

JERSEY / JUDGMENT

American Endeavour Fund Ltd v Trueger and others

COURT
COURT

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ROYAL
COURT
(Samedi Division)
23rd January, 1998
Before: P.R. Le Cras, Esq., Lieutenant Bailiff.
Between
The
American Endeavour Fund Ltd Plaintiff
And
Arthur I. Trueger
First
Defendant
And
Berkeley
International Capital Corporation
(A
California Corporation) Second
Defendant
And
London
Pacific Group Ltd Third
Defendant
(formerly
known as Govett & Co Ltd)
And
London
Pacific International Ltd Fourth
Defendant
(formerly known as Berkeley Govett International Ltd)
And

James
Hardie Industries Ltd First
Third Party
And
Firmandale
Investments Ltd Second
Third Party
And
Robert
A. Christensen Third
Third Party
And
Alison
Mary Holland
Fourth
Third Party
(by
original action)
AND
Between
Berkeley
International Capital Corporation
(A
California Corporation) First
Plaintiff
And
London
Pacific Group Ltd
(formerly
known as Govett & Co Ltd)
Second
Plaintiff
And
London
Pacific International Ltd
(formerly
known as Berkeley Govett International Ltd) Third
Plaintiff
And
The
American Endeavour Fund Ltd
First
Defendant
And

James
Hardie Industries Ltd
Second
Defendant
And
James
Hardie Finance Ltd Third
Defendant
And
Firmandale
Investments Ltd
Fourth
Defendant
And
Michael
G. Allardice
Fifth
Defendant
And
Robert A. Christensen
Sixth
Defendant
And
Graeme
A. Elliott
Seventh
Defendant
And
Alison
Mary Holland
Eighth
Defendant
And
Volaw
Trust & Corporate Services Ltd
Ninth
Defendant
(by
way of counterclaim)
Application by the

Plaintiff in the Original
Action for an Order:

1. that the Defendants to the Original Action comply with the order of the Lieutenant Bailiff dated 15th May, 1997, by remedying the defects in their Discovery as detailed in the schedule attached hereto (except paras. 6, 8 and 9 of the schedule);
 2. that the Defendants to the Original Action provide to the Plaintiffs a disk containing the documents referred to in their list of documents, viz those documents described in paras B-E inclusive.
 3. that the Defendants to the Original Action provide the Plaintiffs with a copy of the coding manual referred to in the schedule to Theresa McPherson's affidavit dated 18th January, 1998;
 4. that the Court shall under its inherent jurisdiction give such directions and grant such other relief as it sees fit.
- Advocate
W.J. Bailhache for the Plaintiffs in the Original Action.
Advocate
J.G. White for the First to Fourth Defendants in the Original Action.

JUDGMENT

THE LIEUTENANT BAILIFF: This is a summons brought by the Plaintiff against the First to the Fourth Defendants arising out of a dispute regarding Discovery. On 20th February, 1997, the Court ordered at paragraph 3 of the Act: "that the Plaintiff and the First to Fourth Defendants should, by the 16th May, 1997, furnish each other with a list, verified by affidavit, of the documents which are or have been in their possession, custody or power relating to any matter in question in the action with inspection of documents to be given by C.D. Rom by the 30th May, 1997." The time limit was extended by Act of the Royal Court dated 15th May, 1997, paragraph 1 of which reads: "ordered that the time for the Plaintiff and the First to Fourth Defendants to comply with the said Order of the 20th February, 1997, in relation to discovery, be extended to the 31st August, 1997, and that this be the final extension of time in relation thereto." It is common ground between the parties that the list, verified by affidavit, has been produced and that no dispute arises thereon. Disputes have, however, arisen regarding inspection of the documents, and a vigorous correspondence has ensued, followed by lengthy affidavits. In brief, the problem arises from the construction of the phrase "inspection by CD Rom". The Plaintiffs make a series of complaints as to what they consider to be the failure by the Defendants to provide sufficient information in order to enable them properly to inspect the documents, which are very considerable in number. To this end, the Plaintiff had issued a summons with these complaints attached by way of a schedule and, this morning, sought to amend and extend the summons by the addition of paragraphs 2 (as further amended), 3 and 4. "1. That the Defendants to the original action do by 6

January 1998 comply with the order of the Lieutenant Bailiff dated 15 May 1997 by remedying the defects in their Discovery as detailed in the schedule attached hereto (except paras 6, 8 and 9 of the schedule).

2. That the Defendants to the original action do provide to the Plaintiffs a disk containing the documents referred to in their List of Documents, viz those documents described in paragraphs B-E inclusive.
3. That the Defendants to the original action shall provide to the Plaintiffs a copy of the coding manual referred to in the schedule to Theresa McPherson's affidavit dated 18 January 1998.
4. That the Court shall under its inherent jurisdiction give such directions and grant such other relief as it sees fit." The Defendants object to proceeding with the summons on the ground, primarily, that they must know which issues to address. As to paragraph 1 of the summons, Mr. White made the point that it is not in fact discovery about which the Plaintiff is complaining but inspection; whilst paragraph 2 is one, which although previously raised, is, in the context of the summons, new and a point on which he undertook to make urgent enquiry, though he would not consent to bind himself to a time frame. As to paragraph 3, this again is a point on which he would need to take instructions. As he read the Act, it did not appear to him that there was any requirement presently to give the other side the cross-referencing the Defendants had prepared for themselves. So far as paragraph 4 was concerned, on which Mr. O'Connell for the Plaintiff sought to hang an order for directions requiring the experts to meet, under certain conditions, he was entitled to know precisely what directions were required. Mr. White did accept that there were certain complaints which did require to be rectified, and that attention would be given to these in order to ensure that the existing order was properly complied with. It is clear beyond peradventure that the summons cannot proceed today and that the Defendants are entitled to an adjournment. However, the Court wishes to add certain further observations. It is equally clear that the interpretation of the phrase "inspection of documents ... by CD Rom" does not have a meaning which is common to and accepted by the parties. It is perhaps inevitable, with new technology, that such a disagreement might arise; the problem being compounded here no doubt by the enormous quantity of documentation. At all events it was perfectly clear in argument before us that there was a fundamental disagreement on what should be provided, which in our view must be decided before the Court can decide whether the Order has been complied with. As the technology is so new, there are no rules of Court dealing with general cases and hence no starting point for seeing whether such general rules should in any way be extended or modified in any particular case. The way forward, in the view of the Court, is for the Plaintiff to set out what it thinks should be provided by way of facilities for inspection, and for the Defendants to answer this, so that (per Mr. White) the Court may decide what it expects of the parties. The Court envisages that evidence will have to be heard and a decision reached on this point, before - to repeat - a summons can be heard as to whether the Order has been complied with. That said, there appear to be certain areas where it is admitted that there has been insufficient compliance, and where that is so, then,

without making an order, it is, we think, sufficient at this stage to indicate that compliance should be achieved as soon as it is reasonably possible. The summons therefore both in the original and its amended form is stood over “sans jour fixe”. Authorities Royal Court Rules 1992, as amended: Rule 6/16. R.S.C. (1997 Ed’n): Vol 1: O.24.

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