

JERSEY / JUDGMENT

Booth v Viscount [2023]

JRC 055 (12 April 2023)

[2023] JRC 055

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judgment

the MASTER:

Introduction

1. This judgment sets out my decision in relation to an application by the Viscount to strike out the Order of Justice, dated 10 January 2023, served by Mr Booth (the "2023 Order of Justice") on the grounds that it is an abuse of process and/or discloses no reasonable cause of action and/or is scandalous, frivolous, or vexatious. The Relevant Background 2. This application concerns a further attempt by Mr Booth to pursue claims allegedly arising in relation to his désastre . The history to his declaration en désastre and subsequent proceedings is set out at length in a judgment of the Court of Appeal dated 10 October 2022 (reported at Booth v Viscount and Anor

[2022] JCA 200) and I do not propose to recite it in this

judgment.

3. On 1 November 2022, less than a month after the Court of Appeal judgment, Mr Booth wrote to the Viscount requesting that he release to Mr Booth, a claim from the désastre against David O Reynolds Limited trading as Reynolds Chartered Surveyors ("Reynolds") arising out of Reynolds' allegedly negligent valuation of a property called King's Oak on 4 March 2013 (the "2013 King's Oak Valuation"). Whilst subsequent correspondence from Mr Booth referred to a further claim against Reynolds for a valuation of a property called Beaumont Hill House on the same date, in his submissions to me, Mr Booth expressly limited his claim to the 2013 King's Oak Valuation, and I have proceeded on the basis that this is the only claim he seeks to pursue now. 4. The Viscount declined to release the claim to Mr Booth and Mr Booth subsequently issued the 2023 Order of Justice in the following terms against the Viscount: "1.9 The Plaintiff alleges that the Viscount's actions are in breach its obligations and responsibilities, as a Public Authority, under the provisions of the Human Rights (Jersey) Law 2000 that states, in item 7 (1), "It is unlawful for a public authority to act in a way which is incompatible with a Convention right". 1.10 The Royal Court has a supervisory

jurisdiction over the Viscount's conduct. 1.11 The Plaintiff therefore relies on the Human Rights (Jersey) Law 2000, that gives further effect to the rights and freedoms guaranteed under the European Convention on Human Rights and for connected purposes. 1.12 The Plaintiff asks the Royal Court to decide if the Viscount has acted unreasonably by preferring to act in accordance with powers conferred under the Bankruptcy (Désastre) (Jersey) Law 1990 rather than complying with the, as it should have done. Human Rights (Jersey) Law 2000 1.13 The Plaintiff seeks a direction to the Viscount that he should forthwith comply with the Human Rights (Jersey) Law 2000 and allow the Plaintiff to pursue the Claim." 5. This pleading is in very similar terms to an Order of Justice dated 7 May 2021 issued by Mr Booth against both the Viscount and Reynolds (the "2021 Order of Justice") in which Mr Booth alleged that the Viscount had unreasonably refused to release to him claims against Reynolds for negligent valuations of Mr Booth's property. Following a consent order dated 28 June 2021, that claim proceeded by way of a preliminary issue to determine whether the Viscount should " forthwith and unconditionally release to Mr. Booth the right of action against Reynolds ". Directions were given for the Viscount to file an Answer and for evidence to be exchanged. After a hearing, the Royal Court declined to direct the Viscount to assign those claims (reported at Booth v Viscount and Anor

[2022] JRC 062). Mr Booth appealed, and the Court of Appeal similarly declined to direct the Viscount to assign the claims (reported at

[2022] JCA 200). 6. For the purposes of this judgment, I note that the issue before both the Royal Court and the Court of Appeal was not as to the merits of Mr Booth's claim against Reynolds, or the Viscount's assessment of those merits, but rather as the Court of Appeal held (at paragraph 96 of its judgment): "...the question in this court is not whether we agree with the Viscount's assessment that the Claim against Reynolds was 'hopeless', but whether we are entitled to rule that the Royal Court was 'wrong' in holding that the Viscount was not 'wrong' in taking that position. The short answer is that we consider the Royal Court was not 'wrong' to conclude that the Viscount was not 'wrong' in regarding the Claim as hopeless. Whilst emphasising again that this is not a judgment on a strike-out application, and as such this court is not itself making a definitive ruling on the merits of the Claim." 7. In submissions to me, Mr Booth made it clear that he feels aggrieved by the decisions of both the Royal Court and the Court of Appeal which, he says, have deprived him of what he regards as his right to have his claims against Reynolds determined by a Court, as opposed to the Viscount. The Applicable Law 8. RCR 6/13 is in the following terms: "6/13 Striking out (1) The Court may at any stage of the proceedings order to be struck out or amended any claim or pleading, or anything in any claim or pleading, on the ground that: (a) it discloses no reasonable cause of action or defence, as the case may be; (b) it is scandalous, frivolous or vexatious; (c) it may prejudice, embarrass or delay the fair trial of the action; or (d) it is otherwise an abuse of the process of the Court, and may make such consequential order as the justice of the case may require. (2) No evidence shall be admissible in an application under paragraph (1)(a). 9. The test to be applied on a strike out was set out by Beloff JA in Trant v AG

- [2007] JLR 231 (and approved by the Court of Appeal in *Home Farm Developments Ltd v Le Sueur* [2015] JCA 242): "22 The test on an application to strike out is well established. It is only where it is plain and obvious that the claim cannot succeed that recourse should be had to the court's summary jurisdiction to strike out. Particular caution is required in a developing field of law. Provided that a pleading discloses some cause of action or raises some question fit to be decided by a judge, jurats or jury, the mere fact that a case is weak is not a ground for striking it out. These propositions are vouched for by a wealth of Jersey authority embracing principles deployed by the courts of the United Kingdom, see e.g. *In re Esteem Settlement* (6) (2000 JLR at 127) (we note en passant that a new regime, arguably more favourable to an application to strike out, has been introduced in England and Wales by the Civil Procedure Rules). On an application to strike out under sub-para. (a) of r.6/13(1) (that there is no reasonable cause of action) evidence is not admissible. The facts alleged in the Order of Justice must be taken as correct. However, where an application is made under sub-para. (b) (scandalous, frivolous or vexatious), or sub-para. (d) (abuse of process), or where the application to strike out is made out under the inherent jurisdiction of the court, evidence is admissible and may be considered by the court. It follows that, on this application, evidence was and is admissible." 10. The Viscount relies on grounds (a), (b) and (d) of RCR 6/13 and in particular on: (i) paragraph
- (d) in that he submits that these proceedings are an abuse of the process of the Court in that the cause of action in the 2023 Order of Justice is the same as that in the 2021 Order of Justice; that cause of action having been determined against Mr Booth, the 2023 Order of Justice falls to be struck out on the basis of a cause of action estoppel as the claim has already been adjudicated or alternatively, it could and should have formed part of those earlier proceedings in order that it might have been adjudicated upon; (ii) paragraph (a) in that the proceedings amount to a collateral attack on the Court of Appeal judgment and thereby disclose no reasonable cause of action; and (iii) paragraph (b) on the basis that they are scandalous, frivolous or vexatious. 11. In *Dubai Islamic Bank*
- [2016] JRC 102 at paragraph 108, Master Thompson set out and adopted Sumption LJ's definitions of *res judicata*, cause of action estoppel, issue estoppel and abuse of process (from *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* (formerly *Contour Aerospace Ltd*)
- [2013] UKSC 46 ,
- [2014] AC 160). *Le Cocq*, DB, similarly adopted Sumption LJ's "comprehensive treatment" on appeal (*Dubai Islamic Bank PJSC v Ridley*
- [2017] JRC 204 at paragraph 66) and drew attention to the following points: "67. In paragraph 17 of *Virgin Atlantic* Lord Sumption defines cause of action estoppel in the following terms:- "The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is "cause of action estoppel". 68. In paragraph 20 of the judgment in *Virgin Atlantic* his Lordship cites with approval the analysis by Lord Keith of Kinkel in *Arnold v National Westminster*

Bank plc

[1991] 2AC 93 in the following terms:- "Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is a relevant one the parties seeks to reopen that issue." 12. Although Le Cocq, DB, summarised paragraph 22 of Virgin Atlantic , I think it of assistance to set out Sumption LJ's passage in full: "22 Arnold v National Westminster Bank plc [1991] 2 AC 93 is accordingly authority for the following propositions. (1) Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action. (2) Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised. (3) Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised." The Relevant Causes of Action 13. In order to consider any potential cause of action estoppel, it is necessary to identify the specific cause of action that was before the Court previously. The cause of action is the set of alleged facts which give rise to the legal claim and a remedy. In the 2021 Order of Justice, those alleged facts were that: (i) the Viscount had reached an unreasonable decision; (ii) in relation to a specific subject matter, namely the return of causes of action for allegedly negligent valuations by Reynolds; and (iii) that decision was susceptible to the supervisory jurisdiction of the Court. 14. In terms of a determination, the Royal Court and the Court of Appeal both found that the Viscount's decisions were susceptible to the supervisory jurisdiction of the Court, but on the facts, the decision was not unreasonable. 15. The issue before me is as to the subject matter of the proceedings commenced by the 2021 Order of Justice and in particular whether they encompassed all the valuations carried out by Reynolds on Mr Booth's property or were limited to a specific, identified, valuation: (i) The 2021 Order of Justice relates to "the Claim" and sought a direction that the Viscount should "forthwith and unconditionally release the Claim to [Mr Booth]". (ii) Paragraph 1.4 of that pleading defines "the Claim" as follows: "The Plaintiff requested on 12 March 2021 that the Viscount should release the present claim against the Second Defendant ("Reynolds") ("the Claim") to him." (iii) Mr Booth's email to the Viscount of 12 March 2021 stated simply: "Dear Ms Gallichan Further to our brief telephone conversation I write, as requested, to ask for confirmation from the Viscount that the Viscount's office has no further interest in this matter, receipt of which will enable me to reply to Reynolds

advisors and progress matters. Yours sincerely" (iv) Paragraph 1.5 of the 2021 Order of Justice pleads that: "On 22 March 2021 the Viscount unreasonably refused to release the Claim to the Plaintiff, in circumstances where there is no ongoing désastre and the Viscount therefore has no proper or reasonable motive or justification not to release the Claim to the Plaintiff and to do so unconditionally, in view of the discharge." (v) The Viscount's email of 22 March 2021 does not contain any specific refusal to release a claim to Mr Booth nor does it identify any specific cause of action or valuation but it does have a subject line that refers to "Re: My potential claim against Reynolds regarding Valuations of King's Oak and Beaumont Hill House" . (vi) The body of the 2021 Order of Justice alleges that three valuations carried out by Reynolds were negligent. The first was "the King's Oak Valuation" dated 10 May 2011 (paragraphs 18 to 23 of the 2021 Order of Justice), and the other two were the "the First Beaumont Valuation" dated 30 January 2012 and "the Second Beaumont Valuation" dated 1 March 2013 (which I assume is a typographical error) (paragraphs 41 to 46 of the 2021 Order of Justice). The 2021 Order of Justice goes on to plead particulars for the loss and damage allegedly accruing as a result of those three valuations but at no stage does it attempt to incorporate any of those valuations into the defined term "the Claim" . (vii) The prayer to the 2021 Order of Justice seeks: "A direction that the First Defendant do unconditionally release to the Plaintiff the cause of action against the Second Defendant." (viii) The Viscount's Answer only dealt with paragraph 1 of the 2021 Order of Justice. (ix) The Royal Court judgment was in the following terms: "20. On 26th November 2020, Mr Booth sent Reynolds Surveyors a letter before action, alleging negligence in the valuations provided by it which he claimed were the cause of his subsequent bankruptcy and loss of earnings, inter alia, as a chartered surveyor over the four-year period of the bankruptcy. We will refer to this as "the Claim"... "61. In all of these circumstances, we find that the decision of the Viscount not to assign the Claim is within the range of reasonable responses open to her and we decline, therefore, to intervene and direct her to make that assignment." (x) The letter of claim dated 26 November 2020 from Mr Booth is entitled "Re Your valuations on King's Oak and Beaumont Hill House, Jersey" , refers to valuations of King's Oak (only) between August 2003 and August 2011, and makes complaint about a valuation of King's Oak dated 10 May 2011. (xi) When setting out the facts of the appeal, the Court of Appeal referred to the valuation of Beaumont Hill House of 4 March 2013 but did not expressly refer to the valuation of King's Oak of the same date. The Court of Appeal judgment states that: "5. The Claim is for alleged negligence by Reynolds in the provision of property valuations..." 16. In submissions to me, Mr Booth stated that he issued the 2021 Order of Justice on 7 May 2021 as he was concerned about the possible expiry of prescription for any claims against Reynolds in respect of the 10 May 2011 valuation of King's Oak. He went on to state that the other claims listed in the 2021 Order of Justice were those where he thought he could establish causation which is why particulars of loss had been pleaded. None of those claims related to the 2013 King's Oak Valuation. 17. The Viscount submitted that the prayer to the 2021 Order of Justice encompassed all claims that Mr Booth might have had against Reynolds in relation to valuations. In order for that submission to be correct, the words used in the prayer would

have to have been explicit, clear and unambiguous. They were not. The prayer simply sought the "release to the Plaintiff [of] the cause of actions against [Reynolds]" and this is insufficient to establish the interpretation for which the Viscount contends. 18. Further: (i) Mr Booth started the process of trying to get the assignment of the causes of action with a letter before action to Reynolds in November 2020 referring to valuations of King's Oak and Beaumont Hill House and identifying a particular valuation of King's Oak dated 10 May 2011. His correspondence was directed at specific valuations; not all valuations. (ii) It does not appear plain and obvious to me that Mr Booth asked the Viscount in 2021 to return to him all potential causes of action against Reynolds, or that the Viscount reached a decision in relation to all potential causes of action against Reynolds. Indeed, when Mr Booth asked the Viscount in November 2022 to reassign the cause of action relating to the 2013 King's Oak Valuation: (a) the Viscount did not state that any causes of action relating to that valuation had been included in his previous decision and/or determined by the Royal Court and the Court of Appeal; (b) rather the Viscount went on to set out his reasoning and his refusal in an email of 2 November 2022 stating that "my view is that the Claim is hopeless and I do not agree to assign it to you". (iii) The 2021 Order of Justice expressly referred to three, allegedly negligent, valuations by Reynolds relating to King's Oak and Beaumont Hill House; such particulars would have been wholly unnecessary if the proceedings related to all valuations carried out by Reynolds. (iv) It would require a significant and unjustified leap of logic to extend a demand by Mr Booth to return a cause of action arising out of a specific valuation to all other valuations carried out by Reynolds, including those with which Mr Booth had no issue, without any further action or request on the part of either Mr Booth or the Viscount. 19. The claims in the 2021 Order of Justice were identified in the body of that pleading and comprised a valuation of King's Oak dated 10 May 2011, and valuations of Beaumont Hill House dated 30 January 2012 and 4 March 2013 (the "Three Valuations"). Service of that pleading initiated the proceedings before the Court and the pleading itself defined the issues to be determined by the Court. Accordingly, I find that it was the Three Valuations (and only those valuations) which were before the Royal Court and the Court of Appeal and were determined by those proceedings. The 2013 King's Oak Valuation was not part of the subject matter of the previous litigation. It is not therefore the case that "the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter" such that the issues in relation to the Viscount's decision in respect of the 2013 King's Oak Valuation have already been determined. 20. However, cause of action estoppel also bars the raising in subsequent proceedings of "points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised." (i) The 2021 Order of Justice alleged that the Viscount's decision was unreasonable. Mr Booth could have alleged in those proceedings that the decision was unreasonable because it breached his convention rights. He chose not to do so, notwithstanding that he had previously alleged in proceedings in 2016 that his convention

rights had been infringed. In bringing a challenge to the reasonableness or otherwise of the Viscount's decision not to assign a particular cause of action to him, Mr Booth could and should have brought forward all of his arguments in relation to the unreasonableness and/or unlawfulness of the Viscount's decision. That included any challenge on the basis that his convention rights were infringed. Accordingly, he is estopped from alleging now that the Viscount's decision in relation to the Three Valuations breached his convention rights. (ii) The application before me does not concern the Three Valuations but rather the Viscount's decision not to reassign a cause of action relating to the 2013 King's Oak Valuation. That decision of the Viscount was taken in November 2022, some 18 months after Mr Booth had issued the 2021 Order of Justice, and just under a month after the Court of Appeal had handed down

judgment.

Advocate Wilson for the Viscount submits that this matters not; Mr Booth could and should have brought any claims he might have wished to have made in relation to the 2013 King's Oak Valuation in the 2021 Order of Justice such that he is estopped from raising it now. 21. In my view, such a requirement would be an unwarranted extension of cause of action estoppel: (i) Matters relating to the 2013 King's Oak Valuation and/or as to the Viscount's attitude to the reassignment of any causes of action related to that valuation were not "essential to the existence or non-existence of a cause of action [concerning the Three Valuations]" ; (ii) It is a prerequisite of any challenge to a decision of the Viscount that the Viscount has actually made a decision. In the case of any cause of action arising from the 2013 King's Oak Valuation, the Viscount did not reach a decision on until November 2022 such that it cannot be said that Mr Booth "could with reasonable diligence" have challenged it in the earlier 2021 proceedings. (iii) Nor could Mr Booth have necessarily brought any such challenge into the 2021 Order of Justice after proceedings had been instituted. The rule in England and Wales before the implementation of the CPR was that amendments to pleadings took effect from the date of the original pleading, not from the date of the amendment. This was a bar to raising by way of amendment causes of action which had accrued since the issue of the proceedings. I have not heard argument on whether this rule applies in Jersey and/or if so, with full vigour. There is some authority which might suggest that the position is more flexible in Jersey (*Dalfsen v Caversham*

[2010] JRC 113 at paragraph 6 " That [objection], however, has been, to some extent, neutralised by the undertaking of the plaintiff that the amendment, if leave were given, would take effect from the date of the amendment, rather than from the date of the original order of Justice.") However, in the absence of any definitive position, it cannot be said that Mr Booth, as a litigant in person, "could with reasonable diligence and should" have sought to raise in the 2021 Order of Justice a complaint about a decision the Viscount did not, in fact, take until after the proceedings had been issued. (iv) Litigation in relation to one cause of action does not automatically require litigation of all other causes of action, actual or potential, between the same parties. The test is as set out in paragraph 22 of *Virgin Atlantic* (above) and it is not plain and obvious to me that Mr Booth "should in all the

circumstances" have raised any complaint about the 2013 King's Oak Valuation in the 2021 Order of Justice. 22. Accordingly, I find that Mr Booth is not estopped from challenging the Viscount's November 2022 decision in relation to the reassignment of a cause of action arising from the 2013 King's Oak Valuation. Collateral Attack and Issue Estoppel 23. The point was succinctly stated by Le Quesne JA in *T. A. Picot (CI) Ltd v Crills*

[1995] JLR 33 : "There is no doubt that when an issue is decided by a subsisting judgment of a court, the law will not allow a collateral attack on the correctness of that judgment in a court of co- ordinate jurisdiction." 24. Advocate Wilson for the Viscount submits that the thrust of the 2023 Order of Justice is a challenge to the basis of the legitimacy of the Viscount's actions in refusing to assign the claim to Mr Booth. As the Court of Appeal put matters: "82. In any case where it appears that a claim has been, or might be, brought for the benefit of an insolvent estate, there will be a range of options open to the Viscount. Most obviously, he might decide to pursue the claim, discontinue it, or assign it. In properly deciding what to do, the Viscount will necessarily need to consider the merits of the claim: (i) If it appears to be a really strong case with a likelihood of substantial recoveries that would exceed the attendant costs, then there may well be good grounds for the Viscount to pursue it, so long as there are sufficient resources in the *désastre* for doing so, or to try persuading the creditors to fund any necessary litigation if there are insufficient assets in the Viscount's hands. (ii) On the other hand, if the litigation appears to be utterly hopeless, then there would plainly be no justification for the Viscount pursuing it. Furthermore, in that situation, the Viscount would also be entitled not to assign the claim, whether to the debtor or to any third party, as this court implicitly recognised in para. 29 of the November 2016 Judgment. (iii) If it appears that a claim is neither bound to succeed nor bound to fail, the Viscount may consider assigning the cause of action to a third party, or to the debtor. In deciding whether or not to make such an assignment, and if so on what terms (for example, as to payment up front or as to the division of any proceeds) the Viscount will again need to take a view as to the likely prospects of success. If the claim appears likely to succeed, the Viscount will obviously be well placed to negotiate better terms for the benefit of creditors than if the claim is more doubtful. 83. For these reasons, it is in our judgment self-evident from the very nature of the choices facing him that the Viscount can and must take into account the merits of a claim when deciding what to do with it, including whether to assign it to the debtor. This conclusion is reinforced when proper account is also taken of the function and the status of the Viscount. In the context of a *désastre*, his function is to gather in the assets, advertise for creditors, adjudicate on claims, realise the assets, distribute the assets pro rata among the creditors, and account for any surplus to the debtor: see para. 28 of this court's judgment on the appeal by Investec against the making of the Declaration, [2016] (1) JLR 101. In performing these functions in a *désastre*, the Viscount is discharging a public duty by exercising powers which impact on both creditors and debtors of the estate, and quite possibly other third parties too. As such, his decisions cannot either be taken or judged by reference only to commercial considerations." 25. The 2023 Order of Justice

pleads as follows: "1.12 The Plaintiff asks the Royal Court to decide if the Viscount has acted unreasonably by preferring to act in accordance with powers conferred under the Bankruptcy (Désastre)(Jersey) Law 1990 rather than complying with the Human Rights (Jersey) Law 2000, as it should have done. 1.13 The Plaintiff seeks a direction to the Viscount that he should forthwith comply with the Human Rights (Jersey) Law 2000 and allow the Plaintiff to pursue the Claim." 26. Advocate Wilson submits that on a true reading of these paragraphs Mr Booth is inviting the Court to find that: (i) the previous decision of the Court as to the matters which may be taken into account by the Viscount is wrong because it failed to address the provisions of the Human Rights (Jersey) Law 2000 (paragraph 1.12 of the 2023 Order of Justice); and/or (ii) the Viscount has no discretion and must reassign the claim given the provisions of the Human Rights (Jersey) Law (paragraph 1.13 of the 2023 Order of Justice). 27. Were Mr Booth to be advancing either of these arguments, he would face an issue estoppel given that both matters have been determined as between him and the Viscount, by both the Royal Court and the Court of Appeal. Moreover, any attempt by him to advance such an argument would amount to an impermissible collateral attack on their decisions. 28. In submissions to me, Mr Booth acknowledged that he could not go back and "rework " what had previously been determined notwithstanding that he disagreed with the outcome. He therefore appeared to be disavowing Advocate Wilson's interpretation of the 2023 Order of Justice and focussing on the reasonableness or otherwise of the Viscount's decision in relation to the cause of action arising from the 2013 King's Oak Valuation. 29. Mr Booth stated that he had drafted the 2023 Order of Justice himself without any professional assistance. It is a very short document and outlines the cause of action in the barest of terms. For the claim to proceed further, proper particulars will need to be provided. In the circumstances, it would be inappropriate for me to strike out the claim now without giving Mr Booth an opportunity to clarify exactly what he is alleging and why and to confirm that he is not seeking to raise any matter or issue that is or might be tainted by a cause of action estoppel, issue estoppel or might otherwise amount to a collateral attack on a judgment of the Royal Court or the Court of Appeal. To the extent that any amended claim does not so confirm, it will be susceptible to a strike out. No Reasonable Cause of Action 30. In relation to this head, I am required to take what is set out in the 2023 Order of Justice as being correct. The allegation is that the Viscount's decision not to assign the cause of action is unreasonable (albeit for reasons which are wholly unparticularised). In my view, it is not plain and obvious that that allegation is unarguable, although Mr Booth clearly faces challenges if he is to prevail. Frivolous and Vexatious 31. Advocate Wilson submits that if the merits of the claim against Reynolds are "hopeless" , it would be frivolous and vexatious of Mr Booth to challenge the Viscount's refusal to reassign such a hopeless cause of action. This echoes the previously expressed views of the Viscount (noted by the Court of Appeal at paragraph 45(iii) of its judgment in relation to the 2021 Order of Justice) that he regarded the claim as being "frivolous, and to some extent vexatious. There were no clear benefits to the creditors, and if there were any substantial recoveries then Mr Booth personally would receive the greater share." 32. The fact that the Viscount regarded the

claim as being without merit was part of the reasoning for not assigning the claims, it was not the decision of the Royal Court or the Court of Appeal that Mr Booth's claim was frivolous and vexatious, albeit that both Courts identified that there were problems with the claims that Mr Booth wished to bring. 33. Advocate Wilson submits that similar issues arise in relation to any claims against Reynolds for the 2013 King's Oak Valuation such that the Viscount is justified in viewing the claim as being "hopeless". That assessment may or may not be correct but that is not the action that is before me. I am not considering the merits of any claim against Reynolds but rather the merits of the claim against the Viscount for his refusal to release the claim against Reynolds. 34. Insofar as the merits of the claim against the Viscount are concerned, I note the comments of Beloff JA in *Tran* that " Provided that a pleading discloses some cause of action or raises some question fit to be decided by a judge, jurats or jury, the mere fact that a case is weak is not a ground for striking it out" . If it not permissible for the Court when considering a strike out to take into account the fact that that particular case in question is weak, it is even less appropriate for the Court to consider the merits of a set of proceedings one removed from those before it. Accordingly, for the purpose of the current application, I disregard the merits of the claim against Reynolds and decline to strike out the 2023 Order of Justice. Disposal 35. Notwithstanding the deficiencies in the 2023 Order of Justice, I think that there is the outline of a claim that is fit to be decided by the Court, namely whether the Viscount's decision in refusing to reassign a claim against Reynolds arising out of the 2013 King's Oak Valuation is unreasonable given the (as yet unparticularised) extent to which such a decision allegedly breaches Mr Booth's convention rights. If that claim is to be advanced, further information will inevitably be required. 36. Pursuant to RCR 6/15, I hereby direct that within 6 weeks of the handing down of this judgment, Mr Booth provide by way of an amended Order of Justice: (i) full particulars of: (a) each and every alleged obligation and responsibility to which it alleges the Viscount is subject under paragraph 1.9 of the 2023 Order of Justice; (b) each and every provision of the Human Rights (Jersey) Law 2000 relied on; (c) each and every Convention right relied upon; (d) Mr Booth's status as a victim within the meaning of Article 8(1) of the Human Rights (Jersey) Law 2000 given amongst other things, the quantum of the alleged claim against Reynolds and the deficit to creditors in his *désastre* ; (e) each and every alleged breach on the part of the Viscount. (ii) Confirmation as to whether Mr Booth is alleging that any refusal by the Viscount would be incompatible with his human rights, and if so, which right; or if not, what aspects of the Viscount's refusal in this case are incompatible with such rights. (iii) Confirmation that Mr Booth is not alleging that: (a) the previous decision of the Court as to the matters which may be taken into account by the Viscount is wrong because it failed to address the provisions of the Human Rights (Jersey) Law 2000 (paragraph 1.12 of the 2023 Order of Justice); and/or (b) the Viscount has no discretion and must reassign the claim given the provisions of the Human Rights (Jersey) Law (paragraph 1.13 of the 2023 Order of Justice). 37. Further, pursuant to the Overriding Object, the Court is required to manage cases actively which includes dealing with as many aspects of the case as the Court can on the same occasion (RCR 1/6(6)(i)). Insofar as there are causes of action, vested in the Viscount

as a result of Mr Booth's désastre (whether against Reynolds or others) which Mr Booth wishes, or might wish, the Viscount to reassign to him now or in the future, he must set out in a separate schedule full particulars of all such causes of action, together with any request that the Viscount reassign them. The schedule must be provided to the Viscount within 6 weeks of the handing down of this judgment, failing which Mr Booth shall be barred from seeking their reassignment. 38. The matter shall be relisted for further directions on the first available date after 8 weeks. 39. Subject to any submissions of the parties, my provisional view is that this summons was necessary for the advancement of this litigation and that the appropriate order for costs is costs in the cause. Authorities Booth v Viscount and Anor

[2022] JCA 200 . Booth v Viscount and Anor

[2022] JRC 062 . Trant v AG

[2007] JLR 231 . Home Farm Developments Ltd v Le Sueur

[2015] JCA 242 . Dubai Islamic Bank

[2016] JRC 102 . Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)

[2013] UKSC 46 ,

[2014] AC 160 . Dubai Islamic Bank PJSC v Ridley

[2017] JRC 204 . Dalfsen v Caversham

[2010] JRC 113 . T. A. Picot (CI) Ltd v Crills

[1995] JLR 33 . Human Rights (Jersey) Law 2000 Page Last Updated: 24 Apr 2023 Back to top About JLIB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- 20262023 (External) BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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CASE PAGE <https://chat.esheria.ai/case-law/jersey/booth-v-viscount-2023-jrc-055-12-april-2023>

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