

ROYAL COURT  
(Samedi Division)

48.

9th March, 1995

Before: The Deputy Bailiff, and  
Jurats Herbert and Bonn

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In the matter of the Judgments  
(Reciprocal Enforcement) (Jersey) Law 1960  
and in the matter of a judgment of the  
High Court of Justice of England and Wales  
Chancery Division, Manchester District Registry,  
obtained in the action between Geoff Bell Holdings Limited  
the plaintiff and Ian Geoffrey Bell, the defendant,  
dated the 15th day of February, 1993

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Advocate A. P. Begg for the Plaintiff.  
Advocate P. Landick for the Defendant.

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JUDGMENT

5 THE DEPUTY BAILIFF: This application by Mr. Landick is the  
continuation of his summons which led to our judgment of 16th  
February, 1995. On that day, we ordered that the judgment  
registered in Jersey under the Judgments (Reciprocal  
Enforcement) (Jersey) Law, 1960 ("the Reciprocal Order") declared  
to be (initially) of no effect from the date upon which it was set  
aside in England. We determined that we could not proceed further  
on the matter without hearing argument from Counsel.

10 Our judgment records that the judgment of the High Court in  
Manchester dated the 15th February, 1993, ("the Manchester  
judgment") was set aside on or about 8th August, 1994. We have  
today decided, and we so order, that the further effect of the  
Manchester judgment is to make the Reciprocal Order voidable and  
15 of no effect from the date of registration. Mr. Begg has conceded  
that the effect of this judgment is to set aside any enforcement  
proceedings made under the fatally flawed Reciprocal Order. Mr.  
Begg also conceded in the course of argument before us that the  
summons of 6th September 1994 was sufficient in its wide ranging  
20 terms to invite us to make the decision that we have made. Mr.  
Begg went on however to say that there were still matters outside  
the Reciprocal Order which were not affected by our judgment.  
Those matters lay particularly within the terms of the Order of  
Justice of 19th March, 1993 ("the first Order of Justice").

We have carefully considered the first Order of Justice and the injunctive relief that was obtained as a result of the facts set out in it. The first Order of Justice was quite properly obtained and there was more than sufficient within it (at the time) to enable the injunctive relief to be granted. It is now, however, fatally flawed, because paragraph 7 refers to the Manchester judgment. It specifically mentions the judgment sum of £3,034,493.47. That is very weighty. In our view, paragraph 7 is the very kernel of the Order of Justice. We have no doubt that its terms would have led to any judge granting the injunctions sought. It reads:

"*THAT on the fifteenth day of February in the year one thousand nine hundred and ninety three, the Plaintiff was granted an Order of Judgment from the High Court of Justice in Manchester, against the First Defendant, in the sum of three million and thirty four thousand, four hundred and three pounds, thirty seven pence (£3,034,403.37) including interest, on the grounds that the First Defendant had, from the twenty second day of October in the year one thousand nine hundred and eighty three until the said leasehold property was sold to BP Oil plc, held the said leasehold property on trust for the Plaintiff absolutely and that the proceeds of sale received by the First Defendant properly belong to the Plaintiff*".

Mr. Begg argued that because the interim injunctions within the first Order of Justice had been confirmed, they were now rock-solid and unimpeachable. We reject that argument, because the first Order of Justice (deriving its existence from the Reciprocal Order), cannot now stand on the record and must be set aside. Although Mr. Begg strongly argued that Barakot Limited, (the second defendant in the first Order of Justice), was not specifically mentioned within the terms of the Manchester judgment, we cannot conceive that the position of Barakot can be any different than the first defendant (Mr. Bell), who is named in the Manchester judgment. Barakot Limited is a company wholly owned by Mr. Bell who is its sole director. It is his "alter ego".

In consequence, we cannot for one moment see that the first Order of Justice has any better standing than the Reciprocal Order and on that basis, there is no action sustainable in Jersey which Mr. Begg's clients can enforce at present.

During the course of the hearing yesterday afternoon, Mr. Begg told us that he had totally forgotten about a second Order of Justice dated the 19th January, 1994, which involved, *inter alia*, a company called Roselea Limited. That Order of Justice is found on Folder A2, pagination 14. We shall call it the second Order of Justice. We do not need to refer to the second Order of Justice

in any detail, because yet again the foundation of it is the Manchester judgment.

5 In passing, we would say that it does seem to us a little surprising that the second Order of Justice was placed on the pending list but has not been progressed in any way whatsoever thereafter.

10 One other matter of concern is that on 19th March, 1993, when the first Order of Justice was called, Barakot Limited (the second defendant) did not appear and judgment was obtained against it. The Court gave a default judgment against Barakot, confirmed the interim injunctions imposed upon it by the Order of Justice and condemned it to pay the £3,034,403.37, together with interest  
15 thereon, being the amount stipulated in the Manchester judgment.

However we look on all these actions, we are left in no doubt that they are all based on the Manchester judgment.

20 Mr. Begg conceded as much when he told us that he would apply by cross summons to amend the first Order of Justice. That would have for effect to alter the body of the Order of Justice in a material way, but to allow the injunctions obtained to remain on. That course of action is not acceptable. The discretion which the  
25 Court exercised in imposing the original injunctions was clearly influenced by the deliberate and (at the time) quite proper statement that an award in excess of £3,000,000 had been given by the Manchester judgment. Mr. Begg's second alternative of serving an entirely fresh Order of Justice may be a practical solution to  
30 the problem. The cross summons was before us because during the course of this hearing, Advocate Landick asked leave to serve a fresh summons striking out the first Order of Justice. There were the usual three grounds for that application under Rule 6/13 of the Royal Court Rules, but the first ground - "discloses no  
35 reasonable cause of action" - is probably the ground which he would argue most strongly.

We abridged time to allow the summons and cross summons to be served, but we are not going to hear them in these proceedings.  
40 They must be heard by the Judicial Greffier on a date to be fixed by the parties.

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45 Mr. Begg now makes application for leave to appeal. The grounds of appeal are set out in the bundle. They rehearse all the arguments laid before us when we made our judgment on the 16th February, 1995. Mr. Begg centered the whole of his argument on the question that the plaintiff was estopped by the Consent Order  
50 dated the 22nd December, 1993.

We have seen nothing in the authorities cited to us on this point which lead us to any other conclusion than that if Mr. Begg were right, the result would be that Mr. Landick would have no *locus standi* in these proceedings and the Reciprocal Judgment would have to stand, because there would be no-one with any standing to set it aside. We have carefully considered the directions given by the Court of Appeal in Seale Street Developments Limited v. Chapman (3rd December, 1992) Jersey Unreported; (1992) JLR 243 C.of.A., where the Court was dealing, of course, with the principles governing the power of stay. In referring to the judgment of Polini v. Gray [1879] 12 Ch. 438, the Court said this:

*"On what principle does it do so? It does so on this ground, that when there is an appeal about to be prosecuted the litigation is to be considered as not at an end, and that being so, if there is a reasonable ground of appeal, and if not making the order to stay the execution of the decree or the distribution of the fund would make the appeal nugatory, that is to say, would deprive the appellant, if successful, of the results of the appeal, then it is the duty of the Court to interfere and suspend the right of the party who, so far as the litigation has gone, has established his rights."*

In the circumstances of this case and despite Mr. Begg's cogent arguments, we refuse leave to appeal.

### Authorities

Seale St. Developments Ltd -v- Chapman (3rd December, 1992)  
Jersey Unreported; (1992) JLR 243 C.of.A.

The "Kronprinz" (1887) 12 A.C. 256.

Siebe Gorman & Co. Ltd. -v- Pneupac Ltd [1982] 1 All ER 377 C.A.

The Official Solicitor -v- Clore (1984) JJ 81 C.of.A.

R.S.C. (1993 Ed'n) Vol I: O.21: paras 21/2-5/13: "Effect of  
discontinuance and withdrawal"; Vol II para. 4607 (p.1470):  
"Judgment by consent".

4 Halsbury 37: para. 390: "Effect of consent Judgment or Order".