

ROYAL COURT
(Samedi Division)

8,

21st January, 1994.

Before: The Judicial Greffier

Between: Roger Strecker Plaintiff
And: The Jersey Electricity Company Ltd Defendant

Application by the Plaintiff for the striking out of the whole or part of the amended Answer of the Defendant as contravening terms of a previous Order of the Judicial Greffier dated 20th October, 1993.

Advocate A. D. Hoy for the Plaintiff.
Advocate P. De C. Mourant for the Defendant.

JUDGMENT

JUDICIAL GREFFIER: On 24th May, 1993, Advocate Hoy signed an Order of Justice in which the Plaintiff sought general damages, special damages, interest and costs against the Defendant. The Order of Justice related to an allegation of damage to the Plaintiff's hearing by reason of negligence and/or breach of contract whilst the Plaintiff was an employee at La Collette Power Station.

On 8th July, 1993, the Defendant filed an Answer which amounted to little more than a bare denial. As a result of this the Plaintiff issued a Summons seeking to strike out the Answer and this was scheduled to be heard on 20th October, 1993.

However, the Advocates for the parties signed a joint letter dated 13th October, 1993, which was embodied in a Consent Order issued by myself dated 20th October, 1993. By virtue of the first paragraph of that Consent Order, the Defendant's Answer was struck out. The second paragraph of that Order read as follows:-

"that the Defendant have leave to file an amended Answer within fourteen days from the date hereof in which amended answer the Defendant shall admit liability without prejudice to the Defendant's right to raise the issue, in the said Answer, of contributory negligence on the part of the Plaintiff;"

On 12th November, 1993, the Defendant filed an Amended Answer which did not, in the submission of the Plaintiff, comply with paragraph (2) of the Order dated 20th October, 1993.

As the Plaintiff had only produced an affidavit in support of an application for striking out at the last moment, and as the Defendant requested an adjournment in order to be able to file an affidavit in answer, a hearing on 17th December, 1993, was confined to considering whether the Amended Answer had been filed in compliance with the leave given in paragraph (2) of the Order of 20th October, 1993.

The first question which I must determine is: what do the words "shall admit liability" in the said paragraph of the Order mean?

The advocates for the parties drew my attention to the case of Rankine -v- Garton Sons & Co Limited [1979] 2 All E. R. 1185. The judgment in this decision is summarised in R.S.C. (1993 Ed'n) 27/3/4 at page 500, (the section relating to judgment on admissions) as follows:-

"In Rankine-v-Garton Sons & Co. Limited., leave to enter interlocutory judgment in an action for personal injuries for damages to be assessed was refused notwithstanding an admission of negligence. The reason is that an admission of negligence without an admission that the plaintiff suffered injury thereby is not an admission of liability."

The heading on page 1185 of the judgment makes the reasons for this very clear as follows:-

"Accordingly, in an action founded on negligence the Plaintiff was not entitled to judgment unless he could prove the two necessary components of his cause of action, i.e. that the defendant had been negligent and that the plaintiff had suffered damage as a result of that negligence."

As this is an action both for negligence and for breach of contract, and as some measure of damage is an essential element of a claim in negligence, and as liability was supposed to be admitted in the Amended Answer, it is clear to me that the Amended Answer ought to have admitted that some damage had occurred as a result of the alleged negligence and breach of contract.

It therefore appears to me that an admission of liability, in this context, amounts to admission of the alleged negligence and breach of contract together with an admission that some damage had occurred. In this case, of course, subject to the issues of contributory negligence and of the quantum of damages.

I turn now to the terms of the Amended Answer. Paragraph 3 of the Order of Justice contains an allegation that:

"The environment in which the Plaintiff worked as aforesaid was unduly noisy and consequently the Plaintiff has been exposed to undue noise."

This is an essential element of the Plaintiff's claim. However, in paragraph 2 of the Amended Answer the Defendant has sought to deny *"that the working environment provided by the defendant was unduly noisy."* Furthermore, the Defendant has gone on to aver that a safe place of work was at all material times provided. In my view, both the denial and the averment are inconsistent with an admission of liability and, accordingly, I am going to strike out all the words in paragraph 2 of the answer after the word *"admitted"*.

Paragraph 4 of the Amended Answer states that:

"it is not admitted that by reason of the Plaintiff's exposure to noise during the course of his employment as aforesaid at paragraph 2 the Plaintiff has suffered the injury, loss and damage as pleaded or at all."

Advocate Mourant indicated that the Defendants now wish to say that any damage to the Plaintiff's hearing had not arisen by reason of exposure to excessive noise during the course of his employment. However, I have already indicated that an admission of liability must include an admission that some damage had occurred. Accordingly, it appears to me that the words *"or at all"* at the end of the said paragraph 4 of the Amended Answer must be deleted.

Paragraph 5 of the Amended Answer contains a pleading of prescription in relation to matters which occurred before certain dates. Prescription is a bar to a right of action and accordingly a plea of prescription is inconsistent with an admission of liability and so paragraph 5 of the Amended Answer must be struck out.

Paragraph 7 of the Amended Answer contains the following sentence:-

"It is not admitted that the breaches of duty by the Defendant caused or contributed to the injury, loss and damage as alleged at paragraphs 7 and 8 and the Defendant will seek to rely on the matters pleaded at paragraph 5 hereof."

Paragraph 7 of the Order of Justice alleges that, *"in causing the said injuries, loss and damage the Defendant and/or the Defendant's employees, agents or invitees were guilty of breaches*

of the said term and condition." Paragraph 8 of the Order of Justice contains a claim for negligence and/or breach of contract. It appears to me that the sentence of paragraph 7 of the Amended Answer quoted above is inconsistent with an admission of liability as some damage must be accepted. I believe that what the Defendant should have done in order to comply with the Order of 20th October, 1993, is to plead that the breaches of duty did not cause or contribute to the injury, loss and damage as pleaded, although that is already covered under paragraph 4 with the deletion mentioned above. Accordingly I am going to strike out the last sentence of paragraph 7. Paragraph 8 of the amended Order of Justice contains a general traverse, "save as is hereinbefore expressly admitted or not admitted".

I am going to strike this out because I am satisfied that this is inconsistent with an admission of liability.

In reaching this decision, I am not prejudging an application from the Defendant to amend the Amended Answer in order to seek to withdraw the admission of liability. I shall, no doubt, hear argument on that on another occasion.

Finally, I shall need to be addressed by both Counsel on the issue of the costs of and incidental to the application to strike out.

Authorities

T.A. Picot (C.I.) Ltd. & Anor. -v- Crills (1st November, 1993)
Jersey Unreported.

L.G.L. Administrators, Ltd. -v- Rahman & Ors. (10th November,
1993) Jersey Unreported.

R.S.C. (1993 Ed'n): O.27/3.

Rankine -v- Garton Sons & Company, Limited [1979] 2 All ER
1185 C.A.