5pages.

ROYAL COURT

25th March, 1993 42.

Before the Judicial Greffier

BETWEEN	Kenneth Skinner	APPELLANT
AND	The States of Jersey Island Development Committee	RESPONDENT

Application by the Respondent to strike out the notices of appeal served by the Appellant in accordance with the provision of Rule 12 of the Royal Court Rules, 1992, in appeal numbers 92/176 and 92/177 as being "mal institué" in that they contained purported grounds for appeal which are not within the right of appeal conferred by Article 21(1) of the Island Planning (Jersey) Law 1964, as amended.

S.C.K. Pallot, Esq., Crown Advocate, for the Respondent.
Advocate J.D. Melia for the Appellant.

JUDGMENT

JUDICIAL GREFFIER: On 30th July, 1992, the Appellant served two notices of appeal against decisions of the Island Development Committee on the Appellant.

The grounds of appeal in each case were that:

(1) the proceedings of the Committee were neither safe nor satisfactory;

(2) the decision was not one the Committee is empowered by law to make; and

(3) the decision was unreasonable having regard to all the circumstances of the case.

Although the summons appeared to seek to strike out all three of these grounds, Advocate Pallot immediately conceded that he was only seeking to strike out the first two grounds.

Following the principles set out by the Court of Appeal in the case of Bastion Offshore Trust Company Limited and the Finance & Economics Committee (9th October, 1991) Jersey Unreported, C.of.A., I found that the striking out procedure was available to me in relation to an administrative appeal, both under the terms of Rule 6/13(1) of the Royal Court Rules, 1992, and by virtue of the inherent jurisdiction of the Court.

Article 21(1) of the Island Planning (Jersey) Law, 1964, as amended, reads as follows:-

> ***"(1) any person aggrieved by the refusal of the Committee to grant permission under Article 6 of this Law, or by any condition attached to the grant of any such permission or by any notice served under paragraph (2) of Article 7, or paragraph (1) of Article 8, or paragraph (3) or paragraph (5) of Article 9, or paragraph (1) of Article 12, or Article 13, of this Law, may appeal, either in term or in vacation, to the Royal Court, in the case of a refusal to grant permission or the attaching of any condition within two months of the date of the notification of the decision of the Committee in the matter, and in the case of the service of a notice within the period specified in the notice as the period within which the requirements of the notice are to be complied with, on the ground that the decision of the Committee or the service of the notice, as the case may be, was unreasonable having regard to all the circumstances of the case."***

Advocate Pallot's contention was simply that there was only one ground of appeal, namely, "that the decision of the Committee or the service of notice, as the case may be, was unreasonable having regard to all the circumstances of the case."

Rule 12/2 of the Royal Court Rules, 1992, deals with the matter of the form of a notice of appeal against an administrative decision. Rules 12/2(1) and (2) read as follows:-

> ***"(1) An appeal to the Court shall be brought by serving on the Committee a notice of appeal in the form set out in the Third Schedule to these Rules, and every such notice shall specify the grounds of the appeal.***
>
> ***(2) The appellant shall not, except with the leave of the Court, be entitled to rely on any grounds of appeal not specified in the notice of appeal."***

The Third Schedule includes the words *"on the ground/s that"* and after a suitable space for grounds contains note (5) which says *"State the grounds of appeal"*.

In Le Maistre -v- The Island Development Committee, (1980) J.J. 1, the headnote indicates -

> ***"Three questions which the Court has to ask itself in determining the appeal - Whether the proceedings were sufficient and satisfactory, whether the decision was one which the Committee were empowered to make, whether the decision was one to which the Committee could reasonably have come".***

Those three tests are set out in the third paragraph on page 10 and the section beginning on the ninth line of that paragraph reads as follows:-

> ***"The law on appeals of this nature is clear and these three questions are as follows. First, were the proceedings of the Committee in relation to the application, the rejection of which gives rise to the present appeal, in general sufficient and satisfactory? Secondly, was the decision one which the Law empowered the Committee to make? And thirdly, was the decision reached by the Committee, one to which it could reasonably have come having regard to all the circumstances of the case? If the answer to all three is in the affirmative the Court's duty is to reject the appeal."***

Advocate Pallot's first and main line of argument was that the Le Maistre case had been wrongly decided and that, in fact, in an appeal against a decision of the IDC there was only ever one ground, namely that set out in the statute, which ground would correspond to the third mentioned on page 10 of the Le Maistre Judgment.

Advocate Pallot's argument was that although the first and second tests set out on page 10 of that Judgment might well give rise to some form of judicial review of proceedings, they could not give rise to a statutory appeal in accordance with Rule 12 of the Royal Court Rules.

When the learned Court indicated in the Le Maistre case that the law was well settled, it was undoubtedly correct and no subsequent case has raised any doubt in relation to the matter. I am therefore quite unable to agree with Advocate Pallot on this point. He is effectively asking me to override a whole line of decisions by the Royal Court, by which I am clearly bound, and that I certainly cannot do.

His second line of argument was that, even if he were wrong on the first point, when Rule 12/2(1) and the Third Schedule

referred to grounds of appeal they meant only the statutory grounds of the appeal. The effect of such an approach would be that the notice of appeal would only contain the statutory grounds of appeal whereas the appellants case, which is referred to in Rule 12/3(3)(d), consisting of the contentions to be urged by the appellant in support of his appeal, would be able to contain the first two questions mentioned in the Le Maistre Judgment.

The result of this submission would be that appellants would actually be bound to give less information in their notice of appeal than that which the present appellant has given.

I cannot believe that this would be a sensible approach to the matter. Indeed, Rule 12/2(2) tends to support me by indicating that the appellant shall not, accept with leave of the Court, be entitled to rely on any grounds of appeal not specified in a notice of appeal. That is a clear indication that the intention of the Superior Number of the Royal Court, in making the Rules, was that all the main grounds of appeal ought to be specified in a notice of appeal.

It appears to me that Advocate Pallot's submissions must stand or fall on the first point. If the first two questions are wrong in law then they cannot be included as grounds of appeal. However, if they are correct in law then they ought to be included as grounds of appeal.

To get over the difficulty of the usage of the word "grounds" in Rule 12/2(1) and (2) and in the Third Schedule and to give clear effect to the intention of the Royal Court and, indeed, to commonsense, I came to the view that the usage of the word "grounds" in the Rules had a wider meaning than purely the statutory grounds as defined by different statutes and was wide enough to include other reasons for the appeal apart from the statutory wording.

To find otherwise would turn every notice of appeal into a mere recital of the statutory grounds and would be extremely unhelpful both to the Respondent and also to the Court.

Accordingly, I dismissed the application and ordered the Respondent to pay the costs of the application, in any event, and did not stay the enforcement of the Order for costs. The wording of the Act should be construed in accordance with the principles set out in Arya Holdings Limited -v- Minories Finance Limited, (14th January, 1993) Jersey Unreported, in relation to costs.

Authorities

Royal Court Rules, 1992: Rule 12/2, 3; Rule 6/13(1).

Island Planning (Jersey) Law, 1964: Article 21(1).

Bastion Offshore Trust -v- Finance & Economics Committee (9th October, 1991) Jersey Unreported, C.of.A.

Le Maistre -v- Island Development Committee (1980) J.J. 1.

Arya Holdings Limited -v- Minories Finance Limited (14th January, 1993) Jersey Unreported.

Mirpuri -v- Island Development Committee (1967) J.J. 825.