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ROYAL COURT

(Samedi Division) 55

23rd March, 1995

Before: The Judicial Greffier

The First Action

Between	Mayo Associates S.A.	First Plaintiff
And	Troy Associates Limited	Second Plaintiff
And	T.T.S. International S.A.	Third Plaintiff
And	Anagram (Bermuda) Limited	First Defendant
And	Robert Young	Second Defendant
And	Maureen Young	Third Defendant
And	Lionrock Limited	First Party Cited
And	Edgefield Properties Limited	Second Party Cited
And	Box Limited	Third Party Cited
And	Starshield Limited	Fourth Party Cited
And	Cantrade Private Bank Switzerland (C.I.) Limited	Fifty Party Cited
And	TSB Bank Channel Islands Limited	Sixth Party Cited

The Second Action

Between	Mayo Associates S.A.	First Plaintiff
And	Troy Associates Limited	Second Plaintiff
And	T.T.S. International S.A.	Third Plaintiff
And	Cantrade Private Bank Switzerland (C.I.) Limited	First Defendant
And	Touche Ross & Co	Second Defendant
And	Robert John Young (joined at the instance of the First Defendant)	First Third Party
And	Anagram (Bermuda) Limited (joined at the instance of the First Defendant)	Second Third Party
And	Myles Tweedale Stott (joined at the instance of the First Defendant)	Third Third Party
And	Michael Gordon Marsh (joined at the instance of the First Defendant)	Fourth Party
And	Monica Gabrielle (joined at the instance of the First Defendant)	Fifth Third Party
And	Touche Ross & Co. (joined at the instance of the First Defendant)	Sixth Third Party

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Application of the First Defendant in the Second Action for the above actions to be tried together.

Advocate P.C. Sinel for the Plaintiffs in both actions;
Advocate A.R. Binnington for the First Defendant in the Second Action;
Advocate N.F. Journeaux for the Second Defendant in the Second Action;
The Defendants in the First Action had been served with notice of the application but were in default.

THE JUDICIAL GREFFIER: This Judgment arises from Orders which I made on 23rd February, 1995. The Plaintiffs are the same in both actions and they are companies which acted as investment administrators and investment managers for various foreign investors. Those foreign investors placed monies with the Plaintiffs and these monies were sent to bank accounts with the First Defendant in the Second Action which I refer to as "Cantrade". The monies there were used in relation to foreign exchange dealings which were made by the Second Defendant in the First Action, whom I will refer to as "Doctor Young". The Plaintiffs claim that the Second Defendants in the Second Action, whom I will refer to as "Touche Ross", produced audited accounts, on behalf of the Plaintiffs, in relation to these foreign exchange dealings and in relation to the monies in the accounts with Cantrade.

During 1993 the Plaintiffs discovered that there were far less monies in the accounts with Cantrade than they had been led to believe by Doctor Young and by the accounts of Touche Ross and as a result of this they brought the First Action against Doctor Young, his wife and the First Defendant in the First Action, which I will refer to as Anagram, in relation to the shortfall of monies. Subsequently, the Plaintiffs have brought proceedings under the Second Action against Cantrade and against Touche Ross all relating to the same shortfall in monies. The claims are quite complex but can be briefly summarised as follows:-

(1) The First Action relates to the difference between the monies which the Plaintiffs thought were in the accounts and in foreign exchange deals and the monies which are actually there together with a claim relating to inflated commissions which may have been claimed by Doctor Young on non-existent profits.

(2) The claim in relation to Cantrade is partly in negligence for not informing the Plaintiffs that losses were being made which Cantrade knew should not occur, partly based upon the principle of constructive trust and partly based upon the bank having benefited and profited from foreign exchange deals continuing beyond the point in time when Cantrade ought to have known that these ought to have stopped.

(3) The claim against Touche Ross is in negligence for not properly checking and auditing the figures which were issued, thus causing the Plaintiffs to be misled as to the situation in relation to the accounts and the investments.

Rule 6/11(1) of the Royal Court Rules, 1992, as amended, reads as follows:-

"6/11.-(1) Where two or more actions are pending before the Court, then, if it appears to the Court -

(a) that some common question of law or fact arises in both or all or them; or

(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or

(c) that for some other reason it is desirable to make an order under this Rule;

the Court may order those actions to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any of them."

The application in this case which was made on behalf of Cantrade was for the two actions to be tried together.

On the day upon which I heard the Summons in relation to trial together I also made Orders that the First and Second Defendants in the First Action be joined as Third Parties to the Second Action at the instance of Cantrade, that three individuals who are closely associated with the Plaintiffs be joined as Third Parties to that action at the instance of Cantrade and that Touche Ross be joined as a Third Party to that action at the instance of Cantrade.

The terms of Rule 6/11(1) are very similar to those of Order 4 Rule 9(1) of the Rules of the Supreme Court. The commentary in the 1995 White Book on Order 4 Rule 9(1) is therefore highly persuasive and, indeed, this section in earlier White Books has, in the past, been quoted in local Judgments.

Section 4/9/1 on page 28 of the 1995 White Book contains the following sections:-

"The main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is "some common question of law or fact bearing sufficient importance in proportion to the rest" of the subject-matter of the actions "to render it desirable that

the whole should be disposed of at the same ti[illegible]. Where this is the case, actions may be consolidated where the plaintiffs are the same and the defendants are the same, or where the plaintiffs or defendants or all are different. The circumstances in which actions may be consolidated are therefore generally similar to those in which parties may be joined in one action under O.15,r.4.

There may, however, be further circumstances which will militate against an order being made."

The section then goes on to deal with circumstances in relation to certain particular difficulties none of which apply in this case and then continues:-

"Apart from these difficulties an order for consolidation may be refused where it would be likely to cause embarrassment at the trial. For example, where the actions are by different plaintiffs, based on the same libel, and the defences are different it would often be likely to embarrass the jury to consolidate them.

Where consolidation must be refused for one reason or another an order will often be made that one action shall follow the other in the same list and be heard before the same judge (or the same judge and jury). In this way common witnesses are saved the expense of two attendances, and the judge will be in a position to try the actions in such order as may be convenient or even at the same time."

In this particular case the parties all agreed that the pleadings in the two actions were so detailed that it would not be desirable to consolidate these because of the difficulties in creating one set of consolidated pleadings and it was for that reason an Order for trial together was being sought rather than an Order for consolidation.

I deduce from the above sections from the 1995 White Book that the following principles apply to this sort of application:-

(a) There is a discretion to order trial together of two actions which are pending before the Court.
(b) The main purpose of ordering trial together is to conserve costs and time, therefore it will not usually be ordered unless there is "some common question of law or fact bearing sufficient importance in proportion to the rest" of the subject-matter of the actions "to render it desirable that the whole shall be disposed of at the same time".
(c) There may, however, be further circumstances which militate against such an Order being made.
(d) Apart from these considerations an Order for consolidation may be refused where it would be likely to cause embarrassment at the trial.

The Plaintiffs in both actions opposed the Order which was being sought on the basis that it was premature. The Plaintiffs indicated that due to the lack of financial resources of the Defendants in the First Action they might not wish to pursue them to trial. Advocate Sinel, for the Plaintiffs in both actions, also alleged that there was a serious possibility of criminal charges being brought against Doctor Young and that the principle of Jersey Law that a criminal trial in relation to a particular matter had to be completed before the civil trial in relation to the same matter would then prevent the First Action from proceeding to trial for some time.

I decided that I had to proceed with the application upon the basis of the circumstances which existed at the time of the application. At that time the Plaintiffs in both actions were vigorously pursuing the Defendants in the First Action and had, to my knowledge, recently obtained Orders from the Royal Court arresting the assets of the Defendants in that action in the jurisdiction. At the time of the hearing of the application no criminal charges had been brought against Doctor Young or any of the other Defendants in the First Action. Furthermore, Doctor Young and his company Anagram, were both being joined as Third Parties to the Second Action and so if criminal proceedings were subsequently brought against them then neither action would be able to proceed, in its present form, to trial before criminal proceedings were completed.

I took the view that if there were subsequently to be a change of relevant circumstances then an Order could be sought varying any Order which I might make in relation to trial together.

I was satisfied that the application fell within the terms of sub-paragraphs (a) and (b) of paragraph (1) of Rule 6/11 of the Royal Court Rules, 1992, as amended. There were substantial common questions of fact in both cases. The measure of damages and method of calculation of damages suffered by the Plaintiffs, if they were successful in both actions, would be similar. Both claims arose from the same series of transactions. I was satisfied that the common questions were of sufficient importance in proportion to the rest of the subject matter of the actions to render it desirable that the whole shall be disposed of at the same time and that trial together would be the most efficient and convenient method of trial for the parties and for the Court. I also found that an Order for a trial together would not be likely to cause embarrassment to the trial and that there were no further circumstances which militated against the Order being made.

Accordingly, I Ordered that the two actions be tried together and that the Plaintiffs in both actions pay the costs of and incidental to the paragraph of Cantrade's Summons dated 27th January, 1995, which related to this application, in any event.

However, I ordered that the time for an appeal against those Orders would not begin to run until the Plaintiffs had received my written reasons for these decisions.

Authorities

Royal Court Rules, 1992, as amended: Rule 6/11.

R.S.C. (1995 Ed'n): 04, r/9.

Channel Islands & International Law Trust -v- Pike & Ors. (9th August, 1990) Jersey Unreported.

Le Gros: Traité du Droit Coûtumier de l'Ile de Jersey (Jersey, 1943:): pp. 425-6.

Le Geyt: Manuscrits sur la Constitution, les Lois, et les Usages de Jersey (1847): vol 1: pp. 95-6.