

ROYAL COURT  
(Samedi Division) 72.

17th April, 1996

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,  
Sitting alone.

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In the matter of an arbitration under the Joint Contract Tribunal Arbitration Rules.

Between: Mark Amy, Limited; Claimants  
The Viscount of the Royal Court of Jersey

And: Olcott Investments, Limited Respondent

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Application by the Claimants under Rule 6/13 of the Royal Court Rules, 1992, as amended to strike out the Respondent's Representation.

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Advocate R.J. Michel for the Claimants.  
Advocate A.D. Robinson for the Respondent.

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JUDGMENT

**THE LIEUTENANT BAILIFF:** This is an application to strike out a Representation by the Respondent arising out of an Order for costs made in arbitration proceedings.

5           The application is made on the grounds that the award was to be final and binding on the parties; that the Court, under the maxim "*La convention fait la loi des parties*" should (see Basden Hotels Ltd -v- Dormy Hotels Ltd (1968) JJ 911 @ 919) "*have high regard to the sanctity of contracts and must enforce them unless*  
10           *there is a good reason in law, which includes the grounds of*

public policy, for them to be set aside". The parties had bound themselves by contract and meant to bind themselves.

5 Mr. Michel accepted, quite properly, that there are grounds in Jersey on which the Courts may interfere, see, for example, Le Gros -v- Housing Committee (1974) JJ 77 @ 86 where the Court stated:

10 *"The first issue raised before us was whether the Court has the power to interfere with an arbitration award and, in our opinion it undoubtedly has such a power if, for example, the arbitrators exceed their authority, are wrong in law, deny the parties justice, and reach a conclusion devoid of reason. In all such cases the Court has an inherent jurisdiction to have put right that which is wrong. What the Court cannot do is to interfere with an award which has been regularly made. A power of discretion properly exercised by a person or a body having the legal authority to exercise it is generally*  
15 *unassailable"*.

20 Here the complaint made was against an exercise of discretion where the arbitrator had heard and considered all the arguments and which should consequently be unassailable.

25 Not only was he entitled to his order under the usual rules relating to striking out (see, for example, Arya Holdings, Ltd -v- Minorities Finance (31st March, 1992) Jersey Unreported and R.S.C. O.18/19) but, as a secondary point, by analogy with the present English position, the Representor was effectively in the position of seeking leave to appeal which should only be granted where it could show that it will probably succeed and has not merely an arguable case (President of India -v- Jadranska [1992] 2 Ll.R.274); so that, to put it  
30 another way, the burden of showing that the Representation should proceed had passed to the Representor.

35 Mr. Robinson for the Respondent submitted that the application to strike out carried with it a strict test; and here the Court must deal with the law and precedents as they stand in the Island and not by analogy with decisions elsewhere, based on statute law (see President of India -v- Jadranska).

40 He conceded, again quite properly, that the exercise of a discretion, properly exercised, was, in general, unassailable.

45 Here, however, in his submission the contention is that the arbitrator misdirected himself in law, and that in consequence his exercise of discretion is tainted; and there was thus no proper exercise of discretion and that this was  
50 apparent on the face of his finding.

5 The parties are not lightly to be driven from the seat of  
Judgment. In this case (unlike Charles Le Quesne (1956) Ltd  
-v- TSB (Channel Islands) Ltd (4th September, 1986) Jersey  
Unreported) the basic principles had not been whittled down and  
the test which the applicant was required to meet remained  
severe.

10 In the view of the Court, it is the ordinary rules  
regarding applications to strike out which are apposite in this  
case. The stricter rules suggested by Mr. Michel arise from  
legislation enacted elsewhere and are not applicable to the  
present application.

15 The burden on the applicant in an application to strike  
out is a heavy one, and the Court does not find that it has  
been met. The Court does not wish to embark on a detailed  
analysis of the facts; and ought to be careful not to express a  
view as to the likelihood of success of the parties. Here it  
20 suffices to say that on the local precedents, the  
Representation is one which the Respondent is entitled to have  
heard by the Court.

25 The summons is therefore dismissed. Taxed costs of and  
incidental to the application.

### Authorities

- Basden Hotels -v- Dormy Hotels (1968) JJ 911.
- G.K.N. (Jersey) -v- R.R.B. (1982) JJ 359.
- Le Gros -v- Housing Committee (1974) JJ 77.
- Charles Le Quesne (1956) Ltd -v- TSB (Channel Islands) Ltd (4th September, 1986) Jersey Unreported.
- Charles Le Quesne (1956) Ltd -v- TSB (Channel Islands) Ltd (10th July, 1987) Jersey Unreported CofA.
- Doherty -v- Allman (1878) 3 A.C. 709.
- "The Nema" [1982] A.C. 724.
- Pothier "Oeuvres Complètes" (1821 Ed'n) Vol XIV: p.152.
- 4 Halsbury 2 paras. 707,710.
- President of India -v- Jadranska [1992] 2 Ll.R. 274.
- Bank America, Ltd -v- Nock [1988] 1 A.C. 1002.
- The Erick Schroeder [1974] 1 Ll.R. 192.
- Tramontana Armadora -v- Atlantic Shipping [1978] 1 Ll.R. 391.
- The Toni [1974] 1 Ll.R. 489.
- Arbitration Act 1979.
- Arya Holdings, Ltd -v- Minorities Finance (31st March, 1992) Jersey Unreported.