

ROYAL COURT
(Samedi Division)

217A.

1st December, 1997

Before: Sir Philip Bailhache, Bailiff, and Jurats Myles and Potter

Between:	Mayo Associates SA Troy Associates Ltd. TTS International SA	Plaintiffs
And:	Cantrade Private Bank Switzerland (C.I.) Limited Touche Ross & Co.	Defendants
And:	Robert John Young Anagram (Bermuda) Limited Myles Tweedale Stott Michael Gordon Marsh Monica Gabrielli Touche Ross & Co Cantrade Private Bank Switzerland (C.I.) Limited	Third Parties

Advocate P. C. Sinel for the Plaintiffs
Advocate A. R. Binnington for the First Defendant

In the matter of the Representation of Cantrade Private Switzerland (CI) Ltd seeking the appointment of the Viscount for the purpose of communicating or otherwise dealing with an open offer made by the Bank to certain investors who have lost money as a result of trading activities which are the subject of the action.

Application by the Plaintiffs for an Order that the Bailiff should 'recuse' himself from the hearing of the above Representation.

JUDGMENT

THE BAILIFF: This is a challenge to my presiding over the hearing of a representation by Cantrade Private Bank Switzerland (C.I.) Limited, to which I refer as Cantrade, in connection with proceedings brought against Cantrade and Touche Ross & Co. by

Mr. Sinel advanced two arguments in support of his contentions. The first is conveniently summarised in paragraphs 5 and 8 of his affidavit lodged with the Court this morning. Those paragraphs read:

- “5. *The widely accepted doctrine of the separation of powers upon which the perception of the independence of the judiciary depends demands that the one who holds judicial office should not also occupy a rôle in either the executive or legislative. If, notwithstanding the objection the Bailiff does occupy such a dual or triple rôle, he must take care not to hear cases where the subject matter of the action may involve a conflict between his judicial function on the one hand and his legislative and executive function and his de facto position as Head of State.*
8. *The Bailiff as Head of State is concerned for the well being of the Island's economy which in turn is largely dependent upon the Island's perceived ability to regulate the finance sector. The Bailiff, as President of the States, bears ultimate constitutional responsibility for the actions and omissions of the regulatory and prosecutory authorities which themselves form part of the executive branch of the States of Jersey”.*

Mr. Sinel developed this argument in oral submission by submitting that the Bailiff controls decisions of the States and has a close relationship with members of the Finance and Economics Committee in that some of them sit on the Bailiff's advisory panel. As civic head of the Island the Bailiff was closely identified with the fortunes of the Island. If, therefore, the Island attracted bad publicity in relation to the alleged wrongdoing of Cantrade it would give the appearance of bias if the Bailiff were to preside over an action involving Cantrade.

Furthermore, Mr. Sinel submitted, the Bailiff was ultimately responsible for the prosecutors and for the regulators against both of which departments his clients had grounds for complaint.

I see no basis for disqualifying myself from presiding over this case for any of the above reasons. The Bailiff has no control over decisions of the States. In that assembly the Bailiff has essentially a speaker's rôle in much the same way as the Lord Chancellor presides over the House of Lords when sitting in its legislative capacity. The Bailiff's advisory panel, which admittedly includes the President of the Finance and Economics Committee, exists to assist the Bailiff in the making of various administrative decisions such as whether to invite an Ambassador or other dignitary to pay an official visit to the Island. These matters have no relevance to this case. The Bailiff exercises no power over the Attorney General who is responsible to the Crown for the prosecution of alleged offenders, nor over the Finance and Economics Committee and the Financial Services Department in respect of their regulatory functions or at all.

A similar objection to the Bailiff's presiding over an action - in that case actually involving a Committee of the States as defendant - arose recently in Guernsey: Bordeaux Vineries Ltd -v- States Board of Administration (1993) 16 Guernsey Law

Journal 33. The Bailiff declined to disqualify himself and the matter went to the Guernsey Court of Appeal. The Court's judgment was delivered by Le Quesne JA who stated:

"I now come to the second ground of the Appellant's objection: the Bailiff's connection with the States. The Bailiff is a member of the States by virtue of the Reform (Guernsey) Law, 1948 section 1(1). He is, however, a member of a special and unique kind. He is President of the States ex officio section 1(2). He has no original vote, unlike all the other members, but only a casting vote, section 1(5). Occasions for the use of the casting vote arise only rarely and when they do arise it is used according to well established conventions. Apart from this the Bailiff has absolutely no part in the taking of decisions by the States, nor has he any part in the administration of agencies of the States such as the Respondents.

The Bailiff is also the President of the Royal Court and indeed of this Court. Actions against the States or agents of the States are nowadays by no means rare in the Royal Court. Such actions are not the only way in which the jurisdiction of the Court is exercised over the States. Appeals against decisions of Committees of the States are brought to the Court under certain statutes, notably the laws governing planning and housing. Agencies of the States are occasionally prosecuted.

In all these cases the Bailiff's position in the Court inevitably means that in the ordinary course of his duty it falls to him to preside at the hearing of matters affecting the States. Counsel told us that none of them were aware of any previous case in which it had even been suggested that the Bailiff's connection with the States disqualified him from sitting on such cases.

In my judgment the true view of the position is that the Bailiff is invested by law with duties in the Royal Court and in the States. The consequence of this dual function is that he has on occasion to take part in the exercise by the Court of jurisdiction over the States. I do not think that on these occasions his responsibility in the States disqualifies him from discharging his responsibility in the Court. He can properly discharge both responsibilities because although he is a member of the States his special position there means he is not responsible for the decisions of the States or acts of its agencies nor has he any pecuniary interest, or indeed other interest, in those decisions or those acts. His connection with the States, therefore, is not such as to disqualify him from sitting in Court on cases affecting the States.

Special cases may arise in which the Bailiff's position may be different. I have no doubt that in such a special case, the Bailiff of his own accord would arrange for someone else to take his place. The principal reason indeed for the paucity of examples of the kind of application now before us must be the discretion with which successive Bailiffs have themselves

refrained from sitting in any case in which they could see a real possibility of conflict of interest or embarrassment”.

I respectfully agree with that analysis of the Guernsey Court of Appeal.

Mr. Sinel suggested that his second argument constituted such a special factor as was referred to in the last paragraph of that extract.

The background to this second argument is that on 8th August, 1997, my secretary wrote to Mr. Sinel in the following terms:

“Dear Advocate Sinel,

I refer to your letter dated 5th August, 1997. I can confirm that following the Order of Justice which you have taken out against the Bailiff and Deputy Bailiff in the interests of justice and to avoid any suggestion of prejudice both the Bailiff and Deputy Bailiff have asked that I avoid setting them down to preside over any case in which you appear as counsel”.

Unfortunately that letter was written without my approval as the result of a misunderstanding whilst I was away from the Island on leave. On my return my attention was drawn to the letter and my secretary wrote again to Advocate Sinel on 21st August, 1997, in the following terms:

“Dear Advocate Sinel,

I refer to my letter dated 8th August replying to yours of 5th August, 1997, concerning judges presiding over cases in which you appear as counsel. The Bailiff has asked me to say that, contrary to the views expressed in that letter, he will continue to preside over cases as appropriate in which you appear as counsel”.

Mr. Sinel submitted that his willingness to espouse the cause of a client who had brought an action against the Deputy Bailiff and myself gave rise to the appearance of bias against him and all his clients. I can see no connection between the allegations made by another client of Mr. Sinel and this case. Counsel has a duty to advance such arguments as may properly be brought in support of a client’s case. What is said or argued in relation to one case has no bearing upon another. For the avoidance of doubt I find no difficulty at all in dealing impartially with all the parties to this action. I therefore decline to accept the invitation of Mr. Sinel to withdraw from presiding over this case.

JUDGMENT

(on application for leave to appeal and for a stay,
pending determination of the appeal).

THE BAILIFF: Leave to appeal is refused. The application for a stay is also refused. We have balanced the undesirability of continuing with the hearing following a ruling which might subsequently be set aside by the Court of Appeal against the undesirability of yet further delay. In the judgment of this Court the stay should not be granted, and the hearing will therefore proceed.

Authorities

R -v- Gough (1993) AC 646.

M -v- Home Office and Anor (1992) 1 QB 271 CA.

Shrager -v- Basil Dighton Ltd and Ors (1924) KB 274.

R -v- Atkinson (1978) 1 WLR 425.

R -v- Inner West London Coroner *ex parte* Dallagio (1994) 4 All ER 140.

R -v- Sussex Justices *ex parte* McCartney (1924) KB 256.

Duport Steel Ltd and Ors -v- Sir and Ors (1980) 1 All ER 529 CA.

R -v- Queens County Justices (1908) 2 All IR 285.

Hinds -v- The Queen (1976) 1 All ER 353.

Pepper -v- Hart (1992) AC 593.

R -v- Secretary of State for the Environment *ex parte* Kirkstall Valley Campaign Ltd
[1996] 3 All ER 304.

Becquet -v- Lemprière (1830) PC 376.

Maynard -v- Public Services Committee of the States of Jersey (11th December, 1996)
Jersey Unreported CofA.

De Smith Woolf & Jowell, *Judicial Review of Administrative Action* (5th Ed'n: 1995).

Privy Council Committee on Channel Islands Reform (1947): pp.5-10.

Bordeaux Vineries Ltd -v- States Board of Administration (1993) 16 Guernsey Law
Journal 33.