

ROYAL COURT
(Samedi Division)

47.

13th March, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Le Ruez and Vibert

<u>Between:</u>	Hotel Trianon Palace S.A.	<u>Plaintiff</u>
<u>And:</u>	Marie-Louise Bougenaux née Ruault	<u>Defendant</u>
<u>And:</u>	Cantrade Private Bank Switzerland (CI) Limited	<u>Party Cited</u>

Application by the Plaintiff for an Order adjourning *sine die* an application by the Defendant to set aside the Decision of the Judicial Greffier to order service outside the jurisdiction and that the Defendant file a Further and Better Particulars Affidavit no later than 14 days before the hearing of the Defendant's application.

Advocate A.D. Hoy for the Plaintiff.
Advocate P.C. Sinel for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: We have before us essentially a preliminary summons in due form to contest the jurisdiction of the Court.

5 An Order of Justice was served on a defendant who has no connection with Jersey other than through the party cited which is a Bank and where it was alleged, on allegations of fraud, that she may have deposited money. There was a tracing action.

10 The Order of Justice was not served out of the jurisdiction but was handed to the defendant in Court.

15 The Defendant then did something extraordinary. While protesting the jurisdiction she filed a very detailed affidavit answering all the points raised against her in the Order of Justice. That affidavit was filed with a number on it that the case had been given when it was put on the pending list on 25th October. Apparently it was placed on the pending list by Advocate Melia and there is no protest noted at that time on the file. No answer has ever been filed and no attempt has been made by the plaintiff to obtain judgment.

20 Before the case was put on the pending list there was an *inter partes* hearing concerning the case on 17th October before the Inferior Number where an order was sought that leave to serve out of the jurisdiction by the Judicial Greffier be set aside and that the interim

injunction contained in the action be varied. There is a consensus that the Act of Court is inaccurate and we come back to the jurisdictional point. Mr. Hoy has filed a summons today not in due form but accepted by Mr. Sinel. Mr. Hoy has also filed an affidavit today
5 which casts doubt upon the affidavit of Mme. Bougenaux. She is apparently indicted with others in Paris on a fraud charge and is on bail of FF6 million. These proceedings commenced after her affidavit was filed.

10 Because the action may turn on whether the party cited is a constructive trustee of the plaintiff, it seems to us that the defendant should be invited to make an amended affidavit within 14 days. Mr. Hoy says that he needs to refer to her original affidavit in order to deal with the jurisdictional point. It is still not accurate nor is it
15 complete. This may not be necessary on the jurisdictional point but would certainly be necessary if the Court went on to consider the variation of the injunctions. We have no idea at this time how we will decide on the jurisdictional point.

20 In our view the filing of a second affidavit cannot compromise the jurisdictional point because if the first affidavit is a step in proceedings that step has been taken and a further affidavit cannot influence the decision. Furthermore, until the *inter partes* application is made as ordered by the Court on 17th October no prejudice is suffered
25 by the defendant because no further disclosure is available.

If the defendant is in good faith the Court would expect her to comply but we will proceed on the adjourned hearing in any event once the time has elapsed.

No Authorities