

ROYAL COURT
(Samedi Division)

21st August, 1997. ¹⁶⁵

Before: Sir Peter Crill, K.B.E., Commissioner,
and Jurats Le Ruez and Potter.

Between Mayo Associates S.A.
Troy Associates Limited
T.T.S. International S.A. Plaintiffs

And Cantrade Private Bank
Switzerland (C.I.) Limited; First Defendant

Touche Ross & Co. Second Defendant

And Robert John Young
(joined at the instance of the First Defendant)

Anagram (Bermuda) Limited
(joined at the instance of the First Defendant)

Myles Tweedale Stott
(joined at the instance of the First Defendant)

Michael Gordon Marsh
(joined at the instance of the First Defendant)

Monica Gabrielli
(joined at the instance of the First Defendant)

Touche Ross & Co.
(joined at the instance of the First Defendant)

Cantrade Private Bank Switzerland Third Parties
(C.I.) Limited
(joined at the instance of the Second Defendant)

IN THE MATTER OF the Representation of the First Defendants dated 7th March, 1997; and

IN THE MATTER OF an application for leave to appeal and appeal by the Plaintiffs against the Order of the Royal Court of 3rd July, 1997, that the Plaintiffs' summons - seeking an Order that the Royal Court is without jurisdiction to grant the relief sought in the said Representation and/or that the said Representation be dismissed on the grounds that there are no grounds on which the Royal Court is able to or should grant such relief - be heard simultaneously with the said Representation.

Application by the Plaintiffs, under Rule 15 of the Court of Appeal (Civil)(Jersey) Rule 14, for a stay of execution of the Order of the Royal Court of 3rd July, 1997, pending determination of the application for leave to appeal and appeal.

Advocate P.C. Sinel for the Plaintiffs.
Advocate A.R. Binnington for the First Defendant.

JUDGMENT

5 THE COMMISSIONER: The background to the matter before the Court this morning may be simply stated. The plaintiffs have brought an action against the defendants. [There are in fact two defendants but we are not concerned this morning with the accountants (the second defendant) but only with the bank, the first defendant, to whom, for the purpose of this judgment, we shall refer as "the bank"]. The plaintiffs, on the face of it, allege grave wrongdoing, if not by the bank itself then at least by an employee, in conjunction with a certain Dr. Young. It is not necessary to detail those allegations; they are denied in the pleadings and the case will come before the Royal Court in due course when the pleadings are closed and all the necessary discoveries have been made.

15 We should add this: the plaintiffs have brought this action against the bank because they have been acting for a number of investors who have lost money, it is alleged, through the activities *inter alia* of the bank.

20 The bank has made certain offers to some of the investors, whose names and addresses it knows, but have been unable to approach the others directly. The only way it could do this is through the plaintiffs.

25 The bank has suggested this morning, through Mr. Binnington - whose address as usual was most ably put to us - that the plaintiffs are seeking a stay in order to delay the hearing of the bank's representation in which certain affidavits will be produced which would indicate wrongdoing on the part of at least one of the principals of the plaintiffs and certainly also draw attention to the fact that there was a conflict of interest, inasmuch as one or both of the plaintiffs could be regarded as acting in a fiduciary position.

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5 The bank's representation, brought on 7th March 1997, sought that the names and addresses of the investors, which they did not know, should be disclosed to the Viscount. That application was immediately opposed on 1st April, 1997, by the plaintiffs, who issued a summons to be heard before the Judicial Greffier on 29th April, 1997, seeking to strike out the representation on the usual grounds.

10 However, on 4th April, 1997, there was a Royal Court hearing regarding the filing of further evidence and certain directions were given. In the course of that hearing the court said this:

15 *"In the context of this case the Judicial Greffier has no jurisdiction to hear a summons to strike out a representation which is before the Court and which has not been delegated by the Court to him. We accordingly strike out that summons".*

20 At that hearing the plaintiffs had contended that the representation constituted a separate action but that submission was rejected.

25 The matter again came before the Court on 3rd July, 1997, when the Bailiff sat in Chambers and made some further Orders. I quote from the Act:

30 *"(1) directed that the Plaintiffs' summons seeking an order that the Court has no jurisdiction in this matter should not be heard as a preliminary issue but as one of the issues to be determined at the hearing of the representation;*

35 *"(2) directed that any party may file a further affidavit by the 7th August, 1997, and that any affidavit in reply should be filed by the 21st August, 1997; and*

40 *(3) directed that the parties should file skeleton arguments not less than five working days before the hearing of the representation".*

This hearing is scheduled to commence in the Royal Court on 1st September, 1997.

45 However, the plaintiffs have appealed against those Orders and that appeal is to be heard by the Court of Appeal at the sitting beginning on 22nd September, 1997.

50 As we see it, the nub of the bank's submission to this Court this morning is that the learned Bailiff was right to make the Order he did, because in order to determine properly whether the Royal Court has jurisdiction or not, it will be necessary to examine the representation and the evidence adduced in support.

On 22nd September, 1997, the Court of Appeal will have to rule on the Order for a simultaneous hearing of the jurisdictional point and of the representation, and will take into account the submission of Mr. Binnington that the facts are so intermingled that the two matters should be heard together. It seems to us that we cannot this morning pre-empt the decision of the Court of Appeal. If we gave our opinion as to whether Mr. Binnington was right we would in fact be deciding the very point which the Court of Appeal, amongst other things, is going to have to determine on 22nd September, 1997, and we are not prepared to do that.

It seems to us also that if we do not grant a stay then the position may well be this: the two matters will be heard, on 1st September, 1997, and let us suppose that the Court finds against the plaintiffs on the question of striking out and goes on to give a judgment in respect of the representation; and let us further suppose - though we cannot anticipate what the Court of Appeal will decide - but let us further suppose that the Court of Appeal then reverses the decision of the learned Bailiff of 3rd July, the appeal would then be nugatory.

We have looked carefully at the position in respect of the Court of Appeal disturbing the exercise of discretion by the court below but it is not entirely clear to us on exactly what grounds the learned Bailiff reached his decision on 3rd July. That must be a matter, we think, to be argued before the Court of Appeal.

The plaintiffs' stay application today effectively requests the Court to order that the dates set aside for the hearing of the representation and the application in respect of the jurisdictional matter in the Royal Court on 1st September, 1997, should be vacated. We are going to make that Order so that the Court of Appeal can decide on the appeal on 22nd September, 1997.

Mr. Binnington has rightly pointed out that the matter has gone on for a very long time and that there might well be several sittings in which case the cost may well be considerable. However, Mr. Sinel, in our view, also correctly, pointed out that if the matter went ahead on 1st September, 1997, and the Court of Appeal then found in favour of the plaintiffs' argument, that the two matters should have been dealt with separately, there would have been considerable expense on the part of the plaintiffs and presumably on the part of the defendants to little end, because the matter might then have to go back to the Court of Appeal on the substantive issue.

All in all, therefore, we have made the Order we have. However, I do want to say this: it is the Court's belief that the sooner these matters are heard the better, because, as both parties agreed, the innocent people in this deplorable affair are

the investors and the sooner they are compensated, if that is possible - and we express no views on that point - the better.

As regards the costs of today's summons, they will be in the cause.

Authorities.

R.S.C. (1997 Ed'n): Vol. 1: O.59, r.13: p.1015.

Seale Street Developments Limited -v- Chapman (1992) JLR 243 CoFA
at pp.253-4.

Winchester Cigarette Machinery, Ltd -v- Payne (No.2) (15th
December, 1993) "The Times".

Ratnam -v- Cumarasamy [1965] 1 WLR 8.

G. -v- G. [1985] 1 WLR 647.