

COURT OF APPEAL

15th December, 1992

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Before: Sir Charles Frossard, K.B.E., Single Judge

Between: J. and N. McMahon First Appellants
Ronald Colin George Probets Second Appellant

And: H.M. Attorney General Respondent

(A) Application by the First Appellants for an order that:

- (1) the implementation of the Notice issued under the provisions of the Investigation of Fraud (Jersey) Law, 1991, on 24th November, 1992, addressed to AIB Bank (Jersey) Ltd., regarding any accounts controlled or administered by the Appellants be stayed, and the disclosure by the Attorney General of the information and documents referred to in the Notice prevented, pending the hearing of their appeal against the Order of the Royal Court (Samedi Division) of 9th December, 1992, wherein the Royal Court consulted the Appellants on the grounds that it would be improper for the Court to receive an application from anonymous representatives; and
- (2) the Attorney General pay the costs of an incidental to this application on a full indemnity basis; and

(B) Application by the Second Appellant for an Order that:

- (1) The implementation of the said Notice regarding any accounts held, controlled, or administered by the First Appellants be stayed pending the hearing of his appeal against the decision of the Royal Court of 9th December, 1992, whereby the Court refused his application for such a stay pending the making of an Order by that Court in respect of the relief sought in his representation;
- (2) the time for filing and service of the application referred to in paragraph (B)(1) above be abridged to allow it to be heard on Tuesday 15th December, 1992, at 10.00.am.; and
- (3) the Attorney General pay the costs of and incidental to this application on a full indemnity basis.

Advocate R.J. Michel for the First Appellant.
Advocate G.R. Boxall for the Second Appellant.
C.E. Whelan, Esq., Crown Advocate on behalf of the Attorney General.

JUDGMENT

SIR CHARLES FROSSARD: This is a very simple point even though it has taken us all day to get to it. J and N McMahon, whoever they may be, following a Notice issued under the Investigation of Fraud (Jersey) Law 1991, applied to the Royal Court seeking a declaration as to whether, in the light of information contained in a supporting affidavit, the Notice fell within the terms of the 1991 Law, which gives power to the Attorney General to seek information regarding serious frauds from banking and other institutions, or indeed from anybody.

When the matter came before the Bailiff in the Royal Court, where Mr. Michel appeared on behalf of the representors - and I use that word advisedly - and Mr. Boxall on behalf of Mr. Probets, who was named in the Attorney General's Notice, and was in some way involved, it was discovered that J and N McMahon, the representors, were, as was said by Mr. Michel this morning, the name of the bank account from which it was sought to obtain information. That being the case the learned Bailiff nonsuited Mr. Michel's client on the grounds - and it is contained in the judgment, so I need not repeat it - that in this jurisdiction you must appear under your proper name.

Mr. Boxall, appearing for Mr. Probets didn't really participate in the proceedings, as far as I can see. However, Mr. Michel's client was non suited. The result would have been that the Notice issued by the Attorney General would take effect immediately.

However, the Attorney General, I think possibly with some little pushing by the Court, gave an undertaking that he would not take any action for a period of one week, which expires tomorrow evening, 16th December, to allow Mr. Michel to consider the question of disclosure of his clients' proper names and status. Mr. Michel has received no instructions on that, but he has applied to this Court for a stay of execution of the Attorney's Notice, pending an appeal to the Court of Appeal on the point of his being nonsuited for non disclosure of his clients' names. He has pointed out that if the application today is granted, he will complete his submissions for lodging in the Court of Appeal registry by tomorrow evening or the next day. Under Rule 9 the Court of Appeal (Civil) (Jersey) 1964 Rules, the Crown as Respondent would have one month to reply, and subject to agreement between the parties the appeal could be heard before this Court at its January, 1993, sitting.

As I understand it, inquiries are in hand which relate to the use of the accounts, but there has been no application by the Crown to seize any assets in these accounts. As far as I can see the Crown is seeking information about their operation.

In view of the undertaking already given in the Royal Court by the Attorney General to delay enforcement of the Notice for one week, and in view also of the fact that if I do not grant a stay of execution until the hearing - which I hope will take place before the Court of Appeal in January - any order of this Court would be rendered nugatory should the substantive hearing find in favour of Mr. Michel's clients, I will grant the application.

As regards Mr. Boxall's application, in view of the somewhat cloudy Act of Court - in fact there isn't really a proper Act of Court - and as he really joined with Mr. Michel's clients in their application, the same order I think must inevitably apply to him because his client is specifically mentioned in the Attorney General's Notice.

Authorities

Court of Appeal (Civil) (Jersey), Rules 1964: Rule 15.

R.S.C. (1993 Ed'n): O.53/3/10; Ord. 59, r.13 (59/13/1 - 59/13/6) & r.14.

Sloan -v- Sloan [1987-88] J.L.R. 651.

Wilson -v- Church (No.2) [1879] 12 Ch.D. 454.

Erinford Properties -v- Cheshire County Council [1974] 1 Ch. 261.

R -v- Secretary of State for Education [1991] 1 All E.R. 282.

Investigation of Fraud (Jersey) Law, 1991.

Moore Stephens -v- H.M Procureur of Guernsey (7th September, 1992) Guernsey Judgment.

Richard O. Bertoli & Others -v- Sir Denis Malone - Privy Council Appeal Case No. 50 of 1990.

Spry "The Principles of Equitable Remedies" (2nd edition) at page 325.

Factortame Ltd. & Others -v- Secretary of State for Transport (1989) 2 All E.R. 692.

Tett -v- States of Jersey & Rent Control Tribunal (1972) J.J. 2249.

In re Barker (1985-86) J.L.R. 1.

In re Barker (1985-86) J.L.R. 4 at p.16.

Tomlinson -v- Comptroller General of Patents, Designs & Trademarks (1899) 1 QB 909.

Smith -v- Director of Serious Fraud office (1992) 3 All ER 456 HL.