

ROYAL COURT  
(Samedi Division)

120.

8th July, 1992

Before: The Bailiff, and  
Jurats Gruchy and Orchard

FIRST ACTION

<u>Between:</u>	Brian Sydney West	<u>First Plaintiff</u>
<u>And:</u>	Gustav Brian West	<u>Second Plaintiff</u>
<u>And:</u>	Birgitta Ingegered West	<u>Third Plaintiff</u>
<u>And:</u>	Maria Melanie West	<u>Fourth Plaintiff</u>
<u>And:</u>	Lazard Brothers & Co (Jersey) Limited	<u>First Defendant</u>
<u>And:</u>	Lazard Brothers Trustee Company (Jersey) Limited	<u>Second Defendant</u>

SECOND ACTION

<u>Between:</u>	Channel Islands and International Law Trust Company Limited (in their capacity as Trustee of the Halifax Trust)	<u>First Plaintiff</u>
<u>And:</u>	Gilbrun Investments Limited	<u>Second Plaintiff</u>
<u>And:</u>	Brian Sydney West	<u>Third Plaintiff</u>
<u>And:</u>	Jeffrey Michael Pike	<u>First Defendant</u>
<u>And:</u>	Hyperion Limited	<u>Second Defendant</u>
<u>And:</u>	Kennilco Limited	<u>Third Defendant</u>
<u>And:</u>	Aven Roberts William Nelson Roberts John Menzies Scarborough	<u>Fourth Defendants</u>
<u>And:</u>	Lazard Brothers & Co (Jersey) Limited	<u>Fifth Defendant</u>
<u>And:</u>	Lazard Brothers Trustee Company (Jersey) Limited	<u>Sixth Defendant</u>

And:                    **Lumbro Nominees (Jersey) Limited**     Seventh Defendant  
And:                    **Michael A Bryant**                    Eighth Defendant  
And:                    **Cambravale Limited**                    Ninth Defendant  
And:                    **Warrant Trustees Limited**             Tenth Defendant

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Representation of Tenth Defendant in Second Action (the Trustee of the Perelle External Settlement) seeking an order that the third named Fourth Defendant and the Second Defendant in the Second Action be enjoined from disclosing to the Plaintiffs in both actions, certain words in the working notes of the Representor relating to the accounts of the Second Defendant.

The Second Defendant and the third-named Fourth Defendant in the Second Action, convened.

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**Advocate M.J. Backhurst for the Representor.**  
**Advocate R.G.S. Fielding for the parties convened.**

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**JUDGMENT**

**THE BAILIFF:** It is not necessary for us to go into the background of this summons, which comes before us by way of a representation. It is only necessary to state that there were two actions originally before this Court, the above cited first and second actions.

The first action, we have been informed, has been substantially settled, but because the pleadings in the Second Action have been amended and relate, to some extent, to some of the matters raised in the First Action, the two have now effectively been consolidated.

In the second action, Channel Islands and International Law Trust Co Limited as Trustee of the Halifax Trust, Gilbrun Investments Limited and Brian Sydney West, the three plaintiffs, action a number of defendants including a company called Hyperion Limited (the second defendant) and Warrant Trustees Limited, (the tenth defendant).

Warrant Trustees is trustee of a settlement known as the Perelle External Settlement and is, we are informed, *inter alia*, the owner of all the issued shares of Hyperion Limited (which claims to be a non-party in the second action - but that is not, in fact, so because it is mentioned as a party).

Warrant Trustees brings this representation today asking that certain matters which were left over from an order for discovery made by this Court, to which I will turn to in a moment, should be excluded from certain documents which otherwise would be tendered to the plaintiff by way of discovery.

An Order was made by this Court on 10th April, 1992; the prayer of that order is that each of the non-parties be ordered *"to furnish the plaintiff with a list of documents which are or have been in their possession, custody, or power individually, or collectively relating to any matter or question of the above listed causes or matters and to verify such list by affidavit within fourteen days of the date hereof and further to provide the plaintiffs with facilities for the inspection and copying of such documents"*.

So there was an Order already made by this Court and not appealed against as far as we know. The non-party today, or rather the party claiming to be a non-party, says that although it recognises that a certain amount of the information must be disclosed, some of it is not relevant and/or can be severed.

The Court, on 10th April, 1992, made the Order asked for. Some if not all of that Order has been complied with, but Mr. Fielding has told us that, as we understand it, the plaintiff concurred in the editing of some of the documents by Mr. Fielding, who is appearing this morning on behalf of Mr. Scarborough and Hyperion, which he did having regard to the rulings of this Court on the question of relevance, and particularly in Victor Hanby Associates, Ltd -v- J.H. Oliver (6th November, 1990) Jersey Unreported, C. of A. It is suggested by Mr. Backhurst that we should accede to his request because the information which he seeks to have excised from a number of the working documents of Warrant Trustees Limited is not relevant.

In the course of the hearing it transpired that a good deal of what was objected to has already gone. However, Mr. Backhurst, for Warrant Trustees Limited, is now asking for an Order restraining Hyperion and Mr. Scarborough from disclosing to the plaintiffs certain words, which he would like excluded, notwithstanding the Order of the Court of 10th April, 1992, to which I have earlier referred.

The dispute concerns the development of a property in Gloucestershire. It is not necessary for us to go into the details, as I have said. The main dispute is whether Hyperion lent money to an Isle of Man company, Kennilco Limited, in connection with this development, or whether it injected a capital sum direct. That is the main dispute on which the Court will have to adjudicate in due course.

It seems to us that, where Kennilco and Hyperion's business interests are concerned either directly or indirectly, everything is relevant.

Looking at the documents and the items which we have been asked to remove, I turn first to those referred to as "J3; these have already been edited out. In respect of those in "J1", all the items have been removed except for the following paragraph: *"nb Phoenix Sec and Admin charges are usually paid by Kennilco/Hyperion and debited to Phoenix Rubber fees account in Hyperion's books. However, second Admin charge to 30/6/81 £397 was paid direct by Phoenix hence no recording of this in Hyperion's books"*.

The test seems to be may the items be relevant, not *must* they be relevant, to the main argument. The authority for that is to be found on p.12 of the Court of Appeal Judgment in Hanby-v-Oliver, which I have just mentioned. We think that these items may be relevant to the main argument and should therefore stay in.

In "J4", everything has been edited out except the first two lines which read: *"Dividends received from Phoenix Rubber Co (and then a date) 6/4/81 paid to Kennilco Loan Account entry £8,000"*. We think that may be relevant and should stay in. Because the entries on the following page "A1" stem from the same sort of entry - notwithstanding that Mr. Pike says that that entry was an error - and because there is such a strong connection with what is in dispute, we think that those items and those on "A2", as edited of course, and likewise for the same reasons, those on "A3" should also remain in.

We think the issue as to whether there were mistakes or not and to what extent, even if there were mistakes, it would be right for the trial court to have regard to those entries, must be a matter for the trial court.

Accordingly we are satisfied that the editing which Mr. Fielding has done - and both counsel have been most helpful in this - is sufficient and complies with the Order of this Court of 10th April, 1992. We therefore decline to make the order you ask Mr. Backhurst, except where the items have already been edited.

Each party shall pay their own costs.

**Authorities**

I.B.L. Ltd and Ors -v- Planet Financial and Legal Services, Ltd  
(6th November, 1990) Jersey Unreported.

Victor Hanby Associates, Ltd -v- J.H. Oliver (6th November, 1990)  
Jersey Unreported, C. of A.