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COURT OF APPEAL

74,

18th April, 1996.

Before: J.M. Collins, Esq., Q.C., President,
R.C. Southwell, Esq., Q.C., and
J.G. Nutting, Esq., Q.C.

Between:	Lesquende Limited	Plaintiff
And:	Planning and Environment Committee (formerly known as The Island Development Committee) of The States of Jersey	Defendant

Application by the Defendant for Orders: (1) staying further proceedings issuing from the Order of the Royal Court (Samedi Division) of 13th March, 1996, that the Defendant be liable to pay the Plaintiff's costs, in relation to arbitration proceedings, pursuant to the provisions of Article 14(2) of the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961, pending determination of the Defendant's appeal against the Royal Court Order; and (2) that the costs of and incidental to this application be costs in the appeal.

Advocate M.M.G. Voisin for the Plaintiff/Respondent.
W.J. Bailhache, Esq., Crown Advocate for the
Defendant/Appellant.

JUDGMENT

THE PRESIDENT: The Plaintiff in this action, Lesquende Ltd, owned land in St. Brelade, Jersey, known as "Belle Vue Pleasure Park".

5 By Act of 31st July, 1990, the States of Jersey authorized the Defendant, the Planning and Environment Committee of the States of Jersey, to enter into negotiations with the Plaintiff to effect the purchase of the pleasure park and in default of agreement to acquire the land compulsorily in the exercise of the

power conferred by Article 4 of the Island Planning (Jersey) Law, 1964.

5 On 19th September, 1991, the Plaintiff offered to sell the land for £6.75 million. The Defendant responded with an offer to purchase of £5 million.

10 On 11th December, 1992, no agreement having been reached, the Defendant applied to the Royal Court for an order vesting the land in the public of the Island and requested that a Board of Arbitrators be appointed pursuant to Article 8 of the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961.

15 The Royal Court made the necessary orders and on 12th November, 1993, a Board of Arbitrators was instituted.

20 The Board heard evidence and submissions for 46 days between 11th April, 1994, and 30th September, 1994, and on 5th February, 1995, delivered its award, valuing the land at £4,900,000 (a sum less than that claimed but greater than that then on offer). We are told that the finding is to be the subject of proceedings for Judicial Review at the suit of the Plaintiff later this year.

25 At the hearing the Plaintiff was represented by solicitors and junior and leading counsel. Their advisers included two Chartered Surveyors, two firms of Quantity Surveyors, two firms of Estate Agents, a firm of Architectural and Design Consultants, two firms of Engineers, a Chartered Accountant, a firm of Town Planning experts, and a company specialising in landscape architecture. The total cost of those advising the Plaintiff, according to the bill of costs annexed to the Plaintiff's Order of Justice, is £658,010.16, much of which was disbursed in 1994 and the disbursement of the total now being complete.

35 The Plaintiff sought to recover these expenses in the current proceedings.

40 So far as the jurisdiction of the Board is concerned in such a matter, the relevant provisions are contained in Article 14 of the Law which provides as follows:-

45 **(1) There shall be paid to the Members of the Board fees in accordance with such scale as the States may by Regulations determine.**

(2) The fees of the Board and all expenses incurred in proceedings under this Law shall be paid by the acquiring authority".

50 In his Order of Justice in these proceedings the Plaintiff sought an order from the Royal Court requiring the Defendant to pay the costs and expenses properly incurred by the Plaintiff in

the arbitration proceedings in accordance with Article 14(2). In the alternative the Plaintiff requested an order that such costs and expenses fall to be determined by the Board to be assessed as compensation payable by the Defendant to the Plaintiff pursuant to the provisions of Article 9(1)(g) of the Law as being *"the assessment of compensation for disturbance or any other matter not directly based on the value of land"*.

In addition the Plaintiff asked for the interest on those costs and expenses from 6th February, 1995.

The Defendant by his Answer asserted that on a true construction of Article 14 of the Law the Plaintiff was not entitled to reimbursement of any costs or expenses, and that in any event the Plaintiff's costs were not properly incurred by reason of the Plaintiff's conduct at the proceedings before the Board.

The Defendant further denied that the Plaintiff was entitled to an assessment of costs under Article 9(1)(g) of the Law because on a true construction of this provision the sums claimed by way of costs and expenses cannot be claimed as the basis of a claim for assessment of compensation for disturbance or any other matter not directly based on the value of land.

The matter was argued before the Deputy Bailiff over four days between 21st and 27th February, 1996. The Deputy Bailiff took time to consider his decision and on 13th March, 1996, gave judgment in the Plaintiff's favour on the basis of a true construction of Article 14(2) of the Law.

At p.18 of his judgment he said:

"In my judgment the Acquiring Authority is liable to pay the legal and other costs incurred by the owner. "All expenses" means the legitimate costs and other disbursements which have been incurred in accordance with the provisions of the law".

He ordered that the costs be taxed by the Greffier.

Having found in favour of the Plaintiff on the basis of Article 14(2) of the Law, the Deputy Bailiff declined to deal with the application under Article 9(1)(g) of the Law.

On 4th April, 1996, the Defendant served notice of appeal to set aside the decision of the Deputy Bailiff.

On 17th April, 1996, the Defendant issued a summons to the Plaintiff to show cause why execution of the judgment of the Deputy Bailiff in favour of the Plaintiff should not be stayed pending the determination of the appeal.

On the face of it the summons appeared to be seeking a stay of an order to pay over money. However, it became immediately clear that it was being treated by the parties as a stay of further proceedings in the action until the appeal had been heard, those proceedings being a determination of quantum by the Judicial Greffier as ordered by the Court. The urgency of the application before us stemmed from the fact that there was to be an appointment before the Judicial Greffier on the following day for (in effect) directions.

The necessity for a determination as to the quantum of the entitlement established by the Deputy Bailiff as a matter of principle stems from the issues raised by paragraph 5 of the Defendant's Answer. It is the Defendant's case that the costs were increased unreasonably by the prolonged manner in which the proceedings were conducted by and on behalf of the Plaintiff, by the number of issues raised by them, including issues on which it is alleged that they failed to plead the case fully or to answer requests for particulars or to secure evidence in good time.

Mr. Bailhache, on behalf of the Defendant, considered that the hearing of these issues, which might involve oral evidence (including evidence from counsel) would be likely to occupy at least two days. This, he said, might well be an under-estimate.

The thrust of Mr. Bailhache's application was that costs would be wasted if the hearing on quantum were to take place and then the decision of the learned Deputy Bailiff thereafter were to be upset in this Court. This, he submitted, would not only give rise to the risk of costs being incurred which might turn out to have been wasted but also would risk the waste of the judicial resources available in this Island. He also submitted that any delay occasioned by the postponement of the hearing on quantum until after a decision of this Court upholding the judgment of the Royal Court could be compensated by an order for interest. His estimate was that the appeal could be heard in September of this year.

The authorities cited by Mr. Voisin make it clear that a stay in such circumstances as these will only rarely be given. These circumstances are wholly different from those in which it can be said that without a stay the right of appeal would be rendered nugatory. They differ also from those in which a stay may be granted in order to obviate or limit the risk of money paid over under a judgment being lost or dissipated prior to the appeal being heard. In parenthesis, Mr. Bailhache is content in respect of this aspect to accept the Plaintiff's undertaking in respect of the costs of the arbitration (once ascertained). He does not apply for a stay in respect of the costs of the proceedings in the Royal Court, which are comparatively modest.

5 This Court has in the past applied the English authorities in respect of similar provisions in the English Rules of the Supreme Court. See, for example, Seal Street Development Ltd -v- Chapman [1992] JLR 243. We have been invited to do likewise, an invitation which we accept. The general principle to be derived from the English cases is expressed thus by reference to authorities cited in the Supreme Court Practice (1995 Ed'n). The Court does not "*make a practice of depriving a successful litigant of the fruits of his litigation and locking up funds to which prima facie he is entitled*", pending an appeal. (Citation in Supreme Court Practice (1995 Ed'n) paragraph 59/13/1, p.1009).

15 While the Courts retain an unfettered discretion in all cases, the authorities make it clear that a stay in respect of such matters as inquiries as to damages will be likely only to be granted on some special ground. See Adair -v- Young [1879] 11 Ch.D. 136, Re Palmer's Application [1883] 22 Ch.D. 88, and Shaw -v- Holland [1900] 2 Ch.D. 305. Thus in the first of these cases discovery for the purpose of taking an account would have resulted in the ruination of the Defendant's business before his appeal would ever have been heard, and this was sufficient to justify a stay.

25 We have found no special circumstances in this case sufficient to justify a stay of the proceedings before the Judicial Greffier. We are doubtful whether the business of this Court would permit a hearing of an appeal in September and in any event the parties will at that time be preparing for the judicial review hearing which is due in November. The entitlement of the Plaintiff to interest could possibly be in issue, and in any event could be raised by any Defendant worth powder and shot, so that it does not of itself amount to such a circumstance as to support a stay, in general terms at least. The Plaintiff, as already stated, has incurred its costs and disbursements and there is no sufficient reason why, having established its right as a matter of principle, it should not go on to litigate the extent of that right. Finally, if (as could be the case) the appeal is not heard until early 1997 and the hearing before the Judicial Greffier follows some time thereafter, there will have been a potentially significant period in which memories can fade, a factor which may be reduced but is not eliminated by any means, in the judgment of the Court, by the existence of a transcript.

45 Accordingly, we dismiss the application and order costs in the cause.

Authorities

In Re Palmer's Application [1883] 22 Ch. D. 88.

Seale Street Development Ltd -v- Chapman and Anor. [1992] JLR 243.

Shaw -v- Holland [1900] 2 Ch. D. 305.

Coleman & Co., -v- Smith & Co. [1911] 2 Ch. D. 572.

Adair -v- Young [1879] 11 Ch. D. 136.

R.S.C. (1995 Ed'n): 59/13/1: p.1009.