8 pages.

ROYAL COURT
(Samedi Division)

105.

8th June, 1995

Before: The Deputy Bailiff, and Jurats Coutanche and de Veulle

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Between:	Daisy Hill Real Estates Limited	Representor
And:	The Rent Control Tribunal	Respondent

Appeal against the decision of the Judicial Greffier of 10th April, 1995, to refuse the Representor's application for further and better particulars.

Advocate W. J. Bailhache for the Representor.
H.M. Solicitor General for the Respondent.

JUDGMENT

THE DEPUTY BAILIFF: This is an appeal by Daisy Hill Real Estates Limited to reverse an Order of the Judicial Greffier dated 10th April, 1995, substantially refusing the Representor's request for further and better particulars of the Respondent's Answer. The Representor has filed a representation before this Court following a decision of the Rent Control Tribunal in relation to the assessment of rents for flats at Marett Court, St. Helier.

The learned Greffier dealt as a preliminary issue with a question of whether there was a binding agreement between the parties for the provision of the particulars which were being sought. There is no reason given for his decision. He simply states "(I) found that there was no such binding agreement". We were asked to deal with this matter as a preliminary point. After deliberation, it was decided between the parties that we would be asked to make our decision within the terms of the judgment which we now deliver.

The facts leading up to the purported agreement could not be simpler. On 9th February, 1995, Messrs. Bailhache Labesse wrote to the Law Officers' Department to say that *"We now enclose a request*

for further and better particulars of the Answer. Please confirm within 7 days of the date of this letter that you agree to provide the request for particulars by Friday, 24th February, 1995. If we do not receive a satisfactory reply, we shall proceed to issue the necessary summons". The firm received a reply from a legal adviser in the Law Officers' Department on 15th February to say *"Further to my letter of 10th February, I am now instructed that it will be possible to provide further and better particulars of the Tribunal's Answer on or before 24th February".* Mr. Bailhache told us that there was embodied in that exchange an agreement capable of being enforced and when some two and a half weeks later the particulars were served with substantial omissions, the Representor realised that, having not served the summons (because he had relied on the written word) he was now disadvantaged.

Whilst we can understand his vexation, we cannot see that there is any legal substance to Advocate Bailhache's argument. In Jersey there are elements necessary to constitute an agreement with "cause". The law does not however proclaim the existence of a contract merely because of the presence of mutual promises. It seems to us that it matters not what the parties had in their minds, but what inference reasonable people would draw from their words or conduct. As Lord Stowell said over 150 years ago, in Dalrymple v. Dalrymple (1811) 2 HAG Con 54 at 105 ***"Contracts must not be the sports of an idle hour, mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatever".*** Clearly, there was a serious effect intended in this case, but we cannot see how it could possibly be held that the letter of 15th February showed an intention to create a binding contract. We accordingly dismiss that preliminary point.

We turn now to the judgment of the learned Greffier and our duties in considering it. These are clear. In Hambros Bank (Jersey) Limited v. David Eves and Helga Maria Eves (née Buchel) (30th September 1994) Jersey Unreported CofA, the Court of Appeal at page 4 of its judgment supported an earlier judgment of this Court in this way:

> ***"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 security for costs, should be conducted by way of re-hearing. At p. 6, the Commissioner said this:***
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> > ***"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)"."

We intend to follow the course adopted by us earlier and particularly in the weight that we attach to the Judicial Greffier's decision.

At the commencement of his judgment, the Judicial Greffier had regard to the principles that guide the English Courts in relation to further and better particulars under Order 18/12/1 of the Rules of the Supreme Court. He did not set them out. He might well have done so. They read:

"The function of particulars is accordingly:

(1) to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved.

(2) to prevent the other side from being taken by surprise at the trial.

(3) to enable the other side to know with what evidence they ought to be prepared and to prepare for trial.

(4) to limit the generality of the pleadings.

(5) to limit and define the issues to be tried, and as to which discovery is required.

(6) to tie the hands of the party so that he cannot without leave go into any matters not included.

But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings".

We must recall that an application for particulars is a method of attacking pleadings that have been filed and "the object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense and avoid allowing parties to be taken by surprise". (Spedding v. Fitzpatrick (1888) 38 Ch.D.410 p.413).

Particulars, normally, will narrow the issues between the parties and limit the parties to matters which are fairly contained within them. There is, in our view, a distinction to be drawn at this stage. A party is entitled to know the outline of his opponent's case; so that the Greffier will always order a party to give particulars if he is satisfied that if he does not the applicant will be uncertain of what is going to be proved against him at trial. What the Greffier will not do is to order particulars of how the other party will prove his case. That, to us, is a matter of evidence and if the only purpose of particulars is to obtain particulars of such evidence, that would be properly regarded as an improper application.

But in a case where the only object is to obtain particulars, if the information asked for is necessary, we would say clearly necessary, then the application is a proper one and must be given even though it will disclose some evidence upon which the other party will rely at trial. (See Marriott v. Chamberlain (1886) 17 QBD 154 at 161). This would apply, in our view, even in cases where the party from whom particulars is sought was privileged from producing documents which would disclose the evidence. [Millbank v. Millbank (1900) 1 Ch.376 p.385].

There is one other matter that we need to deal with at this stage. At one stage of his argument, Mr. Bailhache said that the learned Greffier was taking a somewhat pedantic stance in driving a wedge between further and better particulars of a defence and a statement of the nature of the case. The wording occurs in Rule 6/14(1) of the Royal Court Rules (1992):

> ***"In any proceedings, the Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or a statement of the nature of the case on which he relies and the order may be made on such terms as the Court thinks fit".***

We feel that the learned Greffier was aware of the distinction and adequately balanced the distinction as is shown in page 2 of the judgment:

> ***"The requests contained in paragraphs 1(a) and (b) are not, strictly, for Further and Better Particulars but are for a better statement of the respondent's case. The requests seek to ask questions about the attitude of the respondent to certain evidence and the facts and matters which the respondent took into account when reaching a certain decision. This is not a request for Further and Better Particulars and it is not a proper request for a better statement of case as the respondent has adequately pleaded its answer to the relevant paragraph of the representation".***

We do not feel necessarily that in paragraph 2 of the judgment the words "in this way" have the meaning urged upon it by Advocate Bailhache, namely, "because it is a statement of case". The reluctance of the Greffier in our view, though the matter is inelegantly worded, is more concerned with the fundamental objection that prevails throughout the judgment. Paragraph 2 reads:

> ***"There are two of the requests which are of a similar nature and these are 2 and 13. In both of these, the Representor has seized upon a reference in the Respondent's Answer to "a fair rent" and seeks information as to how the Respondent set a fair rent. This application clearly is not an application for further and better particulars. It appears to me that it is an attempt to get the Respondent to state how it sets a fair rent and that it is not appropriate that this information be sought in this way".***

We must also recall that Rule 6/8(1) of the Royal Court Rules states that ***"..... every pleading must contain, and contain only, a statement in a summary form of the material fact on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the claim admits".***

Mr. Bailhache clearly wishes (and that is the whole thrust of his request) to ascertain whether the Rent Control Tribunal has a policy. He said so to us in as many words:-

> *"This is a classic opportunity to ascertain whether there is a policy at all"*

and

> *"what we are asking for here is what is the policy"?*

It must be recalled that the only particular ordered by the learned Greffier lay under paragraph 5 of the Answer where it was pleaded that *"the Tribunal does take into account the level of rents sought by the Housing Committee in respect of comparable property"*. The learned Greffier ordered full particulars of the rent sought by the Housing Committee which the tribunal took into account including particulars of the alleged comparable property. That is, in our view, a text book example of a request properly made and an order properly given. What then of the remaining particulars which were substantially refused?

The particulars sought are, on the face of it, an attempt to compel the Tribunal to explain the anomaly between the rents fixed

by it and the valuation of market rental given to it by the representor's valuer, Messrs. Vibert & Bridle. The Tribunal also commissioned a valuation by one Mr. Robin Stone. This is mentioned in the Answer at paragraph 13(viii). Mr. Stone suggested rents higher than those fixed by the Tribunal but lower than those suggested by Vibert & Bridle. His written notes are now in the hands of the Representor. The Tribunal has certain statutory powers. Under Article 4(2) of the Dwelling Houses (Rent Control)(Jersey) Law 1946:

> ***"Where any contract to which this Law applies is referred to the tribunal, the tribunal shall consider it, and, after making such enquiry as the tribunal thinks fit and giving to each party an opportunity of being heard, or, in his option of submitting representations in writing, shall approve the rent payable under the contract or reduce it or increase it to such sum as the tribunal may, in all the circumstances think reasonable, and shall notify the parties and the committee of its decision in each case".***

There is, of course, no appeal from a decision of the Rent Control Tribunal. (See Macready v. Amy (1950) JJ 11). Mr. Bailhache referred us to the Appeal of Mr. John Dixon Habin under Regulation 10 of the Gambling (Licensing Provisions) (Jersey) Regulations, 1965, (1971) JJ 1637 where the learned Bailiff said at 1649:-

> ***"The first principle to emerge, therefore, is that in those enacted Laws constituting an authority and which contain no appeal provisions, that authority need give no reasons for its decision and its decision cannot be impugned in a Court of Justice, unless, perhaps, it could be demonstrated that the decision was made in total disregard of the interests of the public in general".***

Mr. Bailhache told us that part of the judgment of the Superior Number was so plainly wrong that it could not be binding upon us, particularly as the Superior Number has only one judge of law, albeit eight judges of fact. But as H.M. Solicitor General argued this interlocutory hearing is no place to decide whether the actual procedures can be impugned rather than the decision. We have carefully regarded Housing Committee v. Phantesie Investments (1985-86) JLR 96, and R. v. Civil Service Appeal Board ex parte Cunningham (1991) 4 All ER 310. These cases raise important issues which the court of trial will no doubt have to grasp. It is to be recalled that the opening paragraph of the reply to the request reads:

> *In reply to the requests numbered 1 to 6 inclusive and 12 the Tribunal says that the full details of the Tribunal's case were set out in the Answer and that the Representor is not entitled to any of the particulars requested since*

they do not relate to the representor's case for the judicial review of the Tribunal's decision".

What the Judicial Greffier said at page 4, when dealing with the fundamental question of the meaning of "fair rent" is this:

"The question as to whether or not the respondent should be required to give detailed reasons for its decision is one of the matters in dispute in this action and if I were to grant the Order for these particulars then it would pre-empt the decision".

The learned Greffier goes on to say that, in his opinion, and in any event, the Answer contains a number of statements which ***"together adequately explain why the respondent decided that the rents which it set were fair rents".***

We are not prepared to go further. Mr. Bailhache has alerted us to what is likely to be a difficult trial but, at the present time, we have to agree with the learned Greffier that many of these particulars, if granted, might pre-empt the very important matters that have to be resolved in due course. The authority in this jurisdiction, at present, is against the Tribunal having to justify its decision. We feel that while the reasons given by the Tribunal seem at times to ask more questions than they answer, it is not the purpose of further and better particulars to cause the Tribunal to have to make a full declaration of its policy. We cannot fault the learned Greffier's decision. This Court is not yet certain of whether the Tribunal is bound in law to supply <u>any</u> reason for its decision and will remain uncertain until the whole matter has been fully resolved at trial.

Authorities

Dalrymple v. Dalrymple (1811) 2 HAG Con 54 @ 105.

Hambros Bank v. Eves (30th September, 1994) Jersey Unreported CofA.

R.S.C. (1995): O.18/12/1.

Spedding v. Fitzpatrick (1888) 38 Ch.D. 410 @ 413.

Marriott v. Chamberlain (1886) 17 QBD 154 @ 161.

Millbank v. Millbank (1900) 1 Ch. 376 @ 385.

Royal Court Rules, 1992: Rule 6/14(1).

Dwelling Houses (Rent Control) (Jersey) Law, 1946: Article 4(2).

MaCready v. Amy (1950) JJ 111.

Appeal of John Dixon Habin under Regulation 10 of the Gambling (Licensing Provisions) Regulations, 1965.

Housing Committee v. Phantesie Investments (1985-86) JLR 96.

R. v. Civil Service Appeal Board ex.p. Cunningham (1991) 4 All ER 310.