DISHONOURED CHEQUE

1984/30

20th December, 1984

Chestertons -v- Leisure Enterprises

DEPUTY BAILIFF: This is a summons to strike out a defence to the action between the plaintiffs Chestertons and the defendants Leisure Enterprises (Jersey) Limited. The plaintiffs are estate agents in London and it is alleged in the Order of Justice that in 1983 they received instructions from a Mr Marcus Bright, acting on behalf of or in conjunction with Las Calinas SA, which association or company owns property in Spain, and the agreement was that Chestertons would place advertisements in certain magazines and newspapers published in the United Kingdom for the purposes of attracting persons who might be interested in acquiring those properties. Certain advertisements were placed and the bill for those advertisements came to £7,083.40. It is accepted that on the 6th October, 1983, the defendant company, Leisure Enterprises (Jersey) Limited, tendered a cheque in the sum of £7,083.70 in settlement of two invoices which had been sent to Mr Bright and/or, it is claimed, Las Calinas SA by the plaintiffs. The cheque was dated the 6th day of October and was drawn upon the Jersey Esplanade branch of Williams & Glyn's Bank plc, 44 Esplanade, St Helier, Jersey, and made payable to the plaintiffs. It was presented on or about the 10th October but was dishonoured because, in the meantime, the defendant company had countermanded the payment. It is disputed whether the plaintiffs knew at the time they concluded the contract for the placing of the advertisements that Leisure Enterprises Limited was, in fact, connected with Las Calinas and Mr Bright and that would be a matter, in due course, of evidence. The cheque, as I have said, was paid by Leisure Enterprises but the plaintiffs say that that is not relevant because the contract, as I have said, was concluded between them and Las Calinas acting through Mr Marcus Bright. Because the cheque was dishonoured, it is for this reason that the summons has been brought, because Mr Mourant relies on a number of authorities from the white book where a cheque or a bill of exchange is equated with cash. Now, our law on the subject of 'lettres de change' is that of the Loi 1813, Concernant le Paiement de Dettes de Change, of 1813, and Article 1 of which reads as follows:

"Toutes lettres de change dûment acceptées, et tous billets à

ordre, seront payable le jour de leur échéance, y compris trois jours de grâce; et dans le cas de refus ou de défaut de paiement de la part des débiteurs, il sera loisible aux personnes ayant droi demander le paiement de telles lettres de change ou billets à ordres de faire saisir, par le moyen d'un Officier de Justice, les biens ou la personne de tels débiteurs, quoiqu'ils soient fondés en héritage et de procéder vers eux sommairement tant en vacance qu'en terme."

We are satisfied that the words 'le jour de leur échéance' mean in respect of the cheque, the day on which it is paid and therefore the days of grace were allowed until the 9th to meet it; it was not met and there was a 'défaut' on the part of the 'débiteur' in this case, the defendants, to meet that 'lettre de change'. Chestertons said because of those circumstances, that is all they need prove, and that they are entitled to their payment inasmuch as they are entitled to say that any defence in respect of their representing or suing on a cheque, a dishonoured cheque, cannot be entertained by this Court. Looking at the White Book, and equating our law on 'lettres de change' for the purposes of this case with the English law on the subject of dishonoured cheques or bills, bills of exchange, I am satisfied I may have proper regard to what the position is in the United Kingdom and it is clearly set out on page 142 at paragraphs 14/3 and 14/4 of Order 14 in the White Book. I read from it:

"In an action on a dishonoured bill of exchange, or cheque or promissory note, a wholly different practice prevails so far as setting up the defence of set-off or counter-claim is concerned. In such a case, save in exceptional circumstances or upon strong grounds, the defendant will not be allowed to set up a set-off or counter-claim for damages for breaches of other contracts or the commission of a tort and the plaintiff is entitled to judgment for the amount of his claim without a stay of execution."

And in this particular case, Mr Mourant equated what he was doing today/ with an application had it been ... were it being made before the High Court for summary judgment, and I think that's a reasonable analogy to draw. The paragraph goes on:

"This practice will obtain whether the counter-claim is connected with or arises out of or is independent of the contract in respect of which the bill, cheque or note was given, and whether or not the action is between the immediate parties to the bill. The prin-

ciple is that a bill, cheque or note is given and taken in payment as so much cash, and not as merely giving a right of action for the creditor to litigate a counter-claim.

"We have repeatedly said in this court ..." I now read from the judgment of Lord Denning in Fielding & Platt Ltd v Selim Najjar, (1969) 1 Weekly Law Reports, page 357 and page 361; I turn to the judgment itself:

"We have repeatedly said in this court that a bill of exchange or promissory note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary." It is suggested that on the first note, there was a failure of consideration; that suggestion is quite unfounded; the plaintiffs were getting on with their part of the contract. Now, it is quite clear, therefore, that if there was a failure of consideration in this case, that would be a reasonable ground and a proper ground for me to permit Mr Dorey to put in his answer and he has said that one should strike out an answer only where it is obviously unsustainable. It is quite clear to me that there are very serious matters alleged in what would be the answer if I allowed it in, or allowed it to continue to be on the record, particularly an allegation of fraud. Now, as against what Mr Dorey has said, Mr Mourant has drawn my attention to the interesting case of Nova Knit Limited against Kammgarn Spinnerei GmbH reported at 1977 2 All England Law Reports at page 463, where, at page 469, Lord Wilberforce says this:

"I take it to be clear law that unliquidated cross claims cannot be relied on by way of extinguishing set-off against a claim on a bill of exchange," and he cites Warwick against Nairn and James Lamont & Co against Hyland:

"As between the immediate parties, a partial failure of consideration may be relied on as a pro tanto defence, but only when the amount involved is ascertained and liquidated," but on the other hand, Mr Dorey has suggested that I should distinguish that case because his claim is in two parts - first, that because of the failure of consideration, the plaintiffs are not entitled to sue on the dishonoured cheque and that, indeed, by ... in fact, the defendants were entitled to cancel it; secondly, he says, the counter-claim is distinct from that argument and is a separate matter and, therefore, I should distinguish the case of Nova (Jersey) Knit from the present case.

I am satisfied that there is an issue to be tried. Rule 6(13a) says that the Court may, at any stage of the proceedings, order to be struck out or amended any claim or pleading or anything in any claim or pleading on the ground that it discloses no reasonable cause of action or defence, as the case may be, and I have no doubt that if I allowed the defence to stand, there is disclosed in it a reasonable ground of defence; under all the circumstances, I am not prepared to accept the arguments of Mr Mourant, I think the justice of the case requires that the defence should be allowed to stand and therefore I dismiss the summons.

You do not think it should be costs in the cause, do you, Mr Dorey?

ADVOCATE DOREY: (indistinct)

DEPUTY BAILIFF: Mr Mourant, do you have anything to say?

ADVOCATE MOURANT: (indistinct)

DEPUTY BAILIFF: I think it should be costs in the cause, Mr Mourant, because it follows that if the serious things that Mr Dorey raises do not succeed, you will succeed and you will have your costs and this will be taken into account; so the costs in the cause.