

ROYAL COURT
(Samedi Division)

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5th April, 1994

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
Single Judge.

<u>Between:</u>	Kim Kawasaki	<u>First Plaintiff</u>
<u>And:</u>	Steven Cerny	<u>Second Plaintiff</u>
<u>And:</u>	Geoffrey Lee	<u>Third Plaintiff</u>
<u>And:</u>	Mayo Associates S.A.	<u>First Defendant</u>
<u>And:</u>	Troy Associates Limited	<u>Second Defendant</u>
<u>And:</u>	T.T.S. International S.A.	<u>Third Defendant</u>
<u>And:</u>	Michael Gordon Marsh	<u>Fourth Defendant</u>
<u>And:</u>	Myles Tweedale Stott	<u>Fifth Defendant</u>
<u>And:</u>	Monica Gabrielli	<u>Sixth Defendant</u>
<u>And:</u>	Cantrade Private Bank Switzerland (C.I.) Limited	<u>Party Cited</u>

Application by the Defendants for an Order for full indemnity costs, following the Order of the Court raising the Injunctions in the Order of Justice. (See Jersey Unreported Judgment of 24th March, 1994).

Advocate P.C. Sinel for the Defendants.
Advocate M. St. J. O'Connell for the Plaintiffs.
The Party Cited did not appear and was not represented.

JUDGMENT

THE LIEUTENANT BAILIFF: This is an application for costs on an indemnity basis. The grounds for the exercise of the Court's discretion are well enough known and I do not need to rehearse them here. It was strongly urged by counsel for the Defendants

that, *inter alia*, this was a very bad case of material non-disclosure; that the necessity to disclose was ignored throughout; two of the Plaintiffs not producing an affidavit of any sort, and the third was late, insufficient and inaccurate. In addition - a point properly conceded by Mr. O'Connell - the Plaintiffs had changed their ground between the issue of the Order of Justice and the hearing.

Mr. O'Connell's first point was that the Plaintiffs had suffered punishment enough by having their injunctions struck out and that there was not sufficient evidence for the Court to form a view as to their intentions.

In addition he submitted that it was unreasonable to pursue the application when in his view an agreement to vary the injunction had been reached, which seems not to have been acted upon. This had caused his clients to relax, though he conceded that the Defendants were not estopped from making their application.

An agreement to vary the terms of the injunction whilst seeking nonetheless to strike it out is not the same as agreeing to allow it to remain on, *pendente lite*. The Defendants were entitled to proceed and entitled, as the Court has found, to succeed.

The Plaintiffs - and I do not seek to criticise Mr. O'Connell - were in gross breach of their obligations to the Court. The submissions of Advocate Sinel are to my mind correct and I have no hesitation in awarding the Defendants their costs of and incidental to the summons on a full indemnity basis.

Authorities

Rahman -v- Chase Bank Trust Company (2nd July, 1990) Jersey
Unreported.

Jones (née Ludlow) -v- Jones No. 2 (1985-86) JLR 40.

Preston -v- Preston (1982) 1 All ER 41 P.C.

Skinner -v- Myles (25th April, 1990) Jersey Unreported; (1990)
JLR 98.

Bowen-Jones -v- Bowen-Jones & Ors. [1986] 3 All ER 163.

R.S.C. (1993 Ed'n): O.62 r.2.