

ROYAL COURT

3rd December, 1991.

1798.

Before: Commissioner F.C. Hamon

BETWEEN                                 David Mallet Le Cornu and  
  John Edward Le Cornu                                 PLAINTIFFS

AND   C.I. Heat Pump Bureau Limited                                 FIRST DEFENDANT

AND   Maurice Gordon Glover and  
  Michael Black   SECOND DEFENDANTS

Costs - application by the Plaintiffs for adjournment of hearing on costs.

Advocate R. A. Falle for the plaintiffs.  
Advocate P. C. Sinel for the defendants.

JUDGMENT

COMMISSIONER HAMON: On the 20th June, of this year, the Court as then constituted, was considering an application to cancel a lease. It dismissed the counterclaim of Mr. Sinel during the course of the hearing.

In its judgment delivered on the 20th June, the Court said this at page 29:

***"So having perforce to turn our backs on Pothier and Dalloz and the rich veins of our customary law, we are able to***

reach a conclusion but before so doing we have to recall that virtually at the eleventh hour, the defendant disclosed that it had commenced work on the property using Mr. Lyon's schedule of dilapidations as a guide. For this reasons we are not minded to order that the lease should be cancelled".

And then again at page 31, the Court said this:

"The lease falls in on 25th December, if the work is not carried out by 25th October, to the satisfaction of the plaintiffs, we will be prepared to consider a further application to cancel the lease. It seems to us virtually impossible to order specific items to be carried out. If the work is not completed to the satisfaction of the plaintiffs then if a further application for cancellation is made, we will consider, in the light of this judgment, whether that which has not been completed is reasonable. We hope that counsel will assist their clients in resolving any problems".

Mr. Sinel says two things this morning. He says that we should really deal with the judgment of 20th June as a completed judgment; and he also says that he feels that, as of right, he must succeed on certain matters concerning costs in the application. He must be referring to the question of the failure to disclose documents. On that particular point of the question of failure to disclose, he may very well be right. If I were to hear him on that point and were to make an award for costs on those matters it would in my view- although, there is no guidance given in our rules - be an order for costs in any event, but I would not allow them to be assessed until the completion of the trial.

It must also be pointed out (despite the fact that Mr. Falle has just received the surveyor's report and passed it to Mr. Sinel at nine o'clock this morning) that two agreed sittings of this Court on this particular matter have already been cancelled through nobody's fault: on one day one of the counsel was ill and on the other day the other counsel was ill.

I cannot, Mr. Sinel, now regard the judgment as a final judgment. It was intended to be a continuing matter which hopefully would resolve itself, whereupon Mr. Falle would have come back and said that all matters were completed to his clients' satisfaction and that would have been the end of it apart from costs. But it is now a continuing matter. The door was open for it to be continued. I have sympathy with what you say, Mr. Sinel, on the specific items, but because this is a continuing matter and because one cannot, in my view, assess the totality of the costs until we have a complete picture of what has actually happened, it would be wrong for us to reach a situation where we awarded your clients costs on a small matter when it might be that we would then go on to award costs to the plaintiffs on the overall and continuing matter. You would be getting costs awarded which would be not assessed until the end of trial, and we would have to deal with the global matter later. On that basis, I am making an order now that the matter of costs and of this application shall stand over until we have heard this matter once and for all to its conclusion.

On the point which we raised that Jurat Le Boutillier is no longer a Jurat, counsel have agreed- I shall put this down for the record - that when we return they would not object to a new Jurat being substituted at the continued hearing for Jurat Le Boutillier, and if that does happen then obviously we will need some time to explain to the new Jurat the effects of the judgment of the 20th June, and of course he will have to have time to read it. It may well be that all of us will again have to view the property with the new Jurat and see the condition in which it now stands.

As to the costs of this morning's application, again Mr. Sinel I understand that you feel you have wasted your time; I have some sympathy with that. We will again note what you have

said; the application for costs in relation to today's hearing will be assessed at the end of the day. I would like counsel to fix as early a date as possible to resolve this matter.

No authorities cited.