COURT OF APPEAL

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25th July, 1991

Before: Sir Godfray Le Quesne, Q.C., President,
Sir Charles Frossard,
The Deputy Bailiff.

Between: Derek Stanley Arthur Warwick — Plaintiff

And Frank Callaghan — Defendant

Application by the defendant (1) for leave to appeal against the Judgment of the Royal Court dated 19th July, 1991, whereby it was ordered that the matter be considered as a "cause de brièveté", that the defendant's answer be filed within seven days, and that the action be heard on 29th July, 1991, and on such subsequent days as shall be necessary; (2) for an order that the action be stayed, pending determination of the appeal; and (3) for an order that the plaintiff pay the costs of and incidental to this application.

Advocate P.C. Sinel for the defendant
Advocate W.J. Bailhache for the plaintiff

JUDGMENT

THE PRESIDENT: This case came before the Royal Court for the first time on Friday last the 19th July.

Mr. Bailhache, who appears for the plaintiff, then represented to the Court that, for reasons into which I do not find it necessary to go in detail, the case was very urgent and a trial should take place at very short notice. After hearing this submission, and also the submissions of Mr. Sinel on behalf of the defendant, the Court ordered that the answer should be delivered within seven days and that the trial should begin on Monday 29th July. It is against that order that Mr. Sinel is seeking leave to appeal today. He has submitted to us in the first place that the Court had no power to make this order because, he says, the order reversed the order of, or even dispensed with, certain steps which are positively required by the Royal Court Rules and, he submits, although the Rules give the Court power to extend or abridge time, they do not confer any power to reverse the order of, or even to omit altogether, the steps which the Rules prescribe. Alternatively Mr. Sinel submits that if there was power to make the order, the making of the order was a wrongful exercise of the Court's discretion because in various respects the very short time allowed for the lodging of the answer and the preparation for trial would work injustice to his client.

I turn first to the argument that there was no power in the Court to make this order. It is admitted by Mr. Sinel, and indeed there could be no dispute about this, that Rule 1 (5) of the Royal Court Rules, 1982 gives the Court power either to extend or to abridge the time for, among other things, delivering an answer. There cannot, therefore, be any complaint about power to make the order of the Royal Court insofar as it required the answer to be delivered within seven days rather than the twenty one days which Rule 6 allows. Mr. Sinel, however, goes on to submit that fixing the beginning of the trial for the 29th July meant that his client was effectively prevented from seeking any of the interlocutory steps for which the Rules provide, and he particularly told us that it would be necessary for his client to obtain certain particulars of the case as pleaded by the plaintiff and also to

obtain full discovery, that is to say the production first of a list of documents possibly verified by affidavit, and then adequate time for the inspection of the documents and consideration of whatever they might contain. It does not appear to me that the order of the Royal Court should be interpreted as excluding the possibility of particulars or discovery. The order was made on the 19th July. It would have been possible for the defendant in the course of the week between then and the 29th July to apply to the Court for an order for particulars or for an order for discovery. No such application has been made. Had it been, the Royal Court would have had to consider whether the case was a proper case for ordering particulars or discovery. We have naturally not had full argument on this point today, but it seems to me, having looked at the plaintiff's pleading, that it is very doubtful whether a good case could have been made out for an order for particulars.

As regards discovery, if an application had been made, the Court might have thought that certain documents were necessary for the conduct of the defence; but a great many documents have in fact been produced by Mr. Bailhache, and he says that there are more which he will produce by the end of the week. I may add that the one document which would clearly have been of first rate importance was the almost contemporary notes of the meeting of the 4th June which, in his affidavit, Mr. Bloom says he wrote in the train on the way back to London. Those, however, will apparently not be produced because, most unfortunately, Mr. Bloom says he has lost them.

It does not appear to me, as I have said, that the Royal Court's Order of the 19th July can properly be treated as having excluded the possibility of orders for particulars or for discovery. Had such application been made and the Court considered it justified, the Court would have made the order. I have no doubt, if it had thought when making the order that

compliance with it by the 29th July would not have been reasonably possible, the Court would for that reason have postponed the date of trial.

It therefore appears to me that the Royal Court did not act beyond its powers in the order which it made on the 19th July.

This makes it necessary to consider whether the order made was an order properly made in the discretion of the Court. Here it is important to remember that in an appeal against a discretionary order of that kind this Court does not sit in order to substitute its own judgment for that of the Royal Court. Our function is to consider whether the Royal Court took into account all matters properly relevant and no other matters, and, if they did exercise their discretion on those matters alone, this Court will interfere only if satisfied that the order made was clearly wrong.

The Royal Court before making the order considered both the case made by Mr. Bailhache, in which he urged the injustice which the plaintiff would suffer if the trial were not to take place very shortly, and also Mr. Sinel's contention that if his client was to have a proper opportunity of presenting his defence, the ordinary intervals of time allowed by the rules must be observed. It is clear - at least it has not been suggested otherwise - that the Court took into account what was said to it and it has not been suggested to us that the Court took into account any other matter. This is therefore a case in which the Court exercised its discretion on material properly put before it in order to reach a conclusion upon a question which, for my part, I consider to have been a question to which more than one answer might be given. This is exactly the situation in which the proper course for this Court is to respect the discretion which has been exercised by the Royal Court and not to consider the matter afresh with a view to substituting its own view.

I therefore consider that this is not a case in which this Court should interfere with the order made by the Royal Court.

However, to that I add a very important consideration. It is clear that when matters are handled as swiftly as this action is being handled, new matters will arise from day to day and things which were thought to be possible or convenient may turn out not to be so. As a result of our decision today the trial of this action will presumably begin on Monday next, 29th July. For my part, I presume and expect that, when the case comes for trial on Monday, the Royal Court will be prepared to consider any submission which Mr. Sinel may make of the following kinds. Mr. Sinel may find himself in a position in which he has been unable to communicate with persons whom he may wish to call as witnesses or whom he may wish to consult, by which I mean consult face to face, before he can effectively cross examine the plaintiff and witnesses called on his behalf. Should Mr. Sinel satisfy the Court that that is his situation, I should expect the Court to grant him whatever adjournment may be necessary in order to relieve that difficulty. A further possibility is that after studying the documents which, we were told, were supplied to him by the plaintiff yesterday evening, Mr. Sinel may find either that they do not include some documents which are important for him to have, or that they point to the existence of other documents which it is necessary for him to have for the purposes of his defence. Here again, if Mr. Sinel satisfies the Court of any situation such as that, I should expect the Court to grant him whatever adjournment may be necessary for the production of the additional documents and for such study of them as he would reasonably wish to make before proceeding with the trial.

If the matter is handled in that way, and I repeat I assume that that is the way in which the Royal Court will handle it, it seems to me that the trial could proceed, subject to any

adjournments of that kind, without injustice to the defendant. It may be that this will avoid injustices to the plaintiff, which Mr. Bailhache suggested to us would result, if the trial were to be postponed. I say 'may be', because it appears to me that the position may very well depend not upon when the trial begins but when it ends. That, however, is a matter which can only be clarified when the trial has started; and I repeat that I expect the Royal Court to grant adjournments in the circumstances which I have described.

For the reasons which I have stated, in my judgment, the order made by the Royal Court is not an order with which this Court can interfere and the application must therefore be dismissed.

FROSSARD, J.A.: There is nothing that I am able usefully to add. I agree.

TOMES, J.A.: I also agree.

Authorities

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4 Halsbury 36, paragraphs 38-39 and 59-61.

4 Halsbury 13, paragraphs 1-7.

4 Halsbury 1 (1), paragraphs 94-96.

4 Halsbury 37, paragraphs 4 and 14.

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