ROYAL COURT
(Samedi Division)

1st February, 1988

Before: Commissioner P.R. Le Cras
sitting as a Single Judge

BETWEEN	**Vekaplast Heinrich Laumann, K.G.,**	PLAINTIFF
AND	**T.A. Picot (C.I.) Limited**	FIRST DEFENDANT
	Vekaplast Windows (C.I.) Limited	SECOND DEFENDANT

Hearing of two summonses issued by the
Defendant arising out of a decision on costs
given by the Assistant Judicial Greffier
on the 25th January, 1988

Advocate C.M.B. Thacker for the Plaintiff
Mr T.A. Picot for the First and Second Defendants

JUDGMENT

COMMISSIONER LE CRAS: The Court has before it an appeal from the Assistant Judicial Greffier relating to costs and a summons for discovery. The position is more complicated than might appear at first sight and as it is barely covered in the Royal Court Rules, I propose to set out my decision at more length than I might otherwise have done.

In its act of the 21st August, 1986, the Court ordered that the first and second defendants pay ninety per cent of the plaintiff's costs and this jointly and severally. In his Judgment, the Deputy Bailiff stated and I will forbear to read the passage at the top of page two of Mr Matthew's finding which starts at D: "The only real dispute this afternoon revolves around the question of costs" and ends: "In all the circumstances we consider Mr Thacker's request to be justified and we order that the first and second defendants jointly and severally shall pay ninety per cent of the plaintiff's taxed costs".

Following this order the plaintiff sought to recover taxed costs not only in respect of their solicitors and advocate in Jersey, but also for work done in England and in Germany. In dealing with such an application it seems to me that two points arise. The first as to whether in the circumstances it is reasonable to include the costs of lawyers and others outside the Island. This depends on the circumstances of the case. In Crane, for example, it was held not to be necessary, whereas in Rahman the learnèd Deputy Bailiff specifically made an order to include them, whilst another case in point is that between the Official Solicitor and Mr Alan Evelyn Clore and others defendants 1983 J.J. p.43, where the learnèd Deputy Bailiff as he then was stated thus, at p.51: "Thus in this case it is perfectly proper in my opinion for the parties, be they in Jersey or be they in the United Kingdom to approach the matter on the basis as to what the law would be if the courts in Jersey were to apply the English common law. In such a case I cannot see that it is unreasonable to seek the best advice obtainable ...." and I leave the passage at that point. Once this point has been decided a second point arises which may be put in this way, first whether the costs are relevant or not and if they are relevant whether they are reasonable or excessive. As regards the first part of this second point, that is, was the work relevant or not, there has been cited the case of British United Shoe Manufacturing Co. Ltd -v- Holdfast Boots Ltd, 1936, 3 All ER p.717 where it was held that the master's duty in taxation was not only to see the work was done and find the value of the work but also to see that the work was necessary to be done. Or as put on p.726: "It is not the documents related to the action which are necessary to be examined for the purpose of seeing whether the charge is proper. The documents relating to the action afford no information as to either the value of the work done by the plaintiff's

solicitors or the quantity of it in reference to the particular matters in question in the preparation of these affidavits and documents. So far as documents disclosed by the two affidavits are concerned, in number they are quite few. Apart from privileged documents, there are thirty-two in the English company's affidavit and forty in the American company's affidavit. It does not follow from that that a great deal of work and a great deal of necessary work was not done, but in my judgment the master did not have before him the materials upon which he ought to have insisted and upon which alone he would have been able to arrive at the proper sum to be ordered to the plaintiff's solicitors in respect of this particular matter".

The second part of this second proposition is that given that it was necessary for the work to be done, was the fee reasonable and on this point I take up the learned Deputy Bailiff's sentence at page 51 in the Clore case cited above where he said: "And subject to the Greffier being satisfied that the scale of Messrs. Allan and Overy's charges and also counsel's fees are reasonable, and I have no reason to doubt that they are not, they should be allowed". The position reached here is that the Assistant Judicial Greffier has made a decision on the first point, that is, in this particular case it was reasonable to include the cost of lawyers and others from outside the Island. He has dealt dealt with McKenna's account, page six of his finding, with Dr Frank's by implication at least at page seven and with that of Herr Schüttelhofer at page eight. This, as I understand it, is accepted by Mr Picot on behalf of the defendant, although of course he disagrees with the result. I am not satisfied, however, that the Assistant Judicial Greffier has dealt with the second point. That is whether the costs are relevant to the proceedings and if so, whether they are reasonable in amount, or that he has ever had the information before him to do so, other of course than Mr Thacker's account and one or two other items which are agreed by the defendant. McKenna's account is in my view not in a form which gives either the Assistant Judicial Greffier a chance to form an opinion on it, nor Mr Picot a chance to dispute it. Whilst that of Dr Frank is scarcely more informative.

In these circumstances I propose to remit the papers to the Greffier for him to deal with the second point and if there is to be an appeal from his finding, the Court will want to deal with it as a whole.

This brings me to the summons. It is clear, following the finding in Hobbs & Hobbs -v- Cousins, 1960, Probate p.112, 1959 3 All ER at p.827 and from Pamplin -v- Express Newspapers Ltd, 1985, 2 All ER p.185 that the defendant has in the present circumstances no right to require discovery. Following Pamplin, it is for the plaintiff to decide in what manner he should produce to the Greffier, in a form which will give the defendant the chance to comment on it, the evidence which he wishes to lay before him. The principles are plainly set out in Pamplin and there is no need for the Court to repeat them here. The summons for discovery is therefore dismissed.

I would wish to add that in the normal way I should have been reluctant to have entertained it as it should have been made before the Assistant Judicial Greffier. The principles set out in the Rules of the Supreme Court, Order 62/35(4), seem sound and should normally be followed. Once the Greffier has decided on the point remitted to him, then it will be open to either side to appeal but in any appeal it should be clearly stated on what ground the appeal is made, for example whether it is correct in the circumstances to allow outside costs, or again for example, whether these costs are allowable but do or do not relate sufficiently to the action.

AUTHORITIES

Jones (née Ludlow) -v- Jones (1985-86) JLR 40.

The Official Solicitor -v- Alan Evelyn Clore and Ors (1983) JJ 43.

Re: Testament Crane (1960) PD 186 (reported in 'table des decisions').

Re: Gibson's Settlement Trusts (1981) 1 All ER 233.

Francis -v- Francis and Dickerson (1955) 3 All ER 836.

Davey -v- Durrant (1858) 53 ER 448.

P. Shirley -v- C.I. Knitwear, unreported JJ 1986.

Official Solicitor -v- Clore (1984) CA 267.