrative decision of a Committee of the States of Jersey to know precisely the grounds upon which the Committee bases its case and precisely the reasons which prompted them to refuse to grant the application, because in most cases, an appeal would be against refusal of a Committee to grant a particular application based on the relevant Law.

I consider it of the utmost importance that a citizen who feels that his common law rights have been restricted, as the statutes do restrict them, should be entitled to say to every Committee properly carrying

out the Law: please tell me precisely and in detail why it is you have refused my application. Such an entitlement, it seems to me, must not be subservient to the procedural requirements of this Court. In my view the procedure of this Court and of the Rules made thereunder must enable the parties in a case such as an appeal from an administrative decision to be absolutely clear about the facts upon which the arguments are going to revolve. That, of course, does not include the Law which is to be advanced, which is a different matter."

In the last paragraph on page 4 of the same judgment the Bailiff said,

"Miss Nicolle has convinced me that I could not regard an appeal from administrative decision as an action; nor do I think that it is a pleading in the narrow sense, but it is certainly, in my opinion, a written proceeding. The statement of the Committee's case certainly is a written proceeding. In my opinion it requires particulars in order that the Appellant may know exactly and precisely - I may be repeating myself, but I cannot stress too clearly - exactly what he has to meet. Without that in my view justice cannot be done."

It appears to me from these passages that the Bailiff's main concern was that an Appellant should be in a position to know precisely the facts which were being alleged by the Respondent Committee as being the basis upon which the original decision had been made.

Rule 6/14 (1) of the Royal Court Rules reads -

"A further and better statement of the nature of the claim or defence in any action, or further and better particulars of any matter stated in any pleading or written proceeding requiring particulars, may in all cases be ordered, on such terms, as to costs and otherwise, as may be just."

In my view, it is significant that the Bailiff found it necessary to find that the Respondent's case was a written proceeding in order to bring it within the terms of rule 6/14 (1). However, he expressly stated that an appeal from an administrative decision was not an action. In Rule 6/14 (1)

a further and better statement of the nature of the claim or defence may only be ordered in an action whereas the definition in relation to further and better particulars is wider. I am bound by the decision of the Bailiff that an administrative appeal is not an action and therefore find that an order for a further and better statement of the nature of the Respondent's case in an administrative action does not fall within the terms of 6/14 (1). I do not believe that this finding contravenes the spirit of the Bailiff's judgment inasmuch that his concern appears to be attached to matters of fact relating to the original decision rather than to matters of the arguments which the Committee would wish to put before the Court at the time of the hearing of the Appeal.

Applying these principles to the present request for further and better particulars I came to the following conclusions:-

- (1) That the particulars sought of paragraph II (v) were appropriate As they essentially relate to the basis upon which the Committee policy at the relevant time was operated with particular reference to the meaning of the words "exceptional circumstances".
- (2) The particulars under paragraph II (vii) are appropriate in the amended form discussed by the parties because this is a request for the Committee to explain the basis of its decision.
- (3) The first part of the request under paragraph II (viii) was agreed between the parties and the second part of the request is appropriate upon the basis that this also is a request that the Committee explain the criteria upon which it based its decision

and the way in which it considered those criteria in relation to the Appellant.

- (4) The first part of the request under paragraph II (xvi) is acceptable upon the basis that it is a request for further and better particulars of an allegation of fact made in the Respondent's case. However, the second part is not appropriate as the Respondent has not made any statement to the effect that the Trust Company is owned or part owned by Advocates who have been given licences to operate independently of the undertakings of the Advocates. This request is therefore a request for information which falls outside the scope of further and better particulars.
- (5) The first part of the request under paragraph II (xix) is appropriate as there is an apparent contradiction between the Supplementary Committee's Statement and the Respondent's case which needs to be clarified so that the Appellant may be clear as to precisely what was the basis upon which the decision was made. The second part of the request under this paragraph is not appropriate as it is a request for a further and better statement of the nature of the Respondent's case.
- (6) The request under paragraph III (ii) is appropriate as it is a request for a clarification of the factual statement being made by the Respondent in relation to the financial interests of various members of the Respondent. As these are matters of fact which are clearly in issue they ought to be particularised so that the precise issues between the parties may be defined.

- (7) The request in relation to paragraph III (iii) (c) is appropriate as further and better particulars of "the circumstances here pertaining" will clarify the issues of fact between the parties surrounding the allegation of apparent bias.
- (8) The first part of the request under paragraph III (iv) is appropriate as it is not entirely clear from the Respondent's case as to whether or not they are alleging that the Appellant had started the relevant business before the time of the application. The second and third parts of the request under this paragraph are not appropriate as they are requests for a statement of law in the case of the second request and for a further and better statement of the nature of the Respondent's case in the case of the third request.
- (9) The request under paragraph III (vi) (d) is not appropriate as this is a request for a statement of law.
- (10) The request under paragraph III (vi) (e) is similarly not appropriate as this is also a request for a statement of law.

The Respondent shall pay the Appellant's costs in relation to this application in any event.

After I made my decision in relation to this matter but before this date, the Bailiff, sitting as a Single Judge of the Court of Appeal stayed his Order of 20th March 1991 pending appeal. I have considered whether, in the light of that stay, I ought to deliver this Judgment

today. I have been persuaded by both counsel that it is fully in the spirit of the terms of the stay that I proceed but that the time period for the delivering of particulars, the enforcement of costs and the time period for appealing against this decision all be extended in order to take effect from the date of the Order of the Court of Appeal.

AUTHORITIES.

Royal Court Rules, 1982, as amended: Rule 6/14(1)

Bastion Offshore Trust-v-Finance & Economics Committee (20th March, 1991)  
Jersey Unreported