

JERSEY / JUDGMENT

1998/78 - Barker v Barker

[1998] UR 78 (20 April 1998)

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JUDGMENT

THE BAILIFF: On 13 July 1995, the Deputy Bailiff granted, ex parte , an application by the Plaintiff for an interim injunction restraining the Defendant, and a number of parties cited, in the following terms: " Service of this Order of Justice upon the Defendant and the parties cited, shall act as an immediate interim injunction restraining them and each of them whether by themselves or by their servants or agents from selling, gifting, alienating or otherwise disposing of, Highbury House, or St Julians Hall (whether by conveyance, share transfer, or otherwise,) without the consent of the Advocate acting for the Plaintiff which consent shall not be unreasonably refused upon the Plaintiffs Advocate being satisfied that suitable arrangements have been made for the proceeds of sale of the said properties, to be placed in an Escrow account in the joint names of the Plaintiff's Advocate, and the Defendants Advocate pending the resolution of the dispute between the Plaintiff and the Defendant, as to their respective entitlements in the said proceeds of sale". The Order of Justice was amended on the 28 July 1995, but nothing turns on those amendments . It subsequently came to the notice of the Plaintiff that the States planned to acquire the property Highbury House by compulsory purchase. On the 7 December 1995, the Plaintiff accordingly sought, and obtained, ex parte, a further interim injunction restraining the Defendant and Beech Limited, the fourth Party Cited in the first action, from dissipating or paying away any of the monies receivable in respect of the compulsory purchase of Highbury House. Other pleadings have since been filed and leave given to amend those pleadings, but none of that is relevant for present purposes. The Defendant now applies by representation to discharge those injunctions. The Defendant has appeared on his own behalf, and the Plaintiff has been permitted to appear by his son, Mr Jonathan Barker; both parties are effectively litigants in person. The Court has, accordingly, appointed Advocate Speck, as amicus curiae and is grateful for the very considerable assistance which he has rendered. In support of his application the Defendant has filed two affidavits, from which the following grounds may be extracted: It is complained that the Plaintiff was originally represented by Advocate Begg, who had also represented the Defendant in relation to different proceedings, some years ago, when the Defendant was in grave financial difficulties. The Defendant asserts that there was a conflict of interest, and that Advocate Begg used confidential information obtained by reason of representing the Defendant, to the advantage of the Plaintiff. The Defendant asserts that the

affidavits filed in support of the original application for interim injunctions were defective. The Defendant relies upon Rule 15/6(2) of the Royal Court Rules, 1992, to support the argument that an Order of Justice remains in force only for one year from the date of issue, and that the injunctions have accordingly lapsed. We deal with those grounds in turn. The first is clearly not relevant to the question of whether the interim injunctions should be lifted. It may be relevant in the context of any action for breach of confidence, but it is not material today. Turning to the second ground, the defendant addressed us at some length on alleged inaccuracies in the affidavits sworn by Advocate Begg and by the Plaintiff. Suffice it to say, that, in our judgment, none of the matters of which complaint is made, could be said to be material, in the context of the Deputy Bailiffs exercise of discretion. Turning to the third ground, Rule 15/6(2) provides as follows: An order of justice issued by the Bailiff shall remain in force for one year from the date of issue, but may be renewed annually, by him. The purpose of that rule is to limit the life of an order of justice, which has been signed by the Bailiff, or Deputy Bailiff, but not served. In this case, however, both orders of justice were duly served upon the Defendant and Parties Cited. The actions were tabled, and the injunctions have continued in force by virtue of subsequent orders of the Court, and have not lapsed. We find no substance, therefore, in any of the grounds put forward by the Defendant in support of his application. The present position therefore is that two and a half years ago, the Deputy Bailiff was persuaded to exercise his discretion in favour of the Plaintiff to order that these injunctions should issue. As Mr Speck rightly submitted, it is apparent from the papers, that the Plaintiff is faced with some difficulties, particularly in relation to the issues of prescription, and estoppel, following the bankruptcy proceedings in which the Defendant was involved. None the less there does exist a form of partnership agreement, signed in December, 1970, the terms of which the Defendant has admitted in the pleadings. We are satisfied that there is a serious issue to be tried. So far as the balance of convenience is concerned, the Defendant conceded in argument that nothing had changed since the injunctions were granted. At that time the Deputy Bailiff found that there was a risk of dissipation of assets. It rests on the Defendant to show that that risk no longer exists. In our judgment, the Defendant has failed to discharge that burden. In the exercise of our discretion the balance of convenience falls on the side of the Plaintiff, and this application is accordingly dismissed. *Authorities Alpha Print - v- Alphagraphics*

[1989] JLR 152 *Trasco -v- R. M. Marketing* (29 October 1986) Jersey Unreported *A. C. Mauger -v- Victor Hugo*

[1989] JLR 295 *Walters -v- Bingham* [1985/6] JLR 439 *Abbott Industries -v- Warner* (18 September 1986) Jersey Unreported *Johnson Matthey -v- Arya Holdings* [1985/6] JLR 208 *Talika -v- Olec Properties Limited*

[1990] JLR 200 *12 & 13 Britannia Place -v- J & G Properties*

[1989] JLR 34 *De Geulle -v- Le Nosh* (8 February 1990) Jersey Unreported *De Geulle -v- Le Nosh* (7 March 1990) Jersey Unreported *Jackson -v- Jackson*

(1965) JJ 463 ;

(1966) JJ 579 ;

(1970) JJ 1285 Racz -v- Bois Labesse (1979) JJ 151 Goldrein: Commercial Litigation: Pre-emptive Remedies (1997) (3 rd Ed'n): pp. 5-6; 61-83; 184 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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