

ROYAL COURT
(Samedi Division) 157

25th July, 1994

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
and Jurats Bonn and Le Ruez

Between: David Eves First Plaintiff
Helga Maria Eves (née Buchel) Second Plaintiff
And: Hambros Bank (Jersey) Ltd Defendant

Application by the Defendant for an Order, striking out the Plaintiff's Order of Justice.

Advocate A.P. Roscouet for the Defendant.
Advocate D.J. Petit appeared initially for the
Plaintiffs and then withdrew, when the First
Plaintiff appeared on his own behalf and on behalf
of the Second Plaintiff.

JUDGMENT

THE LIEUTENANT BAILIFF: This is an application by the Defendants to strike out an Order of Justice brought by the Plaintiffs. During the course of the hearing counsel for the Plaintiffs conceded that paragraph 3 and paragraphs 5-9 of the Order of Justice should be struck out, a course with which the First Plaintiff did not dissent when he subsequently addressed us. Paragraphs 1 and 2 are no more than statements of fact so far as they go and the outstanding allegations fall into three parts: first, paragraph 4 which reads:

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"That upon the sale of the shares in Glendale Hotel (Holdings) Ltd in November, 1990, the Defendants undertook to pursue a claim against Bois, Labesse for the original mishandling of the transfer of shares in May, 1988. On the Defendant's own admission this would have been in the region of £45,000 to £90,000, but after two years of alleged negotiations, the action was dropped by the Defendants to the Plaintiffs' detriment."

5 To this, counsel for the Defendant submitted that the position was that this claim came before the Greffier who has given judgment in favour of the Defendant and dismissed the counterclaim against Bois, Labesse. Mr. Eves has appealed to the Royal Court. His appeal has been adjourned by the Royal Court pending the resolution of an action involving Glendale Hotel (Holdings) Ltd and the Plaintiffs against the Tourism Committee. If Mr. Eves' appeal is successful then the matter will go to trial and will be heard then, and in those circumstances that would be the proper forum.

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15 Mrs. Eves' appeal has been heard and rejected by the Royal Court but execution has been stayed pending resolution of the action against the Tourism Committee. Mr. Eves accepted that this was the position, that he and Mrs. Eves were taking action against Messrs. Bois, Labesse and that they were worried about the judgment against them.

20 Paragraph 10 reads:

25 *"That following the malicious en désastre action carried out by St. Brelades Bay Hotel Ltd against the Plaintiffs' family business, Blue Horizon Holidays Ltd, the Defendants have persistently made a claim in the proceedings for £115,269.45. Despite the fact that this is not a trading debt or overdraft and is merely a cross-guarantee in relation to Glendale Hotel (Holdings) Ltd, judgment for which was stayed by the Royal Court of Jersey on the 27th day of October, 1993, the Defendants frivolous and vexatious claim has been a major stumbling block to the Plaintiffs in their attempt to resurrect their family business."*

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35 Here again Mr. Osgrove for the Defendant advised us that there was a judgment of the Greffier from which the Plaintiffs had appealed to the Royal Court which has again adjourned consideration of this appeal until the action against the Tourism Committee has been concluded. Again, therefore, if the appeal is successful then the allegation will come before the Royal Court for a hearing and again it will either cease to exist or be heard in ordinary course.

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45 Mr. Eves urged the Court to allow it to stay. The Judgment of the Greffier has proved an obstruction to the resurrection of their business: while it is stayed they have no chance of resurrecting it. If they cannot trade, they cannot repay. Furthermore he doubted if this was indeed before the Court and it was, he urged, only a cross-guarantee.

50 We were referred to various authorities regarding striking out but have no need to recite them here. Suffice it to say that we have no hesitation in striking out these paragraphs. Neither

disclose any reasonable cause of action as they stand. They are certainly vexatious and an abuse of the process of the Court, being no more than doubling up of matters already forming part of existing proceedings. If it were to be exercised under our inherent jurisdiction our decision would be the same.

This brings us to the final paragraphs 11-14:

"11. That the Defendants have continued to obstruct the resurrection of the Plaintiffs' family business so that they were unable to meet the interest on the Home Mortgage Loan "as and when it falls due". Notwithstanding, the Plaintiffs have as at this date, kept their mortgage interest payments up to date.

12. The Defendants have carried out a long running campaign against the Plaintiffs to remove them from their family home, all against text of Section 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8, Paragraph 1.

13. The Defendants have adopted oppressive, vexatious, harassing and severe tyrannic tactics against the Plaintiffs, causing them massive distress, hardship and anguish, just to obtain recall of their loan and bankrupt the Plaintiffs.

14. That the market valuation of the Plaintiffs' property, "The Rest", 29 Green Street, St. Helier, Jersey, is around £225,000. Based on the valuation of a reputable Estate Agent."

We agree with Miss Roscouet that paragraph 11 must fall with paragraph 10. Paragraph 14 is a mere irrelevant allegation of fact and there is not a jot or tittle now remaining in the Order of Justice to substantiate the allegations in paragraphs 12 and 13. At best they are premature and until the various proceedings are heard out neither the Plaintiffs nor anybody else will be able to say whether or not the Plaintiffs will have grounds for bringing forward such allegations.

There is no doubt in our minds and under all the headings adumbrated above but that paragraphs 11-14 should be struck out as should consequently paragraphs 1 and 2 and thus the whole Order of Justice. In doing so we take into account that the allegations have not been heard out before us but in their present form and in the present circumstances this action as drawn cannot and ought not to be maintained and must be struck out in toto.

Authorities

R.S.C. (1993 Ed'n) O.18/19.

Cooper -v- Resch (1987-88) JLR 428.

Lazard Brothers -v- Bois & Bois, Perrier & Labesse (1987-88)
JLR 639.

C.I. & International Law Trust & Ors. -v- Pike & Ors. (1990)
JLR 27.

Takilla Ltd -v- E. Farley & Son Ltd & Anor. (1991) JLR 91.

Takilla Ltd -v- E. Farley & Son Ltd & Anor. (8th January, 1991)
Jersey Unreported.