

IN THE ROYAL COURT OF JERSEY

8th February, 1990

28A.

Before: Commissioner F. C. Hamon, Jurats Lucas and Hamon
BETWEEN De Guelle's Home Bakery Limited PLAINTIFF
AND Le Nosh Limited FIRST DEFENDANT
AND Simon Knapp SECOND DEFENDANT

Advocate R.J. Michel for the Plaintiff.
Advocate P.C. Sinel for the Defendants.

This is an interlocutory application made by the first and second Defendants to this action to show cause why (inter alia) the injunctions granted to the Plaintiff on 25th August, 1989 should not be lifted. Other relief was sought consequent upon the successful granting of the application. Because of our decision we need to limit our judgment to this very specific point.

Advocate Sinel appeared in Court with witnesses but with no affidavit in support of his application.

There was some correspondence between the parties before trial. Relevant to the application is a letter dated the 5th February, 1990 from Advocate Michel to Advocate Sinel where he says (and we are citing only that part of the letter which is relevant to this argument) :

"Your Summons merely asks my client to show cause why "the injunctions granted to the Plaintiff on the 25th August, 1989, should not be lifted." It gives no reasons nor the basis for that application and no Affidavit has been filed in support setting out your clients' contentions in support of that application. On the face of it therefore your client's application is at large. In your letter you list what appears to be four separate justifications for the Summons. The main alleged justification is that "your client obtained an injunction by suppressing all material facts and/or telling lies." That is a very serious allegation indeed. It warrants particularisation. You have not filed an Affidavit in support of your application."

And, where relevant, we give the reply of Advocate Sinel which is dated the 7th February, 1990 :

"Notice of the application was first given to you on the 10th January 1990, it was also made clear that we would be calling witnesses not filing affidavits.

We are not obliged to disclose evidence in advance.

No prior instruction was received asking for affidavits prior to the 19th January 1990.

You express openly your intention to appear and proceed on the 19th January 1990 but now say despite a two week delay that you cannot proceed without an affidavit, I do not understand your logic.

I would like to oblige you but insufficient time remains between now and the agreed hearing date.

If it helps the affidavits filed by your client is untrue in many material respects and is so inadequate that the Court was not placed in a position where it had sufficient information to reach a reserved (sic) decision."

At the commencement of the proceedings we referred Counsel to part of the judgment of the Inferior Number of this Court where the Court sat on the 5th August, 1982 to consider applications by Barry Shelton and Anthony Shelton for an order raising certain interim injunctions in force by virtue of the service on them of one Order of Justice at the instance of the Viscount and of one Order of Justice at the instance of John Henry Appleby.

In that judgment the learned Bailiff said :

"When an Order of Justice is presented to the Bailiff or myself seeking an injunction of this nature, which is really a "saisie conservatoire", which is well known to the Court, it is customary in some cases, but not in all, depending on the circumstances, to require the allegations in the Order of Justice to be substantiated by affidavits. Obviously in the case of the Viscount we do not do so as he is a senior official of this Court. In the case of individual litigants, again, that entirely depends on what is alleged in the Order of Justice. But when two defendants against whom an Order of Justice has been served come to this Court to lift the injunctions then it is essential - and I cannot stress it too strongly - that those applications be supported by sworn affidavits. Otherwise it is imposing on Counsel a very difficult burden. He has to submit to the Court what his instructions are, as his client tells them to him, but that client himself has not deposed to them. We think that is an unsatisfactory state of affairs. Therefore as a practice direction the Court is going to rule that it will not consider in future applications to lift injunctions - unless those applications are supported by affidavits."

That direction of the Court was circulated to all Advocates and Solicitors by the Judicial Greffier.

Since that time "practice directions" have been issued from time to time by the Judicial Greffier (often in consultation with and with the approval of, the learned Bailiff or Deputy Bailiff) or by the Court during the course of a judgment where it was felt that the Rules did not fully cover the contingency that had arisen.

Practice directions are not, of course, rules of Court. Rules are made by the Superior Number of the Royal Court in pursuance of Laws enabling it to act. But Rule 7/6 of the Royal Court Rules is clear where it says "Subject to Rule 7/7 non-compliance with any rules of Court, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court so directs, but the proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with, in such manner and on such terms as the Court thinks fit."

Practice directions give some guidance where the rules are too simplistic. They are not issued lightly. Within the Rules "The Greffier" and "the Court" of course (apart from those Rules contained in the First Schedule where reference to the Court do not include references to the Greffier) are synonymous.

We still had to deal with Advocate Sinel's contention that he had obtained for the Court "the best evidence", that is viva voce evidence. We asked him to disclose the basis of his arguments. He set out nine grounds; on each of the first five (and we did not ask him to go further) Advocate Michel satisfied us that he would have found it necessary to call for an adjournment. And in that exercise the necessity for filing an affidavit in support and the soundness of the learned Bailiff's practice direction became apparent. In *Walters v. Bingham* 1985-86 JLR 439 at page 465 the learned Deputy Bailiff said this :

"In our opinion, under the common law, the Bailiff and the Deputy Bailiff have an absolute discretion, when signing an Order of Justice, whether or not to grant an immediate interim injunction. As a result of the Shelton case it may be that there is now a practice direction that the court will not consider applications to lift injunctions unless those applications are supported by affidavits, although we doubt the propriety of practice directions being issued by the Inferior Number in unreported judgments. In our opinion there is an urgent need for rules of court and/or practice directions of the Superior Number of the Royal Court to govern the issue of interim or interlocutory injunctions. But we refrain from issuing any."

We would go further. We feel that the decision in Shelton, with which we entirely agree, has created a precedent which we consider to be binding upon us.

We are not prepared to lift the injunctions but we are prepared to stay the application pending the filing of an affidavit in support. Once the affidavit has been sworn and filed we will sit at the next convenient date to hear the application. We are not prepared at this stage to make an order as to costs.

AUTHORITIES.

Cerqueira -v- Bilbao International Bank (Jersey) Limited and another (1981) JJ 141.

Trasco International Aktiengesellschaft -v- R.M. Marketing Limited and others
(29th October, 1986) Jersey Unreported.

Walters and others -v- Bingham (1985-86) JLR 439

Numbers 12 & 13 Britannia Place Limited -v- J & G (Property) Limited and others
(8th February, 1989) Jersey Unreported.

Van de Knoop -v- Goed and others (10th July, 1989) Jersey Unreported.

Dormeuil Freres SA and another -v- Nicolian International (Textiles) Ltd (1988)
3 All E.R. 197.

Bekbehani and others -v- Salem and others (1989) 2 All E.R. 143.

Ali & Fahd Shobolski Group Ltd -v- Moniem and others (1989) 2 All E.R. 404.

The Supreme Court Practice 1988 Vol 1 Order 29 pp 472 - 482.

Mareva Injunctions: Law and Practice by Gee and Andrews - pp 64 - 66.

In the matter of the Representation of de Sousa (1985-86) JLR 379.

Abbott Industries Incorporated -v- Warner and others (1985-86) JLR 375.

Shelton -v- Viscount of the Royal Court (1982) Jersey Unreported.