

ROYAL COURT
(Samedi Division)

84.

5th July, 1993

Before: The Bailiff, and
Jurats Bonn and Hamon

<u>Between:</u>	Jyske Bank (Gibraltar) Limited	<u>Plaintiff</u>
<u>And:</u>	Jan Henning Spjeldnaes (Male)	<u>First Defendant</u>
<u>And:</u>	Recolte Investments Limited	<u>Second Defendant</u>
<u>And:</u>	AIB Bank (CI) Limited	<u>Party Cited</u>

Representation of the Plaintiff, praying for an Order giving leave to the Plaintiff to disclose to the Serious Fraud Office documents obtained by the Plaintiff's Advocates from the Party Cited, pursuant to Orders obtained by the Plaintiff by its Order of Justice, dated 12th August, 1992, and by a further Order of the Royal Court of 16th September, 1992.

The Plaintiff's Solicitors have been served with a Notice under s.2 of the Criminal Justice Act 1987, requiring production to the Serious Fraud Office of the documents specified therein, and believe that compliance with the Notice would involve disclosure of all/part of the documents obtained from the Party Cited.

Advocate A.D. Robinson for the Plaintiff.
Advocate J.C. Gollop for the First Defendant.
(The Second Defendant did not appear, and the Party Cited rested on the wisdom of the Court).

JUDGMENT

THE BAILIFF: This is an application by Jyske Bank (Gibraltar) Limited, the Plaintiff in the present action.

The background to this case is set out in a representation, brought before this Court, asking for an Order that documents in the civil proceedings between the parties in Jersey which have already been disclosed to the Plaintiff's English solicitors, in accordance with an Order of this Court of 23rd September, 1992, should be disclosed further to the Serious Fraud Office, who have served on the English solicitors a notice under s. 2 of the Criminal Justice Act 1987, requiring them to disclose those documents to that office, by 17th June, 1993; this date has passed because it has not been possible to bring this case on earlier.

The Second Defendant, Recolte Investments Limited, was served as a result of an Order obtained from myself for substituted service on Advocate Gollop, who is the advocate acting for the First Defendant and who has in the past been instructed by that Defendant's solicitors.

So far as the general principles are concerned, this is the first occasion, as far as this Court is aware, that an application of this nature has been made to extend the principles applicable in the disclosure of information in civil proceedings to putative criminal ones, outside this jurisdiction.

The principle as to disclosure outside the jurisdiction of documents obtained here, was enunciated by this Court in Guinness plc -v- Market and Acquisition Consultants Limited & Ors. (1987-88) JLR 104. That principle was there discussed at length and certain further principles were laid down concerning disclosure. That case was followed by Aldor Investments AG & Anor. -v- Aronson, (25th May, 1990) Jersey Unreported. However, this is the first time this Court has been asked to extend those principles to a putative criminal case in the United Kingdom.

In the ordinary course of events it would be open to the Serious Fraud Office to have requested the Attorney General here to obtain the documents for the purposes of criminal proceedings in the United Kingdom, but matters are different in this instance. The documents have already, by Order of this Court, been released in civil proceedings in the United Kingdom and therefore they are already within the jurisdiction of the High Court.

The only authority which touches on this matter is that of Bank of Crete SA -v- Koskotas & Ors. (No. 2) (1992) 1 WLR 919. The facts are not entirely on all fours, but there is a very interesting section of the judgment of Millett J at p.925. He says this:-

"There are, of course, wide policy considerations in the present case. There is a need for international co-operation between the courts of different jurisdictions in order to deal with multi-national frauds".

It is important that this Island should be seen to assist other jurisdictions where allegations of fraud are made and not to be reluctant to do so if the circumstances merit it.

We had some slight doubt as to whether it would not be more appropriate to make the Order not only against the First Defendant but against the Second Defendant as well. In passing, I should add that the Allied Irish Bank which is the Party Cited and which has complied with the Order obtained against it, does not wish to be heard and has not been heard this morning in relation to this Representation.

As I say, we had some doubt about the Second Defendant. In the affidavit of Miss Irene Ann Dallas, who is an Assistant Solicitor of the Supreme Court, employed by Herbert Smith, the Plaintiff's English solicitors, she says that she is satisfied

that the Jersey proceedings were properly served on Recolte Investments Limited. That was effected by the Order for substitute service on Advocate Gollop, which I have mentioned. Mr. Gollop has satisfied us that he has never had direct instructions from Recolte Investments Limited and that is quite clear from a letter he made available to the Court from the firm of Betesh Fox & Co, Manchester, in which the connection between the First and Second Defendants is challenged.

In Miss Dallas' affidavit she says that she was satisfied that service had properly been effected. She goes on to say "...service has never been acknowledged nor has any step been taken in the proceedings". (that is to say in the original Jersey proceedings). *"This applies equally to the English proceedings. All the evidence available to the Bank points to Recolte being a corporate vehicle of JHS. I would refer the court to the Bank Mandate used to open the Recolte account at the Allied Irish Bank dated 11th January 1991 under which JHS..."* (that is the First Defendant) *"is the sole authorised signatory. Documents disclosed by the Allied Irish Bank indicate that a number of substantial payments were made from this account for the sole benefit of JHS. I would also draw to the court's attention the fact that whilst Messrs. Nunez & Co.'s involvement in handling the affairs of Recolte ceased on 13th May, 1992, this coincided with the date on which Paul Nunez handed the Recolte file and papers to JHS on his request. I exhibit at "IAD 6" a copy of the Mandate relating to the account of Recolte at the Allied Irish Bank and the receipt for the Recolte file given by JHS to Paul Nunez".*

As against that, Herbert Smith were furnished with a letter from Nunez & Co of Gibraltar, dated 2nd July, 1993. It was obviously a fax because it was on the same day. It says:

"We thank you for your letter of the 2nd July, 1993, in reply to which we confirm that although our Chambers are the

registered office of the company, Recolte Investments Limited, we have received no instructions to act in relation to the Court proceedings in Jersey or the United Kingdom".

What is interesting about that letter is that it makes no reference to the matters mentioned in Miss Dallas' affidavit, which I have just read out. We would have thought that if Nunez had that information, when they handed over the papers to the First Defendant, they would have disclosed that to Herbert Smith; they did not do so.

So far as the substitute service on Mr. Gollop is concerned, therefore, we are satisfied that was properly effected.

The question therefore remains whether we should make the Order sought today. It is an extension into the criminal sphere, but we are satisfied that the papers have already left the jurisdiction; they are in the hands of Herbert Smith.

We would not wish to make an Order which would go beyond what is absolutely necessary, but there is an interesting comment in the headnote to Bank of Crete S.A. -v- Koskotas & Ors. (No. 2) (1992) 1 WLR 919, which reads as follows:

"...the English court should not be astute to prevent a party who had obtained material by the use of its coercive powers from producing it in a foreign jurisdiction if compellable to do so..."

Herbert Smith is compellable; we would not wish to place them in the position of having to refuse for fear of offending this Court, and we think it is a proper application to have made, Mr. Robinson, and accordingly it is granted.

○

Authorities

Guinness plc -v- Market and Acquisition Consultants Limited & Ors.
(1987-88) JLR 104.

G.H. Bass & Co -v- The Royal Bank of Scotland plc (10th December,
1987) Jersey Unreported.

Dalamal & Ors. -v- Rhone (27th April, 1988) Jersey Unreported.

Aldor Investments A.G. & Anor. -v- Aronson (25th May, 1990)
Jersey Unreported.

Paramount Airways Ltd. -v- Ryco Trust Ltd. & Anor. (6th September,
1990) Jersey Unreported.

Bank of Crete S.A. -v- Koskotas & Ors. (No. 2) (1992) 1 WLR 919.