

ROYAL COURT
(Samedi Division) 198.

22nd October, 1997.

Before: Francis Charles Hamon, Esq., Deputy Bailiff, and
and Jurats Myles and de Veulle.

<u>Between:</u>	Sterritt Properties Inc.	Plaintiff
<u>And:</u>	Roker Trustees (Jersey) Limited	First Defendant
	Strachans Management Services Limited (trading as Strachans)	Second Defendant
	Richard Jepson Egglshaw	Third Defendant
	Philip de Figueiredo	Fourth Defendant
	Raymond Donner	Fifth Defendant
	Hilvick Investments Limited	Sixth Defendant
	Business Ventures Inc.	Seventh Defendant

Application by the Fifth Defendant for an Order that his application - for a stay of the Jersey proceedings on the ground that Dallas and not Jersey is the *forum conveniens* - should be heard before an application by the Plaintiff - for an Order that the Fifth Defendant is without *locus standi* and that the Fifth Defendant's Trustee in Bankruptcy should be substituted for the Fifth Defendant in the Order of Justice.

Advocate J.D. Melia for the Plaintiff.
Advocate M.M.G. Voisin for the First, Second, Third,
and Fourth Defendants.
Advocate T.J. Le Cocq for the Fifth, Sixth,
and Seventh Defendants.

JUDGMENT

THE DEPUTY BAILIFF: In his judgment of 1st May, 1997, the learned Commissioner, Sir Peter Crill, repeated a point made to him by counsel. He said this:

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"Dallas is the proper forum, it is the place where the contracts were performed. It is the place where, if any fraud took place as alleged by the plaintiff against them by Mr. Donner, it was there that the fraud - if such it was - was perpetrated and it is appropriate that the disputes between the parties should be dealt with there. It is the proper law of the contract."

5 That is what counsel said in argument before me and it is no doubt
what counsel is going to repeat in much greater detail if we move on to
consider whether Jersey is the *forum non conveniens*. It is the main
argument before us. The other, which is perhaps a spoiling argument, is
brought, albeit at a late stage, by Miss Melia for the plaintiff. It is
an interesting point. She argues that the Fifth Defendant be
substituted and the Order of Justice be amended so that the Fifth
Defendant becomes "Thomas Graham Hodson as trustee in bankruptcy of
Raymond Donner". She wishes to argue that the present Fifth Defendant
10 for whom Mr. Le Cocq appears has no *locus standi*.

15 Furthermore, she says, the trustee in bankruptcy, who now claims
audience, does not wish Mr. Le Cocq's firm to act for him. That is
based on a letter from the trustee to Miss Melia's firm dated 16th
October, 1997. There is no indication in that letter that the trustee
is contemplating legal proceedings on the point of *locus standi*, the
letter merely says, "Advocate Clyde-Smith of Ogier and Le Masurier is
not instructed by me in any proceedings before the Royal Court". There
are no affidavits supporting either that assertion or the claim on *locus
standi*. There are many applications bound in with the claim of *locus
standi* in the summons. One in particular asked that an Act of the 17th
January, 1997, of this Court be declared nul and void. In that Act, the
trustee was directed to procure that Mr. Donner should have the absolute
conduct and control by the Sixth and Seventh Defendants of all
25 proceedings brought or which may in the future be brought in any Court
in any jurisdiction against those companies which related directly or
indirectly to the trust fund of the trust. There are, of course, other
directions but that is the prime direction that we wish to draw out for
these purposes.

30 There are problems that might arise. If the trustee in bankruptcy
were to be allowed to be substituted for the presently named Fifth
Defendant, leave would have to be given to serve out of the jurisdiction
and at that point the Court would have to consider whether Jersey was
the appropriate forum. Mr. Le Cocq interestingly produced an affidavit
sworn by a South African attorney, Michael Gerald Solomon. It was sworn
in Johannesburg on 21st October, which is yesterday. It raises doubts
in South African law, which we cannot possibly resolve today, as to
whether the trustee in bankruptcy or the defendant are the proper
40 parties.

45 However, the claims that are brought before us by Miss Melia are
not made by the trustee in bankruptcy. Miss Melia represents the
plaintiff and we have to ask ourselves why the trustee in bankruptcy has
not intervened in an action which has been running since April or May of
this year. In fairness to Miss Melia, there is a letter in support from
an attorney, Patrick O'Brien, who practises in Johannesburg and
Cleveland, South Africa, but that is only a letter and not an affidavit.
If we do not allow this application to be heard, nothing, in our view,
50 prevents a similar application in proper form being made immediately in
Dallas.

55 The summons is very late and very sparse in its supporting
documentation. We can see, despite our initial reservations, no problem
in allowing the *forum non conveniens* point being presented by Mr. Le
Cocq for the Fifth Defendant, bearing always in mind that Mr. Voisin
sits as a fail-safe applicant, should he not be allowed to make the
application in his own name.

5 We are therefore going to allow the *forum non conveniens* point to be taken and when that has been adjudicated upon we will consider how next to proceed on Miss Melia's application which is not lost because she has not argued it at any length before us. It is merely adjourned to stand over until the first application, which Mr. Le Cocq is going to present, has been heard and adjudicated upon.

No Authorities