

ROYAL COURT

20

13th February, 1992

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

Between: **Anthony Peter Cooley** Plaintiff

And: **Gillian Wood** Defendant

And: **Hambros Bank (Jersey) Limited** Party Cited

Leave to amend Pleadings.

Advocate P.M. Livingstone for the plaintiff.

Advocate M.M.G. Voisin for the defendant.

The Party Cited was not a party to this hearing.

JUDGMENT

THE COMMISSIONER: This case has had a protracted history. The dispute arises because the Plaintiff and the Defendant, having lived together as man and wife, formed a Company, Fedora Investments Limited, on the 14th April, 1986. That Company owned two properties in Portugal. The Plaintiff and the

Defendant were the only Directors and the joint beneficial owners of the Company. There are nominee shareholders holding the shares in trust absolutely for the Plaintiff and the Defendant who are a partnership.

On the 21st July, 1989, the Company was sold to enable the new purchasers to own the Portuguese properties. For some reason which is not yet explained the purchasers did not take transfer of the share certificates until the 9th August, 1991. This was an error. A further error occurred when the net proceeds of sale were left in the Company's account. The Defendant transferred £125,000 from the Company's accounts to her own account in two tranches. That is now enjoined.

A further £47,000 was left in the Company account at Hambros (Jersey) Limited, but after the realisation of the error, was transferred by that Company into a joint (or partnership) account.

Two signatures are required on the account. The Plaintiff refuses to sign and so that sum, too, is effectively frozen.

As the Order of Justice served by substituted service on Mr. Voisin on the 13th June, 1990, and amended on the 3rd February, 1992, was explained to us, it was clear that the issue between the parties was comparatively narrow.

Under the terms of the partnership how should the capital assets (which comprise only the cash) be distributed? There was also the question of whether a Receiver should be appointed.

An application for security for costs was made by the Defendant and dismissed on the 22nd October, 1990.

A variation of the injunctions was obtained, again at the Defendant's request, on the 7th October, 1991, whereby she was permitted to withdraw £5,000 from the account at the party cited in addition to the £1,000 per month conceded to her in the Order of Justice. As a result of that hearing the Plaintiff was ordered to pay costs of and incidental to that day's hearing on an indemnity basis.

In the application to vary the injunction the learned Deputy Bailiff said this:

"The grant of an injunction is a privilege accorded to a plaintiff ex parte, a point apparently overlooked by the plaintiff. We had intended to make orders whereby he would take active steps to enter into meaningful negotiation or file a reply and set the case down within six weeks, failing which we would have lifted the injunctions in their entirety. That is now unnecessary because the defendant has herself taken the necessary steps.

We see that the injunctions required the party cited to make full disclosure to the legal advisers of the plaintiff within 72 hours of service of the injunction. We cannot accept that he could not, with due diligence, have progressed his action much more quickly.

Applying two principles stated in PCW (Underwriting Agencies) Limited -v- Dickson and another [1983] 2 All E.R. 158, we have no hesitation in granting the application.

And because this is an application which should have been granted by consent, the plaintiff will pay the costs of and incidental to the applicant on a full indemnity basis".

It came as a surprise to this Court and to the Defendant when Mr. Livingstone tried to amend paragraph IV of the Prayer to extend the Prayer which reads:

"That further or alternatively the Defendant provide an account of all her dealings with the Company's assets and those of the partnership for the period from the 1st May, 1989, to date".

The amendment requested was to cover the whole of the period in which the partnership had existed.

We were told that this related to rental and other payments. We could not see in any event where any reference to that matter was made in the pleadings. Mr. Livingstone therefore sought an amendment of the pleadings. Mr. Voisin strongly objected saying that the matter had only come to his attention in 'without prejudice' discussions within the last two days.

The Court is not minded to allow the amendment. Considerable documentation and research would be necessary and we have no doubt that to have allowed the matter to proceed *sur le champ* would have placed the Defendant at an acute disadvantage.

We decided to allow Mr. Livingstone three alternatives:

1. to proceed on the basis of the pleadings;
2. to apply for an adjournment; or
3. to appeal our decision.

After consultation he formally applied for an adjournment and we granted it.

Mr. Voisin applies now for costs. This matter has been proceeding for far too long. His client had herself to set the case down for hearing. She has travelled to Jersey. She has accommodation expenses.

The situation is, adopting his argument, quite intolerable. He invited us to strike out the proposed amendment. We cannot do that for no better reason than it has not yet been made. Mr. Livingstone asks for an adjournment. He may decide not to amend. If he does it is open to Mr. Voisin to apply to have the amendment struck out. We can only compensate his client in costs.

We therefore order - and we wish to make it very clear that we have not formed any view of this case whatsoever - that the Plaintiff shall pay the costs thrown away on an indemnity basis. What part of the proceedings have been rendered ineffective will have to be decided by the Judicial Greffier at the taxing.

If the Plaintiff cannot pay the costs awarded within two weeks of the Order being made, then for the avoidance of doubt, we authorise the Party Cited to release to the Defendant's lawyers the amount awarded from the £47,000. We also take the opportunity to include in this Order the amount of costs awarded but not yet paid in relation to the judgment of the 7th October, 1991.

No authorities.