

ROYAL COURT
(Samedi Division)

28

11th February, 1994

**Before: The Deputy Bailiff, and
Jurats Herbert and Orchard**

Between: **Royale Freight (C.I.) Ltd.** **Plaintiff**
And: **Adrian Gladwin** **Defendant**

Application by the Defendant for discharge of *Ordre Provisoire (Saisie)*.

Application granted; Plaintiff condemned to pay costs.

Defendant's application to refer inquiry into damages to Judicial Greffier for determination refused. Court directs that any claim for damages are to be instituted by independent action before the Royal Court.

Advocate P.M. Livingstone for the Plaintiff.
Advocate R.G.S. Fielding for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: *Saisie* under the Loi (1862) sur les Saisies en vertu d'Ordres Provisoires is a draconian remedy which allows a creditor to seek a provisional order authorising the seizure of the person of the debtor by an officer of the Court.

The 1862 Law lays down certain safeguards one of which is that the creditor must make a declaration on oath before one of the Judges of the Royal Court that the claim is well founded to the best of his belief. The Law provides that the details of the account must also be attached to that declaration.

Mr. Fielding submitted that the principles applicable to the granting of interim injunctions ought to be applied to the issue of *Ordres Provisoires* on the ground that where the liberty of the subject was in question the Court ought jealously to guard its jurisdiction.

We make no ruling on the broader question as to whether injunctive principles should apply to this type of proceeding but we agree with Mr. Fielding that it is incumbent on a creditor

making a declaration under the 1862 Law to make a full declaration; that is a declaration containing full disclosure of all material facts.

It is not contested that the contract for the delivery of 24 items from Halifax to Jersey was not in fact fully performed. Whatever the rights and wrongs of the matter the fact is that the Plaintiff did not deliver to Jersey those items which it had contracted to collect and to deliver. It may have been the fault of the Defendant, we make no finding on that, but the Plaintiff did not collect and deliver the items in question.

In the view of the Court this should have been disclosed to the learned Bailiff, but it was not so disclosed. In the exercise of our discretion therefore we refuse to order confirmation of the provisional order and we discharge the Defendant from custody.

Mr. Fielding, the Court awards you taxed costs.

So far as the inquiry into the question of damages is concerned the Court considers that this is a matter which, if it is to be pursued, ought to be pursued by way of an independent action between the Defendant and the Plaintiff. It is not a matter which the Court is inclined to refer to the Greffier because that would involve making a finding as to liability which the Court does not, at this stage, feel inclined to make. Therefore we refuse that application but we award you the costs of the application this afternoon.

Authorities

Walters -v- Bingham (1985-86) J.L.R. 439 at 462-6.

Loi (1862) sur les Saisies en vertu d'Ordres Provisoires:
Article 1.