

ROYAL COURT
(Samedi Division)

11th August, 1997 159

Before: Sir Peter Crill, K.B.E., Commissioner,
and Jurats Herbert and Jones

Between:	Hotel Trianon Palace SA	Plaintiff
And:	Marie-Louise Bougenaux, née Ruault	Defendant
And:	Cantrade Private Bank Switzerland (C.I.) Limited	Party Cited

Application by the Defendant for an Order setting aside the Greffier's Order of 14th October, 1996, authorising service on the Defendant, outside the jurisdiction; and/or striking out the action as a whole under Rule 6/13 of the Royal Court Rules 1992, as amended, or by virtue of the inherent jurisdiction of the Court; and/or discharging the injunctions obtained by the Plaintiff in their entirety.

Advocate A.D. Hoy for the Plaintiff.
Advocate P.C. Sinel for the Defendant.
The Party Cited did not appear and was not represented.

JUDGMENT

THE COMMISSIONER: We have before us a summons issued by the Defendant in this action, Marie-Louise Bougenaux, née Ruault, in respect of a claim brought against her in this jurisdiction by the Plaintiff, Hotel Trianon Palace SA.

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The summons requested the Court to do three things. First, to set aside an Order of the Greffier of 14th October, 1996, which authorised service outside the jurisdiction. I need only say, in passing, that in respect of an earlier hearing in this matter there was an error when it was recorded that the Royal Court had set aside that Order when it had in fact not done so.

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Secondly, the summons requested this Court to strike out the whole action pursuant to the provisions of Rule 6/13 of the Royal Court Rules 1992, and/or the inherent jurisdiction of the Court.

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Thirdly, and alternatively, the summons sought an Order that the injunctions - which I shall mention in a moment - obtained by the Plaintiff, be discharged.

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The matter first came before this Court by means of an Order of Justice, signed by the learned Deputy Bailiff, on 10th October, 1996. In that Order of Justice there is a history of what is alleged by the Plaintiff to be prolonged fraud and wrongdoing by the Defendant in relation to the refurbishment of the Plaintiff by her husband who unhappily died in 1992.

It is not necessary for this Court today to go into the background in any more detail, except to say that the alleged wrongdoing has resulted in the Defendant's being examined by a French Examining Magistrate, and "mise en examen" in relation to some of the allegations of fraud in the course of the last two years or so. She was placed en caution in the sum of FFr6m., half of which was said in the Act of the Examining Magistrate to be for the fine in relation to the infraction alleged to have been committed. The other half (FFr3m.) was to be available for civil damages, should they be awarded in favour of the Plaintiff within the jurisdiction of France.

Having recited the alleged wrongdoing by the Defendant and her husband in much greater detail than I have sketched here, the Order of Justice concludes at paragraph 15:

"In the premises the Plaintiff is entitled to trace and recover from the Defendant all money misappropriated from the Plaintiff as set out above, or assets acquired directly or indirectly with such money".

The other claims are that *"the Defendant is liable to the Plaintiff as a constructive trustee in that she ... is liable to the Plaintiff to deliver up all property in her possession derived directly or indirectly from money misappropriated by Mr. Bougenaux and/or the Defendant and is further liable in damages for breach of constructive trust".*

The final paragraph in the recital, before the injunctions are sought, states that: *"The Plaintiff fears that, in the light of the Defendant's behaviour aforementioned, unless restrained by injunctions, the Defendant will take steps to dispose of, deal with or otherwise dissipate moneys held within the jurisdiction of this Court in order to defeat the claims of the Plaintiff herein".*

In the course of the Order of Justice, reference was made to an account held at Banque Cantrade, 21 Rue du Rhône, Geneva, in the name of Atcos ("Atcos Account"). It was alleged that that account, or part of it, was subsequently transferred to Jersey and it is that money which resulted in the Party Cited, Cantrade Private Bank Switzerland (CI) Limited, being included in the original action. However, it was released on 18th October, 1996, and is no longer concerned with this action.

We were told this morning by Mr. Sinel, on behalf of the Defendant, that the money such as it was - no amount was disclosed - had been sent back to France, or at least is no longer in Jersey.

The Plaintiff, through Mr. Hoy, is not disposed to accept the bald statement put forward by Mr. Sinel on behalf of the Defendant in view - it is said - of a number of inaccuracies in her affidavits and also in view of her fraudulent behaviour. It is accepted, I think, that the

money is no longer here, inasmuch as Advocate Le Cocq, acting for the Party Cited, wrote a letter informing the Plaintiff that no money was held in Jersey.

5 What is left in the Order of Justice is in fact a request that this Court should continue with the tracing action. The purpose of imposing a Mareva injunction has gone and Mr. Hoy for the Plaintiff has urged that, as a matter of comity, and having regard to the observations of Sir Godfray Le Quesne in Solvalub Limited -v- Match Investments Limited 10 (13th December, 1996) Jersey Unreported CofA, the Court should allow this action to continue and not rule against jurisdiction.

15 Before I read the passage in Solvalub, there is one matter to which I should refer. On the first occasion on which this matter came before the Court I was informed that the Defendant had been handed a copy of the Order of Justice in Court but Mr. Sinel has satisfied me that that did not per se found jurisdiction as when the matter was argued on 13th March, 1997, before the Royal Court, the question of this jurisdiction came up and was not accepted by the Defendant. Therefore I need not 20 waste any further time in having to decide whether the fact that she had been handed a copy of the Order of Justice ipso facto founded jurisdiction in this Court.

25 Mr. Hoy stated that there is now a claim for damages and therefore there are proceedings which can continue in this Court. As far as I am aware there have been no similar civil proceedings instituted in the French Court and what appears to be the case is that the Examining Magistrate - as is evident from the correspondence - wishes to obtain such documents as the Plaintiff may get through the orders of this Court 30 to assist in carrying out criminal investigations. I will not go so far as to say that in every case such a matter would be wrong, but it seems to me that in a case of this nature one must examine a little more carefully the background.

35 Mr. Sinel has pointed out a number of facts which are not in dispute, they are these: all the parties are in France; the proper law is French; the Defendant resides in France; the Defendant - although this is a peripheral matter - worked for the French Civil Service for 26 40 years; the Defendant has her family in France; the Defendant owns substantial real estate in France; the Plaintiff's claim has not been quantified - although you would not expect that of course in a general claim; there are no civil proceedings yet in process in France; there are no assets in Jersey; all the witnesses live in France; all the 45 documents are in French, although that is not an insurmountable problem, and there is nothing to indicate in the documents that the Defendant is likely to leave France; and although this matter is not accepted by the Plaintiff, the money is in France.

50 The passage in Sir Godfray Le Quesne's Judgment in Solvalub to which I wish to refer is to be found on p.8:

55 *"In my judgment it is within the power of the Royal Court to grant a Mareva injunction in aid of proceedings in a foreign court and to do that in proceedings here in which no relief other than the grant of the Mareva injunction is sought".*

But he is not saying that where there is no Mareva injunction other forms of relief would be appropriate to grant in aid of proceedings outside this jurisdiction; there is a distinction and it is one that should be properly noted.

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Having regard to RSC (1997 Ed'n): O. 11/1/1, 11/1/6 and 11/1/7, particularly the question of the discretion of this Court, and the burden on the Plaintiff to show that this is the appropriate jurisdiction, we are not satisfied that that burden has been discharged, Mr. Hoy, and under the circumstances we decline jurisdiction and the action will be struck out. The Court orders the Plaintiff to pay taxed costs of and incidental to the action.

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Authorities

Solvalub Limited -v- Match Investments Limited (13th December, 1996)
Jersey Unreported CofA.

Hotel Trianon Palace SA -v- Bougenaux (13th March, 1997) Jersey
Unreported.

A and Another -v- C and Others (1980) 2 All ER 347.

Practice Direction (Service out of Jurisdiction) (1987-88) JLR N.6.

R.S.C. (1997 Ed'n): O. 11/1/1; 11/1/6 and 11/1/7.

A.J. Bekhor & Co -v- Bilton (1981) 1 QB 923 CA.

Ough & Flenly: "The Mareva Injunction and Anton Pillar Order: Practice
and Precedents" (2nd Ed'n: 1993): "Safeguards".