

COURT OF APPEAL

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30th September, 1994

Before Sir David Calcutt, Q.C., (President),
J.M. Collins, Esq., Q.C., and
E.A. Machin, Esq., Q.C.

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

Applications by the First Defendant for an Order that:

- (1) the First Defendant be given leave to appeal (which application was refused by a Single Judge on 2nd June, 1994: *See Jersey Unreported Judgment of that date*) from the Judgment of the Royal Court (Samedi Division) of 26th May, 1994:
 - (a) dismissing the First Defendant's appeals from the summary Judgments of the Judicial Greffier of 23rd June, 1993, condemning the First and Second Defendants to pay to the Plaintiffs £100,000 by way of capital due, and of 11th January, 1994, condemning the First Defendant to pay to the Plaintiffs £28,121.06. by way of arrears of interest due;
 - (b) refusing the First Defendant's request for a stay of execution of the said Judgments of 23rd June, 1993 and 11th January, 1994, pending determination by the Royal Court of the action brought by the First and Second Defendants against the Tourism Committee of the States of Jersey; and
 - (c) ordering that the costs of the Plaintiffs be paid by the First Defendant
- (2) execution of the said Judgments of 23rd June, 1993 and 11th January, 1994, be stayed for such period as the Court thinks fit or until both or one of the actions presently pending before The Royal Court between Mr. and Mrs. Eves (as First and Second Plaintiff) and Hambros Bank (Jersey) Ltd., (as Defendant), and between Mr. and Mrs. Eves and the States of Jersey Tourism Committee shall have been determined; and
- (3) the Plaintiffs pay to the First Defendant the costs of and incidental to today's applications.

The First Defendant on his own behalf.
Advocate A.P. Roscouet for the Plaintiff.
Advocate J.G.P. Wheeler *Amicus Curiae*, convened
at the Court's request.

JUDGMENT

5 **THE PRESIDENT:** These are applications by David Eves, the First Defendant in this action, whom I will call "Mr. Eves", for leave to appeal from a Judgment of the Royal Court (Samedi Division) of 26th May 1994:

- 10 (a) Dismissing his appeal from Summary Judgments of the Judicial Greffier of 23rd June 1993, condemning Mr. Eves (and the Second Defendant) to pay to the Plaintiffs £100,000 by way of capital due, and of 11th January 1994, condemning Mr. Eves to pay to the Plaintiffs £28,121.06 by way of arrears or interest due;
- 15 (b) Refusing Mr. Eves' request for a stay of execution of the Judgments of 23rd June 1993 and 11th January 1994, pending determination by the Royal Court of the action brought by Mr. Eves (and the Second Defendant) against the States of Jersey Tourism Committee ; and
- 20 (c) Ordering that the costs of the Plaintiffs be paid by Mr. Eves;

25 Mr. Eves also seeks an order that execution of the Judgments of 23rd June 1993 and 11th January 1994 be stayed for such period as the Court thinks fit, or until one or both of the actions presently pending before the Royal Court between Mr. Eves (and the Second Defendant) (as First and Second Plaintiffs) and Hambros Bank (Jersey) Limited (as Defendant), and between Mr. Eves (and the Second Defendant) and the States of Jersey Tourism Committee shall have been determined.

30 At the outset of the hearing of these applications, the Court was concerned to ensure that it had jurisdiction to hear the applications and any consequential appeal. Mr. Eves was acting in person, and accordingly, since issues of jurisdiction were involved, the Court invited Advocate J.G.P. Wheeler to assist the Court as *Amicus Curiae*. He acceded to our request, and we are grateful to him for the considerable help which he gave.

40 The Court of Appeal is the creature of statute. It can exercise only that jurisdiction which it has had conferred on it. Appeals in Civil Causes and Matters are provided for in Part II of

the Court of Appeal (Jersey) Law, 1961. Jurisdiction is dealt with in Article 12. So far as it is material, the Article is in these terms:

5 *"(1) There shall be vested in the Court of Appeal all jurisdiction and powers hitherto vested in the Superior Number of the Royal Court when exercising appellate jurisdiction in any civil cause or matter.*

10 *(2) Subject as otherwise provided in this Law and to rules of court, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the Superior Number of the Royal Court when exercising original jurisdiction in any civil cause or matter."*

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Article 12 (4) makes provision for the exercise of such additional appellate jurisdiction as may be conferred upon the Court by any enactment passed by the States and confirmed by Order in Council; but, so far as we are aware, no additional jurisdiction has been conferred on the Court under this sub-article.

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In the present case the Summary Judgments to which I have already referred were made under the provisions of Rule 7 of the Royal Court Rules 1992 (statutory provision for Summary Judgments having first been introduced by an amendment of the Royal Court Rules, 1982 made in December, 1991. The Judicial Greffier having given his judgments, as set out above, Mr. Eves appealed to the Samedi Division of the Royal Court (as he was entitled to do under Rule 15/2). The appeal was heard and determined in the Samedi Division by the Deputy Bailiff, sitting with two Jurats.

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The jurisdiction of the Court of Appeal cannot arise under Article 12 (2). The Deputy Bailiff sitting with two Jurats cannot constitute the Superior Number.

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Does jurisdiction arise, then, under Article 12 (1)? The question can be put in this way: Would the Superior Number of the Royal Court have had jurisdiction to hear an appeal from the Deputy Bailiff, sitting with two Jurats, in the Samedi Division, dismissing an appeal from the Judicial Greffier, giving summary judgments, as set out above, immediately prior to the coming into force of the Court of Appeal (Jersey) Law, 1961, (which it did on 15th June, 1964)? The difficulty is that no statutory Summary Judgment procedure existed prior to 15th June, 1964.

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Prior to 1964, it appears that there was, at least in any matter of significance, a general right of appeal from the Inferior Number to the Superior Number. Our attention has been drawn to the Report of the Commissioners into the Civil, Municipal, and Ecclesiastical Laws of the Island of Jersey, 1861,

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at p.liii under the title "Judgment and Appeal", and also to the Loi (1862) sur les Appels du Nombre Inférieur au Corps de la Cour, et du Corps de la Cour à Sa Majesté en Conseil, and in particular to Article 3 of that Loi. Further, we were told that before
5 statutory provision was made for Summary Judgment, an informal procedure leading to Summary Judgment in certain circumstances formed part of the practice of the Royal Court. Further, our attention was drawn to several cases in which there has been an appeal to the Court of Appeal from the Royal Court, on appeal from
10 the Judicial Greffier.

In Heseltine v. Strachan & Co. (1989) JLR 1, the Royal Court held that an appeal to the Royal Court under the Royal Court Rules 1982, against the decision of the Judicial Greffier in respect of
15 security for costs, should be conducted by way of re-hearing. At p.6, the Commissioner said this:

"There are differences between the Jersey practice and the English practice. Certainly the court in Jersey has a wider discretion to order security than the master has in England. It does seem to us that the Deputy Judicial Greffier was given the right to order security by the Rules. From that order an appeal lies to the Royal Court. The making of the order is discretionary. The discretion in our view is vested in the Royal Court and we can see no reason why the Royal Court cannot exercise its discretion in a way contrary to the manner that the Deputy Judicial Greffier exercised it. Weight will obviously be given to the decision of the Greffier; he will often have a long experience in dealing with interlocutory matters of this kind. We can see no reason why the court's hands should be fettered in the way suggested by Advocate Mourant, and we will therefore proceed to deal with the matter as though it had come before us for the first time (emphasis added)."
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In Showlaq v. Mansour & Ors. (28th October, 1992) Jersey Unreported C.of.A., no point was taken that the Court of Appeal did not have jurisdiction to hear an appeal from the Royal Court, which itself had allowed an appeal from an order of the Judicial Greffier striking out a pleading in the action.
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In the present case both the Bailiff, sitting as a Single Judge of the Court of Appeal, and the Court of Appeal itself (sitting in July 1994) proceeded on the assumption that the Court of Appeal had jurisdiction to entertain the present application and (if leave were granted) to hear and determine the appeal.
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For my part, I am satisfied that the enactment of the statutory rules relating to Summary Judgment did no more than develop the practice of the Royal Court. Not without some reservations, I am further satisfied that (provided leave is
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granted) the Court of Appeal has jurisdiction, under the provisions of Article 12(1) of the 1961 Law, to hear an appeal from the Inferior Number of the Royal Court, dismissing an appeal from orders of the Judicial Greffier giving Summary Judgment under Rule 7 of the Royal Court Rules, 1992.

Accordingly the Court has now to consider whether leave should be granted and whether execution should be stayed (as set out above).

The circumstances in which this matter came before the Court are fully set out in the decision of the Royal Court on 26th May, 1994, and it appears to me that no useful purpose would be served by repeating those circumstances in full. For my part, I am satisfied, on a consideration of all the material which has been made available to us, that the Judicial Greffier was right in giving the Summary Judgments which he did. I am satisfied that, under the terms of the facility letter of 18th April 1988 (taken with the hypothec), the Plaintiff was entitled to demand immediate repayment of the capital which was the subject-matter of the Home Mortgage and interest thereon, having regard to the admitted continuing failure to pay each and every instalment of interest on the due date. I am further satisfied, by the evidence, that the Plaintiff was entitled to demand both capital and interest in the amounts for which Summary Judgment was given. Accordingly, I would refuse leave to appeal from the decision of the Royal Court in this respect.

Should there nevertheless be a stay? Mr. Eves not only seeks leave to appeal from the refusal of the Royal Court to grant him a stay, but also asks this Court grant a stay (and indeed a wider stay).

Following the decision in Heseltine (supra), in Victor Hanby Associates Ltd v. Oliver, (1990) JLR 337 C.of.A., the Court of Appeal, considering an appeal from the Royal Court, on appeal from the Judicial Greffier, said this:

"In its Judgment the Royal Court directed itself, correctly in our view, that, on appeal against a decision of the Judicial Greffier, it was entitled to approach the matter de novo and to exercise its own discretion unfettered by the previous exercise of discretion by the Greffier; although, of course, the view taken by him should be given due weight. That is not the approach which this Court should take in considering an appeal from the Royal Court. Our task is to apply those well-known principles which limit the role of an appellate court when asked to review the exercise on discretion by the court below. We should not interfere unless satisfied that the Royal Court has exercised its discretion on a wrong basis."

5 The grant of (or the refusal to grant) a stay is a matter for
the discretion of the Judicial Greffier, or, on appeal, for the
Royal Court. It does not appear to me that the exercise of the
discretion was on a wrong basis. Indeed, it appears to me that
the Royal Court took into account all those matters which were
relevant to the proper exercise of its discretion. For my part, I
can see no basis for interfering with the way in which the Royal
Court exercised its discretion.

10 Accordingly, I would refuse the leave sought in this respect
also, and would dismiss the application to this Court for a stay.

COLLINS, J.A.: I agree.

MACHIN, J.A.: I also agree.

Authorities

Hambros -v- Eves (14th July, 1993) Jersey Unreported.

Hambros -v- Eves (3rd February, 1994) Jersey Unreported.

Hambros -v- Eves (26th May, 1994) Jersey Unreported.

Report of the Commissioners into the Civil, Municipal and
Ecclesiastical Laws of the Island of Jersey, 1861: p.liii.

Heseltine -v- Strachan & Co. (1989) JLR 1.

Showlag -v- Mansour (28th October, 1992) Jersey Unreported C.of.A.

Victor Hanby Associates Ltd -v- Oliver (1990) JLR 337 Co.of.A.