

ROYAL COURT

(Samedi Division)

25th July, 1996

136A.

Before: The Judicial Greffier

Between	John Arthur Burnett Bower	Appellant
And	The Planning & Environment Committee of the States of Jersey	Respondent

Applications by the Respondent:-

- (1) for an extension of the time within which to file an amended Notice of Appeal and within which to lodge certain documents with a view to applying for leave to file an amended Appellant's case;
- (2) for discovery of certain documents;
- (3) for a stay of the costs Order made on 28th March, 1996, pending the determination of the administrative appeal; and
- (4) for a stay of the effect of the notices served by the Respondent Committee pending an appeal against the Orders made on 28th March, 1996.

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The Appellant in person  
Advocate N.M. Santos-Costa for the Respondent

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5 THE JUDICIAL GREFFIER: On 28th March, 1996, I heard an interlocutory  
Summons which was brought on behalf of the Respondent and as a  
result of this I struck out both the Appellant's Notice of Appeal  
and the Appellant's case. However, during that hearing the  
Appellant indicated that he would be seeking to rely upon certain  
lines of argument which had not been pleaded either in his Notice  
of Appeal or in his case, and I, therefore, gave the Appellant  
leave, within seven days from the striking out to file an amended  
Notice of Appeal covering three grounds of appeal which are  
10 mentioned in paragraph (2) of the Act dated 28th March, 1996. I  
also gave the Appellant leave to apply for the filing of an  
amended Appellant's case provided that, within fourteen days from  
the date of the Order, he lodged with me both a draft Summons  
seeking leave to file the amended Appellant's case and the draft  
15 amended Appellant's case and gave notice to the Respondent to  
attend before me to fix a date for the hearing of the said  
application for leave to file an amended Appellant's case.

The Appellant neither filed an amended Notice of Appeal nor issued a Summons to file an amended Appellant's case within the time period specified in the Act dated 28th March, 1996 and had not done either of these things by the date of the hearing on 25th July, 1996.

The Appellant, however, sought to lodge a Notice of Appeal against my decision dated 28th March, 1996. However, this notice was not in the form of a Summons as is required by Rule 15/2(1) of the Royal Court Rules, 1992, as amended. I indicated this to the Appellant and he subsequently filed a Notice of Appeal in the correct form but which failed to raise certain of the grounds of appeal mentioned in the first mentioned document by way of Notice of Appeal. I mentioned this towards the end of page 12 of my Judgment (28th March, 1996) Jersey Unreported.

The Summons which took place on 25th July, 1996, contained four paragraphs of requests. The first paragraph was to show cause why an extension of time to lodge a re-amended Appeal in the above matter should not be granted to the Appellant. It transpired at the hearing that the Appellant was not actually seeking leave to re-amend his Notice of Appeal against my decision dated 28th March, 1996 but was actually wanting to seek an extension of time in which to comply with the terms of paragraphs (2) and (4) of the Order dated 28th March, 1996, that is to say in which to file an amended Notice of Appeal and to lodge with me a draft Summons seeking leave to file the amended Appellant's case and the draft amended Appellant's case. I pointed out to the Appellant that he did not need an extension of time in which to lodge the re-amended Appeal against my decision dated 28th March, 1996 because what he should do in relation to that was to apply for leave to re-amend his Notice of Appeal against that decision.

In relation to the matters of the extension of time, it seemed to me that the Appellant had had ample time (almost four months) in which to deal with the matter of the lodging of the amended Notice of Appeal and the draft Summons together with the draft amended Appellant's case. However, it appeared to me that the Appellant felt that the Appeal against my Order striking out the original documents should take place first and prior to his having to provide the amended Notice of Appeal and the draft amended Appellant's case. I did not agree that that was so but, purely as a matter of mercy, I extended the relevant time periods so that the seven day period for the filing of an amended Notice of Appeal and the fourteen day period for the lodging of a draft Summons seeking leave to file the amended Appellant's case together with the draft amended Appellant's case should run from 25th July, 1996. However, I did this solely on the basis that, if the Appellant failed either to file an amended Notice of Appeal within the extended seven day period or to apply for the filing of an amended Appellant's case within the extended period of fourteen days then the present Appeal, with the exception only of the Appellant's appeal against my Order dated 28th March, 1996, would be dismissed. It seemed to me that it would be unjust for the Respondent to be left in a situation in which the Appellant would continue to fail to file amended documents but

the time period under the enforcement notice would not run due to the possibility of the Appellant's obtaining a further extension of time in which to file an amended Notice of Appeal.

5           The second application contained in the Summons before me was  
that the Respondent be required to provide full disclosure of all  
records held by the Committee and its lawyers concerning the  
property known as Les Buttes, St. Mary, since the IDC's  
10           inception, and sufficient time be granted for full discovery to  
be carried out.

          This application was clearly intended to be for the discovery  
of documents. However, there was no limitation whatsoever in  
relation to the relevancy of any such documents to the appeal.  
15           Even a normal Order for general discovery would contain the words  
"relating to any matter in question in the appeal", in order to  
import a relevancy test. The request as worded was, therefore,  
much too wide. I considered the question as to whether what was  
being sought should be granted subject to a relevancy test.  
20           However, as matters stood at 25th July, 1996, there was a major  
problem in relation to this inasmuch as there was neither a  
Notice of Appeal nor an Appellant's case which could be used as a  
measure of relevancy to the appeal. Furthermore, I was well  
aware of the general principle that general discovery is not  
25           granted until such time as the pleadings are closed so that a  
relevancy test can be applied against the pleadings.  
Accordingly, I dismissed this application.

          The third application was for a stay, pending the  
30           determination of the whole Appeal, of the costs Order which I had  
made on 28th March, 1996, namely, that the Appellant pay the  
costs of and incidental to the Respondent's Summons for striking  
out dated 5th March, 1996 and 14th March, 1996, in any event.  
Since the Superior Number of the Royal Court at a meeting held  
35           about twenty months ago expressed the view that a stay of an  
interlocutory costs Order should only be granted pending the  
trial of the main action in unusual circumstances, I have been  
much more reluctant to grant such a stay than I had been prior to  
that policy decision of the Court. However, in this case, I was  
40           clear that if the Appellant were to be successful in his appeal  
against my Order dated 28th March, 1996, then any taxation  
hearing which would have taken place would have been otiose. On  
the other hand, it was clear to me that if the Appellant were  
forced to make a payment of these costs and if he were  
45           subsequently to be successful in appealing against the  
interlocutory Order dated 28th March, 1996, then the lack of a  
stay of the enforcement of the costs Order would not render the  
subsequent Appeal nugatory for the simple reason that the  
Respondent, financially, would be well able to reimburse any  
50           costs paid. I also took into account the fact that the Appeal to  
the Royal Court against the Order dated 28th March, 1996, had not  
been diligently prosecuted. By the time of the hearing on 25th  
July, 1996, nearly four months had gone by and the Appellant had  
still not filed a final form of Appeal against the interlocutory  
55           Order. If the appeal against the interlocutory Order had been  
diligently prosecuted then I might well have granted the stay

requested but in exercising my discretion I also dismissed this application.

5 The fourth application before me was for an Order that the  
Order of the Committee be stayed *sine die* pending the appeal to  
the Royal Court. At the hearing it became clear that this  
application was for an Order that time should not run on the  
enforcement notice until the determination of the appeal against  
10 my Order dated 28th March, 1996. Article 21(2) of the Island  
Planning (Jersey) Law, 1964, as amended, provides for an  
extension of the time period for compliance with an enforcement  
notice until twenty-eight days from the date on which the appeal  
was abandoned or dismissed. If the Appellant had lodged an  
15 amended Notice of Appeal then he would have continued to have had  
the extension of time in which to comply with the enforcement  
notice which he was seeking. The Orders which I made in relation  
to the first application to extend the time period subject to the  
proviso that if there was not then compliance with those Orders  
20 the appeal - other than the interlocutory appeal against my  
decision dated 28th March, 1996 - would be dismissed, were made  
so that, unless the Appellant proceeded rapidly with lodging his  
additional grounds of appeal and his draft additional Appellant's  
case, the Respondent would know that if the appeal against the  
Order dated 28th March, 1996, were to be dismissed then that  
25 would end the administrative appeal. If the Appellant were to  
comply with my Order dated 25th July, 1996, then he would, as I  
have already said, continue to have the benefit of the terms of  
Article 21(2) of the Island Planning (Jersey) Law, 1964.  
Accordingly, I also dismissed this application.

30 As I had only granted the Appellant an extension of time in  
relation to the first application as an act of mercy, it seemed  
to me to be appropriate that the Appellant pay the costs of and  
incidental to the whole of the Summons which I heard on 25th  
35 July, 1996, in any event, and I so ordered.

40 Finally, I have noticed that in paragraph 4 of the Notice of  
Appeal dated 29th July, 1996, which has been lodged against my  
decision dated 25th July, 1996, there is an allegation of an  
agreement between the Appellant and myself in Chambers "that  
although an appeal between paragraphs 2 to 4 of my Act of 28th  
March, 1996, was to be entered, this was to be a purely holding  
measure pending my reasoned Judgment so that an appeal against my  
45 whole Act could be entered under Royal Court Rules 15/2."  
Although the Unreported Judgment giving reasons for my decisions  
in relation to the hearing on 28th March, 1996 bears that date it  
was drawn up after that hearing and it would appear from a letter  
which I received from Mr. Bower dated 15th April, 1996, that he  
only received it on 12th April, 1996. I would, of course, accept  
50 that any Notice of Appeal against that decision which was lodged  
prior to the Appellant receiving my reasons would be provisional.