

ROYAL COURT  
(Samedi Divison)

170.

28th September, 1992

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**Before:** The Bailiff and Jurats Coutanche and Herbert

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**Oriden (Jersey) Limited**

-v-

**J.C. Stoddart & Company Limited**

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**Advocate Mrs. D.J. Lang for Oriden (Jersey) Limited**  
**Mr. Stoddart, a director, appeared for the defendant company.**

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**JUDGMENT**

**THE BAILIFF:** This is a claim by the company Oriden (Jersey) Limited against J.C. Stoddart & Company Limited.

The plaintiff company, through Mr. Philip Sturgess, claims that, in December, 1990, when the tenant of part of number 12 Esplanade, from the lessor company, George Blampied Limited, Mr. Sturgess made an agreement with Mr. Stoddart for the assignment of the remaining part of the plaintiff company's Lease to Mr. Stoddart and/or to his company.

During the course of this trial, Mr. Stoddart, who is the beneficial owner of the defendant company, did not give evidence. The Court felt obliged to point out to him the possible disadvantage that course of conduct might entail because without evidence, and none was tendered by the defendant company, the Court, unless it was not satisfied with the evidence of the plaintiff company and its witnesses, would find it very difficult not to find for the plaintiff.

In the course of the hearing also, Mr. Stoddart made an application which he later withdrew, which would have had the effect of adding to the defence inasmuch as his defence, as argued to us, and as evidenced by his questions, was that no agreement at all had been entered into. The additional defence would have been that even if such an agreement had been entered into, it was not

binding on the defendant company until that company had, by special resolution of its Board, adopted that agreement. Quite properly Mr. Stoddart that application, which was not opposed by Advocate Lang for the plaintiff company, because the defendant company was defending itself. I say quite properly because Mr. Stoddart is the beneficial owner of J.C. Stoddart & Company Limited.

We were left with a straightforward denial that any agreement had taken place at all. There was, clearly, discussion between Mr. Sturgess and Mr. Stoddart and it is accepted by both parties that that discussion first took place on the 14th December, 1990.

On 17th December, that is to say, the Monday after the 14th, which was a Friday, a fax message dated 17th December, was sent by Mr. Sturgess to his advocate, Advocate Troy. It referred also to a telephone call which had been put through by Mr. Sturgess to Advocate Troy, he says at the time the parties discussed matters on the 14th December, but as Mr. Troy has not been called as a witness because he was acting for both sides and therefore what they said would have been privileged, we cannot express an opinion as to when the telephone call may have taken place. The fax is as follows:-

*"Dear Brian,*

*Further to telephone call - lease held by Oriden (Jersey) Limited from Ash Holdings Limited., owned by George Blampied Limited, P.O.146, Suite D2, Hirzel Court, St. Peter Port, telephone 0481 28326 - fax 0481 27242 - contact G. Hudson. To be assigned to J.C. Stoddart & Company Limited, Grenville House, Grenville Street. Bankers R.B.S. for a consideration of £10,000 to be paid half on signing a.s.a.p. and half mid January, 1991. I have telephoned Geof Hudson who will expedite transfer on receipt of papers. Colin Stoddart is to move in on Wednesday 19th. I have handed him keys, the advocate was David Trott and he is without so has requested you to handle it on his behalf. I have sent lease by hand.*

*Many thanks,  
Philip.*

*P.S. F.D. Robinson, my accountant is to put Oriden into liquidation in January as we do not require it any longer.*

Now, looking at that fax it is apparent to us that a number of things had certainly been agreed if we accept the evidence of Mr. Sturgess, and particularly we have paid attention to the fact of the keys being handed over which, we were told in evidence, had not been returned.

We have looked at the authorities - the extracts from Dalloz: Chapter 3, s.1: Louages: paras 53, 56, 81, 88 and 93 and Pothier: "Traité des Obligations": Chapter 1, S.4: paras 137-8, as well as the Jersey cases. Before we could find for the plaintiff we would have to be satisfied that sufficient matters of the essential elements of a contract were present, as required by Jersey law, during this transaction. We find that they were present. First, the price and method of payment was agreed; secondly, the parties were clearly defined; thirdly, there was no doubt about the premises; fourthly, the matter in issue was a lease; and fifthly, the date of commencement was also unquestioned.

Therefore, if we accept the evidence of Mr. Sturgess, there would be sufficient matters agreed between the parties for us to say that a contract had been agreed. Mr. Stoddart, who was not represented, as I have said, asked a number of questions very carefully of Mr. Sturgess and he submitted to us in his closing address that there had been a discussion between two people with no independent witnesses present. That was quite true, but there was the "faxed" message and unless we were to find that that "faxed" message was engineered in some way by Mr. Sturgess and sent to Mr. Troy deliberately to mislead him, or at any rate setting out facts which had not been agreed, we would have to pay proper attention to it.

Mr. Stoddart asked us whether it was reasonable that any person would want to commit himself to take these premises when they were too small. Secondly, would he wish to take premises or bind himself to take the premises before an application had been submitted to the Finance and Economics Committee for the business to be transferred. We think that could have been an implied term, in any case, in a contract of this nature. Thirdly, would any reasonable person have bound himself before he had obtained the advice of his lawyer, Mr. Troy, on the point of law as to whether his company could take the premises. Of course, Mr. Stoddart abandoned the question that this agreement, if any, was dependant on the company's taking it from him. Fourthly, he suggested that no reasonable person would agree to take on this sort of premises, which carried at the time a licence to operate a Bureau de Change, if permission for the transfer of that licence was not to be forthcoming. We have heard no evidence from anyone that had the transaction proceeded, the licence would not have been transferred. Fifthly, Mr. Stoddart suggested that the consideration was too great; no reasonable person would have taken on the lease in the light of the evidence of the person who eventually took over the premises and who paid £5,200: Mr. Seal expressed the view that £10,000 was far too much and with hindsight £5,200 was also far too much; however that is not a matter which the Court should take into account when considering whether an agreement had been reached or not. Lastly, Mr. Stoddart said that Mr. Sturgess insisted on references as Mr. Sturgess himself said he did, in order to satisfy the landlord

company and unless Mr. Sturgess had obtained those references he would not have signed an agreement which was in the course of preparation. That again, is not, in itself, something which would prevent an agreement being reached, if an agreement had indeed been reached. It would be an implied term of that contract, if it was made, that all these subsidiary matters would be attended to and if they were not satisfactory in whatever way then either party could withdraw from the agreement if made.

The burden of proof in this matter is, of course, on the plaintiff but it is no more than a balance of probability and after looking at the documents before us, and hearing the evidence, the Court has come to the conclusion there was an agreement, as alleged in the Order of Justice, and accordingly the Court finds for the Plaintiff company.

Now, having said that the Court has had to apply itself to the question of what damages, if any, should be awarded. The Court has decided to award special damages of £4,800, which is the difference between the £10,000 the plaintiff company would have received from the defendant company and the £5,200 it did in fact receive from Mr. Seal. It has awarded interest at 11<sup>1</sup>/<sub>2</sub>% from the time when that £5,200 should have been paid. As it is being paid at intervals, we leave it to the Judicial Greffier to ascertain a proper amount of interest on the remaining sums, that amount will decrease as the instalments are paid and that is something that we will leave to the Greffier to work out. We also award the sum of £250 to cover the costs thrown away in preparing the agreement and in dealing with the matter with Advocate Troy.

The Court was in some doubt as to whether it would be proper in a case of this nature, and having regard to the circumstances, to consider general damages. As Mrs. Lang has withdrawn such claim there only remains the question of costs which will also be awarded to the plaintiff.

AUTHORITIES

Pothier / "Traité des obligations": Chapter 1, Section 4, paragraphs 137 and 138; Chapter 2: paragraphs 143, 146, 157 and 160.

"Daloz": Chapter 3, section 1, paragraphs 53, 56, 81, 88 and 93.

Faulkner-v-The Public Works Committee (1983) JJ 71.

Jersey Automatic Company Limited-v-H.A. Gaudin & Company Limited  
(1980) JJ 159.