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89/7

ROYAL COURT

(Samedi Division)

3rd February, 1989

Before: The Bailiff, and
Jurats Coutanche and Gruchy

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| Between: | David Malcolm Hunter<br>Noel Edward Hunot Taylor<br>John Harry Scrutton<br>Walter James Preston<br>Leonard Frederick Barr Smith<br>Arthur George Spooner<br>John Sholto Douglas-Mann<br>Samuel Stanley Levy<br>John Anthony Seward Bassett<br>Martin Trevor Myers<br>Kenneth Robert Easter<br>Robin Shedden Broadhurst<br>Michael Edwin Follett<br>&<br>Jones Lang Wootton (Administration) Limited<br>(trading as Jones, Lang Wootton) | Plaintiffs |
| And | The States of Jersey | First Defendants |
| And | A.C. Mauger & Son (Sunwin) Limited | Second Defendant |
| And | Franki Holdings Limited<br>(formerly Frankipile Limited) | Third Defendant |
| And | Tilbury Construction Limited | Fourth Defendant |

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| And | Ove Arup & Partners | Fifth Defendant |
| And | C.H. Rothwell & Partners | Sixth Defendants |

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Interlocutory application by the first defendant seeking leave to file a re-amended answer and to join the second and fifth defendants as third parties to the action (together with related applications).

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Advocate N.F. Journeaux for the first defendant
Advocate G. Le V. Fiott for the second defendant
Advocate J.G. White for the fifth defendant.

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JUDGMENT ON THE INTERIM SUBMISSION OF THE FIFTH DEFENDANT FOR AN ORDER THAT THE ACTION AGAINST IT SHOULD BE DEEMED TO HAVE BEEN WITHDRAWN BY VIRTUE OF THE PROVISIONS OF RULE 6/20(2) OF THE ROYAL COURT RULES, 1982.

BAILIFF: We have found that Rule 6/20(2) must cover all the defendants and that it is incumbent upon a plaintiff who wishes some action to be taken against a particular defendant to take that step. If he does not take that step then the defendant in question is entitled to avail himself, should the circumstances arise, of the provisions of Rule 6/20(2). Therefore, it being common ground that no action was taken by the plaintiff against Ove Arup & Partners within the prescribed five years, the Rule comes into effect and the action against Ove Arup is deemed to have been withdrawn.

JUDGMENT ON SUBSTANTIVE INTERLOCUTORY APPLICATION

BAILIFF: We have been asked to rule on the meaning of paragraph (3) of Rule 6/10 of the Royal Court Rules, 1982. It is very interesting to consider the position in the United Kingdom, but frankly, until it can be shown, which neither counsel has been able to do, that identical Rules (or Rules so close that it would be proper to look at the White Book for decisions on those Rules) exist in the United Kingdom, we must be guided by our own Rules and the ordinary canons of construction. Where, in interpreting a Rule of Court of this nature, a strict interpretation could prejudice a third party who could have been joined a long time ago in any action (not this particular action) if the action has been on the "table" for a long time, we think that we would incline to a broader interpretation of that Rule. If we interpret it to mean that from the time of service (which the parties accept in this case would be the 3rd November, 1988) the third party is treated as if it had been a defendant in the original action, then a third party could be seriously prejudiced in raising the issue of prescription. We are not being asked to consider whether, as a matter of discretion, we should apply our minds to the prejudice suffered on the facts because the facts have not been put before us as yet. However, if we tied up the interpretation of this Rule in such a way that service was going to be deemed to have been effected at the time that the original action was started, we would deny the third party a possible defence and we think that would be wrong. In any event, the wording of the Rule does not allow us to do that. We interpret paragraph (3) to be saying merely that from the time that a third party is served, he is a defendant in the original action, that is to say, as if the original action had been brought against him, the third party, at the time of service. That to us is the better interpretation and we accordingly rule that we are not prepared to say that Rule 6/10(3) relates back to the time of service of the original action between the plaintiff and the defendants. It is worth noting that in this particular case, the facts support our interpretation, although it is not necessary to have facts produced in support on a matter of interpretation. It is clear to us that following Ove Arup being brought in as an original defendant by the plaintiff no further steps were taken against it. We have already ruled that as a result of no further steps being taken, they were discharged as a co-defendant on the expiration of five years from the time when they were first brought in as a defendant and therefore as Mr. White has said, and it has been agreed by Mr. Journeaux, Ove Arup came to

this Court as a third party in the sense that they were no longer a defendant. We think it would be wrong for us to interpret this Rule in any way which would deprive a third party of a possible right of pleading prescription.

<u>Authority cited in relation to the substantive application</u>

The Leicester Whole-sale Fruit Market -v- Grundy et al - 29th April, 1988, Court of Appeal (unreported) at p.p. 3 and 9.