

JERSEY / JUDGMENT

Boyd v Pickersgill and Le Cornu

[2004] JRC 103 (09 June 2004)

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judgment

deputy bailiff: 1. This is an application by the defendants to strike out this action for want of prosecution. The matter has come directly before the Court as neither the Master nor the Deputy Judicial Greffier is able to hear it. The nature of the claim 2. The plaintiff's claim is set out in the order of justice which was filed at a time when she was acting personally. Advocate Le Cornu of the defendant's firm acted for the plaintiff in connection with her matrimonial affairs between August 1984 and April 1987 at which time she moved to Advocate Le Quesne. In February 1986 Barclays Bank obtained a charge on the matrimonial home Verdala, which was jointly owned by the plaintiff and her husband. The charge was to secure an overdraft. In March 1986 the bank made formal demand for repayment of the overdraft and on 28 th November 1986 a *dégrèvement* and realisation were ordered. A company owned by the bank was registered as 'tenant après *dégrèvement*' in February 1987. The plaintiff alleges that the defendants failed to advise her of the procedure known as 'licitation' which, had she deployed it, (she asserts) would have prevented the loss of Verdala. She asserts that she would have been able to enforce the sale of Verdala, clear all borrowings to creditors and the surplus of assets would have been divided equally between the joint owners of the property, thereby preventing a *dégrèvement* and realisation and much litigation that followed. She asserts that the professional negligence or breach of contract by the defendants in failing to advise her of licitation has led to " losses of property, finance, wealth, many years of unnecessary litigation, exorbitant legal fees, stress, anxiety, depression and inconvenience " (see para 5 of the order of justice). The defendants deny the allegations of professional negligence and breach of contract. History of the proceedings 3. As the Court of Appeal made clear in the judgment to which we shall refer in a moment, the latest possible time at which any negligence or breach of contract could have taken place was 13 th February 1987. The plaintiff issued her order of justice on 21 st April 1997. Shortly thereafter the defendants filed an answer which, whilst denying any negligence or breach of contractual duty, did not plead in detail to the allegations; instead it raised a contention that the plaintiff's claim, whether in tort or contract, was prescribed. A reply on the issue of prescription was filed on 13 th June 1997. In this the plaintiff asserted that she had not known of the possibility of licitation until informed of it by the Judicial Greffier first orally and then by letter dated 21 st August 1989. Accordingly she contended that, until then, she was not aware of her right to bring a claim

against the defendants and accordingly the running of time for the purposes of prescription should be suspended until 21 st August 1989. This would have the effect that the contractual claim (but not the claim in tort) would not be prescribed as it would have been brought within 10 years (namely 7½ years) of August 1989. 4. It was ordered that the question of prescription should be tried as a preliminary issue. The Royal Court found in favour of the defendants in August 1998 but this decision was overturned by the Court of Appeal on 30 th September 1999 (see *Boyd-v-Pickersgill and Le Cornu*

[1999] JLR 284). The Court of Appeal held that it was arguable that the running of time for the purposes of prescription had indeed been suspended until August 1989 as the plaintiff contended. But at the conclusion of his judgment Southwell JA said at :- "Finally, I wish to emphasise that Miss Boyd, having taken so long to start these proceedings, is now obliged to take these proceedings to trial with due speed. No further delay should be permitted." Beloff JA expressed similar sentiments at the conclusion of his judgment on page 294, albeit in slightly more precatory terms. 5. In fact, so far as procedural progress of this action is concerned, absolutely nothing has happened since then. No further pleadings have been filed so that the plaintiff's losses have not been specified and the defendants have not yet pleaded to the substantive allegations. No one has applied for the case to be set down, no discovery has taken place and no hearing date has been fixed. In essence the case is no further advanced than it was when the reply was filed in 1997. Eventually, in September 2003, the Master issued one of his Circulars listing all those stale cases which the Court was minded to strike out of its own volition. That provoked the plaintiff into issuing a summons seeking to show cause why the action should continue and the defendant to issue a summons to strike out for want of prosecution. For reasons which are not clear to us, it is the latter summons which is before us, although we do not think that anything turns on it. The law 6. In *McGorin -v- Pascoe* (7 th June, 2002) Jersey Unreported; [2002/113] the Court of Appeal, although concerned with the power under Rule 6/20(3) for the Court to strike out an action of its own volition, by inference approved the approach which the Royal Court has developed over the years in cases of dismissal for want of prosecution (see para 35 of the judgment). Those principles are conveniently summarised in *Garfield-Bennett -v- Phillips* (6th November, 2002) Jersey Unreported; [2002/214] at paras 11 and 12) and we apply those principles in this case. Thus the Court must ask itself three questions:- (i) Has there been inordinate delay? (ii) If so, has such delay been inexcusable? (iii) If so, has such delay given rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants? We will consider each of these questions in turn. (i) Inordinate delay? 7. Miss Gilbert sensibly did not press this issue. We accept that there was no inordinate delay until September 1999. Until then the parties were engaged with proper despatch in litigating the preliminary issue of prescription. However the fact is that the action has not progressed at all since September 1999 despite the strong admonition of the Court of Appeal that the plaintiff had to press on with despatch. No progress had been made by the date of the issue of the Circular in September

2003 i.e. 4 years. We have no hesitation in categorising such a delay, particularly after a long delay in the issue of the proceedings in the first place (see para 12(i) of Garfield-Bennett) as inordinate. (ii) Is the delay inexcusable? 8. In essence the plaintiff raises three excuses. First she says that she was, to some extent, a litigant in person and allowance should be made for this; secondly she says that she was actively engaged in seeking detailed accountancy advice in order to quantify her claim; and thirdly she says that she was misled by the defendants into thinking that she need not progress matters as long as negotiations were taking place. In order to appreciate these arguments it is necessary to summarise what was taking place between September 1999 and the date of the Circular in September 2003. 9. The plaintiff continued to act in person until May 2000 at which time Ogier & Le Masurier were appointed to act for her on legal aid. Whilst still acting in person the plaintiff spent time on preparing a bill of costs in respect of the hearing before the Court of Appeal and issuing a summons in December 1999 seeking the notes of the judge who had tried certain matrimonial proceedings between her and her husband in 1990 because she thought Advocate Le Cornu had, at that hearing, said that he did not have any record of informing her about the process of licitation. However this matter did not proceed when it became clear that the judge's notes were no longer in existence. In July 2000 it was discovered that Ogier & Le Masurier had a conflict and on 29th August 2000 Crill Canavan were appointed to act for the plaintiff in their place. They had already been acting for her since February 2000 in connection with a claim against Messrs Viberts arising out of Advocate Le Quesne's conduct of her affairs when he took over from Advocate Le Cornu. 10. In the meantime, the plaintiff had made contact with Mr Nigel Faulks, the English solicitor of the firm S J Cornish of Tiverton, who acted for the insurers of the defendants. The plaintiff places considerable reliance upon the correspondence with Mr Faulks and it is necessary therefore to rehearse it in some detail. 11. On 7th March 2000 Mr Faulks met with the plaintiff at the offices of Crills, the Jersey advocates for the defendants. One of the purposes was to discuss possible settlement but the parties also took the opportunity of agreeing the quantum of the plaintiff's bill of costs as a litigant in person although there was still an outstanding issue about the costs of Advocate Maurant, who had at one stage acted for the plaintiff in connection with the preliminary issue of prescription. According to Mr Faulks' affidavit, the meeting was rather a waste of time in relation to settlement as the plaintiff was in no position to explain her claim either in terms of liability or in terms of causation and quantum. It would appear from a letter written a year later (as to which see below) that Mr Faulks stated that he would be willing to offer £12,000 in full and final settlement of the matter but this was not taken up by the plaintiff. It was undoubtedly agreed that the plaintiff would produce details of her claim. On 27th March 2000 Mr Faulks wrote to the plaintiff referring to the meeting saying inter alia:- "You were going to consider the quantum of your claim with a view to setting it out on paper, prior to a further meeting. Rough details would probably suffice." He went on to point out that he was going into hospital at the beginning of May and would be out of action for the following two months. He therefore asked if she could let him have something fairly soon with a view to their meeting as soon as possible, "..... but definitely

during the month of April." 12. On 13 th April 2000 the plaintiff responded. She said that she was preparing various schedules and had enlisted both legal and accounting professionals to assist her in quantifying the claim. She said that she had been advised it would take some time to fully prepare her claim and the suggestion was that she should meet her advisers early in May and then proceed with the claim and submit it to Mr Faulks for consideration prior to a further meeting. She confirmed that a claim would be prepared as soon it was practicably possible to do so. 13. Mr Faulks replied on 17 th April saying that he was disappointed that she felt it necessary to instruct legal and accounting professionals in order to formulate a claim but going on to say "I shall simply await hearing from you as and when you are ready." 14. On 12 th May, Ogier & Le Masurier, who had by now been appointed to act for the plaintiff, wrote to Advocate Michel of Crills informing him that they had been instructed by the plaintiff and that they were assisting in negotiating with the insurers on the issue of settlement. They said that they were in the process of taking instructions and would revert in due course but in the meantime raised the matter of timing as follows:- "We note the comment of the Court of Appeal that this action should be expedited as quickly as possible and in the light of the settlement proposals we would ask you to confirm that if settlement is not reached and the matter proceeds to trial you will not take issue over the question of delay whilst the settlement negotiations are ongoing." 15. We have not seen any reply from Crills in relation to that letter but on 23 rd June the plaintiff wrote to Mr Faulks enclosing a copy of the letter from Ogier & Le Masurier and referring him to the paragraph concerning delay which we have just cited. 16. On 12 th July 2000 she sent a further reminder concluding with the paragraph:- "May I have a reply to the question of your not taking issue with the point of time during these settlement negotiations as in the letter of 12 th May from Mr M Little of Messrs Ogier & Le Masurier to Advocate Michel and my letter (with enclosures) of the 23 rd June?" 17. We then come to a letter of 28 th September 2000 from Mr Faulks to the plaintiff upon which she places great reliance. We will therefore set it out in full:- "I acknowledge very belatedly your letter of 12 th July sent to me by fax. Thank you for enquiring about my health. I am pleased to confirm that I am now in good order although I had not recovered from my various operations at the date you wrote. I can confirm that I will not take a point on the delay in your pressing ahead with proceedings against Pickersgill & Le Cornu pending possible settlement discussions. Having said that, I am a little disappointed that more than six months have now passed since we met in Jersey and we still do not know what you seek or the grounds on which you seek it. Perhaps you could now expedite preparation of your without prejudice case. Your letter of 12 th July referred to a letter with enclosures of 23 June. I was on holiday on 23 June and I have no record of any letter received from you while I was away. I would be grateful if you would send me a further copy with enclosures." 18. The plaintiff replied to Mr Faulks on 6 th October 2000 sending the required copy letter and including the following paragraph:- "I note you are able to confirm that you will not take issue on the question of time while settlement negotiations are in progress. I hope to be able to update you on this matter in the near future." 19. On 4 th January 2001 Mr Faulks sent a chaser to the plaintiff beginning:- "On

looking at my file I note that I have not heard from you since 6 th October. I am therefore wondering how you are progressing with the preparation of your claim." The letter went on to say that Advocate Mourant's claim for costs had now been resolved. He was therefore in a position to pay the plaintiff's own costs in the agreed sum of £6,000 and he was asking underwriters to put him in funds. There followed some correspondence about this topic and the plaintiff issued a summons because the underwriters took some time to produce a cheque. On 2 nd February Mr Faulks sent a cheque and concluded with the sentence "When am I going to hear from you with details of your claim?" 20. In reply the plaintiff wrote on 5 th February explaining the issuing of the summons for the bill of costs but saying in relation to her claim:- "Finally you ask for details of my claim. Like you I too have experienced difficulties with Jersey advocates but hope to have some positive information to report in the near future. In the meanwhile Mr Faulks I would be grateful if, to refresh my memory, you would be kind enough to explain how you reached your original offer figure of £12,000." She sent a chaser in relation to that query to Mr Faulks on 1 st March and he replied on 5 th March 2001 saying:- "I confirm that at our meeting on 7 th March 2000 I offered you in full and final settlement of your claim the sum of £12,000. Although I did not make a note of how that sum was calculated, it appears to be half the attorney's charges on realisation together with interest. I would still recommend underwriters to pay you that sum." 21. No further correspondence took place and neither the plaintiff nor her advocates made any contact with the insurers' lawyers until after the Circular was issued in September 2003 i.e. a period of some 2½ years. 22. We need now to summarise the plaintiff's evidence as to what was happening behind the scenes. As already stated, on 29 th August 2000 Crill Canavan were appointed on legal aid to represent the plaintiff in respect of her claim against the defendants having earlier been appointed on 23 rd February 2000 to represent her in her claim against Messrs Viberts. As will appear shortly, a difference of opinion appears to have arisen between Crill Canavan and the plaintiff as to the extent of their responsibility. Suffice it to say for the moment that the legal aid certificate itself is not in restricted or limited terms. It appoints Crill Canavan to attend to the affairs of the plaintiff in the matter of 'Claim -v- Pickersgill & Le Cornu'. According to the plaintiff, she had a meeting with Crill Canavan on 1 st September 2000 and at that stage she was seeking advice on only one question in relation to the litigation against the defendants, namely whether the offer made on their behalf was a fair one and should be accepted. She raised a second question with Crill Canavan but this related to the Viberts litigation. 23. Crill Canavan decided that an accountant's report needed to be obtained in order to quantify the plaintiff's claim so as to enable them to advise whether the offer of £12,000 should be accepted or not. They recommended the firm of Le Rossignol Scott Warren ("Le Rossignol"). Authority from the legal aid vote for the funding of this work was obtained and Le Rossignol was instructed on 18 th April 2001 i.e. one year after the plaintiff had told Mr Faulks in her letter of 13 th April 2000 that she had enlisted legal and accounting professionals. 24. In her affidavit the plaintiff lists a substantial amount of correspondence and meetings concerning the preparation of the accountant's report by Le Rossignol. We do not think it necessary to recite this in detail. There were

however two periods when it would seem that Le Rossignol was not carrying out any work for lack of funds. From 9th November to 14th December 2001 there was a pause in the authority of the legal aid vote for the provision of further funds. Furthermore on 1st November 2002 Le Rossignol telephoned requesting further funds. This was refused by the legal aid authorities on 18th December 2002. Despite much correspondence, it would appear that this had not been resolved by May 2003 at which time the plaintiff decided to terminate the appointment of Le Rossignol and replace that firm with Mr Clive Tomes. She agreed to fund Mr Tomes privately. Mr Tomes prepared an early draft report towards the end of June 2003 but despite a further meeting and various correspondence, this does not appear to have been finalised by the date of the Master's Circular in September 2003 and indeed the plaintiff does not suggest that it had been finalised by December 2003. 25. In summary, the plaintiff accepts that she had not succeeded in quantifying her claim in the 4 years from September 1999 (when the Court of Appeal gave judgment) to the issue of the Circular in September 2003. In explanation she points to the fact that she had great difficulty in obtaining the necessary report and this was not her fault. Le Rossignol proved, she asserts, not to have had the necessary experience or expertise and the matter was more complex than they had been used to. Hence her decision to dispense with the services of Le Rossignol in May 2003. Furthermore there had been confusion about the role of Crill Canavan. According to the plaintiff's affidavit, although she agrees that she initially asked Crill Canavan only to advise her on the offer from the defendants, she thought that they were seized with the full conduct of her claim whereas they understood that, notwithstanding the apparently unqualified terms of the legal aid certificate, their role was limited to advising her on whether that offer should be accepted. This in turn depended upon the accountant's report. Miss Gilbert submitted that, for all these reasons, even taking no account of the correspondence with Mr Faulks, the delay was excusable. 26. For convenience, we propose to consider the matter first without reference to the exchange of correspondence between Mr Faulks and the plaintiff. We have no hesitation in finding that, in those circumstances, the delay was inexcusable. The Court of Appeal had emphasised to the plaintiff that, having started the proceedings so late in the prescriptive period, she had a duty to progress matters with despatch. That was no more than a statement of the well known legal position (see Garfield Bennett para 12(1)); but it gave it added weight in this case because it came from the Court of Appeal. Yet, despite this, nothing had happened to progress this claim after 4 years. For most of that time the plaintiff was legally represented either by Ogier & Le Masurier or by Crill Canavan. We accept that there may have been some misunderstanding as to the extent of Crill Canavan's role but that is not a matter which can be laid at the defendants' door. It was for the plaintiff and her advisers to be clear about their respective responsibilities and to be conscious of the need to proceed with despatch. Interestingly, despite the plaintiff's assertion in her affidavit that she considered Crill Canavan to be generally seized of her case, she continued to correspond personally with Mr Faulks until that correspondence died out in March 2001. 27. We accept that from 18th April 2001 (some 18 months after the Court of Appeal decision) until May 2003, the plaintiff was engaged with le Rossignol in

seeking to obtain an accountant's report quantifying her claim. We further accept that for certain periods (a month in November/December 2001 and from 1 st November 2002 to the dismissal of Le Rossignol in May 2003) Le Rossignol were apparently not carrying out any further work because of the refusal of the legal aid authorities to commit further funds. But these periods are only part of a very substantial overall period. We cannot say whether the failure to produce the accountant's report was due to the lack of expertise of Le Rossignol (as the plaintiff contends) or whether it was due to lack of clear instructions and information on her part or for other reasons. But ultimately that does not matter. It is the responsibility of a plaintiff to progress matters with reasonable despatch and a plaintiff has to take responsibility for the actions or inactions of his or her advisers. It is his or her duty to exert pressure on advisers as necessary. The question turns on whether we think there is any reasonable excuse for the plaintiff failing to progress this matter from September 1990 to September 2003. We are quite satisfied that, in the absence of the correspondence from Mr Faulks to which we shall turn shortly, there was no reasonable excuse and such delay was therefore inexcusable. 28. The question of whether delay is inexcusable requires the Court also to see whether the defendants have in any way encouraged or agreed to the delay. The position is summarised in Supreme Court Practice (1999 Ed'n) as follows:- "25/L/14 (7) Both to blame

- The Court will look at the conduct of both parties. If the defendant has considerably contributed to the delay or, a fortiori, has actually agreed to it, he will seldom obtain the dismissal of the action (Austin Securities v. Northgate and English Stores Ltd [1969] 1 W. L. R. 529; [1969] 2 All E. R. 753, CA Banca Popolare di Novara v. John Livanos & Sons Ltd (1973) 117 S. J. 509). See too Hunter v. Skingley [1997] 1 W. L. R. 1466; [1997] 3 All E. R. 568, CA, held that where both parties had substantially contributed to the delay, the court would consider the conduct of each party, the various periods of delay and the various items of prejudice and decide, where possible, to whose fault they were attributable. 25/L/15 (8) "Sleeping dogs"
- It has been said that a defendant may properly take no action at all to stimulate the plaintiff but may "let sleeping dogs lie" in the hope that the action may die a natural death (see Lord Salmon's speech in Birkett v. James and his judgment in Allen v. McAlpine, above). But it is not always easy to draw the line between proper inactivity and actual encouragement of, or contribution to, delay (see "Both to blame," above). In many cases the prospects of a successful application are much improved by one or two reminders to the plaintiff that he should either proceed with the action or abandon it." 29. Miss Gilbert submitted that the correspondence with Mr Faulks referred to earlier fulfilled these criteria. Mr Faulks said in his letter of 28 th September 2000 that the defendants would not take a point on delay pending possible settlement discussions. This was acknowledged by the plaintiff in her letter of 6 th October 2000 confirming her understanding that the defendants would not take issue on the question of time whilst settlement negotiations were in progress. However we have no doubt that the defendants cannot possibly have envisaged at the time that 'negotiations' would take a further three years from then. In the letter of 28 th September itself Mr Faulks expressed disappointment at the delay and asked the plaintiff to expedite

the quantification of her claim. He sent a chaser on 4 th January 2001 and a further reminder on 2 nd February 2001. Miss Gilbert submits that the plaintiff was entitled to consider that the negotiations were ongoing (so that the passage of time would not be taken against her) for so long as the defendants did not officially withdraw their letter of 28 th September or otherwise give notice that time was now running again. Mr O'Connell countered that that could not be right. Suppose that this plaintiff had let the matter drop for some 30 years; would she still be able to assert that she reasonably believed that negotiations were continuing unless the defendants gave notice that they considered time once again to be running? He submitted that there had to be implied in the correspondence the understanding that the agreement of the defendants not to take a point on time only operated so long as the plaintiff proceeded with reasonable despatch in the course of the negotiations. 30. We agree. In reality there were no continuing negotiations. The defendants had made an offer of £12,000 at the meeting of March 2000. The plaintiff replied that she needed to quantify her claim in order to consider how to respond to that offer. There matters rested so far as the defendants were concerned. The plaintiff never came back to them. They never received a quantification of her claim and indeed nothing had happened despite the passage of some 3½ years since the offer of £12,000. In our judgment their letter cannot be construed so as to allow the plaintiff an open ended period to take as long as she liked to consider the quantification of her claim on the pretext that she was responding to an offer made by the defendants. In our judgment, even allowing for the correspondence with Mr Faulks, the delay by the plaintiff in this case was inexcusable. There was no agreement by the defendants to a delay of such extent. (iii) Prejudice 31. This brings us to the final question, namely has the delay been such as to give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants. 32. The principal issue in the case will be whether the defendants (through Advocate Le Cornu) advised the plaintiff on the existence and possibilities of litation and, if they did not, whether such failure has caused any loss and, if so, how much? Mr O'Connell submits that the first of these issues will turn on the witness's recollection of events which took place between 1984 and 1987 i.e., assuming a trial some time in 2005 if the case is allowed to proceed, some 18 - 21 years ago. He concedes that advocates keep file notes and any such notes, together with contemporaneous correspondence can assist the recollection. But file notes do not necessarily record everything that is said and sometimes they are in a very abbreviated form and interpretation becomes more difficult as time passes. Furthermore, it is not just Advocate Le Cornu who would have to recall events from so long ago. The other persons who dealt with the plaintiff's affairs were Advocate Lakeman (who has long since departed for another firm) and Advocate Michel. They would also have to try and recall events from such a long time ago. Miss Gilbert, on the other hand, submitted that there would be no prejudice. The case was substantially document based. To the extent that it would turn on what Advocate Le Cornu advised, the correspondence and file notes would be highly significant. Even if they did not give the answer, Advocate Le Cornu had known of the dispute since the proceedings commenced in 1997 and could be expected to have retained in his memory at this stage all

that he had been able to recall when the proceedings were commenced. 33. It might be thought by some that, in a case which depends upon the memory of witnesses, the main prejudice is caused by the early part of any delay. Thus if a case has been delayed for 5 years, the memory will probably have faded by then and any additional prejudice caused by a further 5 year delay is likely to be small. Indeed that was the approach taken in some of the earlier cases on dismissal for want of prosecution when it was stated that a defendant must produce specific evidence of additional prejudice during the period of delay. Thus a witness would need to be able to say that had the case taken place in, say, 1995, he would have remembered, but that as it was now, say, 2000, he could no longer remember. 34. The need for such artificiality was removed by the decision of the House of Lords in *Roebuck -v- Mungovin*

- (1994) 1 All ER 568 where Lord Browne-Wilkinson, with the agreement of the other members of the House, said as follows at 574:- "In the ordinary case the prejudice suffered by a defendant caused by the plaintiff's delay is the dimming of witnesses' memories. Where there are two periods of delay, how can it be shown that a witness has forgotten during the later, rather than the earlier period? We were referred to an unreported decision of the Court of Appeal, *Hornagold -v- Fairclough Building Limited* (1993) CA Transcript 634, where there was a difference of opinion as to whether in such a case it was necessary to adduce specific evidence that the prejudice flowed from the loss of memory in the later period. I have no doubt that such evidence is not necessary and that a judge can infer that any substantial delay at whatever period leads to a further loss of recollection." 35. This was the approach adopted by this court in *Garfield-Bennett* (see para 12(ii)) and is consistent with the approach of the Court of Appeal in *Re Esteem*
- (2000) JLR N41 that times had changed and it now had to be appreciated by all who are involved in civil proceedings that their objective has to be to progress the proceedings to trial in accordance with an agreed or ordered timetable at a reasonable level of cost and within a reasonably short time. 36. In our judgment this is a case which will turn substantially on the oral testimony of witnesses as to what was said and done between 1984 and 1987, albeit that there may be assistance to be derived from file notes and correspondence. The plaintiff alleges that she was not advised about litigation and the defendants deny that this was so. The witnesses will therefore have to recall and give evidence as to what was or was not said to the plaintiff about litigation 18-21 years ago. Applying the principles set out in *Garfield-Bennett*, we find that the additional delay since September 1999 is such as is likely to cause serious prejudice to the defendants by reason of further loss of recollection. 37. We therefore order that this claim be dismissed. Authorities. *McGorin -v- Pascoe* (7th June, 2002) Jersey Unreported; [2002/113]. *Garfield-Bennett -v- Phillips* (6th November, 2002) Jersey Unreported; [2002/214]. Supreme Court Practice (1999 Ed'n). *Roebuck -v- Mungovin* (1994) 1 All ER 568. *Re Esteem* (2000) JLR N41. Page Last Updated: 18 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 29 October 2026 · Esheria