

JERSEY / JUDGMENT

Campbell -v- Campbell and Others

[2017] JRC 003 (06 January 2017)

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judgment

the deputy bailiff: 1. This is a further hearing relating to an application to admit further evidence decided on th October 2016. 2. Following a hearing on 18 th October, 2016, the Court granted leave to the Plaintiff, Mr Richard Campbell ("Richard") to adduce certain evidence (referred to as "Richard's matters"). The detail of that evidence can be found in the Act of Court and indeed in the Court's judgment both of 18 th October 2016 (Campbell-v-Campbell and Others

[2016] JRC 190). In addition, when the Act of Court was being discussed between counsel it was expanded to include additional material to be submitted by the Defendant Mr Robert Campbell ("Robert") (referred to as "Robert's matters") to which the Court acceded. 3. In accordance with the process agreed between counsel and reflected in the Act of Court there was to be an affidavit sworn by Richard relating to Richard's matters together with submissions from counsel followed, within seven days, by an affidavit in response from Robert and submissions from him relating to Richard's matters. Within the same time delay Robert would file and serve in relation to Robert's matters an affidavit sworn by him and supporting submissions and Richard would have the ability to file an affidavit in response and equally to make

submissions.

There was a notice period built into the Act of Court within which any parties seeking to have evidence dealt with orally should make an application to the Court for leave. 4. In fact Robert did not file an affidavit "sworn by him" but rather filed an affidavit sworn by a member of Taylor Wessing, his English legal advisers. 5. There then followed an exchange of emails between the parties from which it was clear that objection was taken to the form of the affidavits and material put before the Court. I asked counsel to appear before me in chambers. It was apparent that there were real differences between the parties and the matter needed to be resolved by way of this further hearing. Accordingly, Richard issued a summons asking the Court to give such further directions in connection with the affidavit evidence and written submissions filed and served in relation to Robert's matters and seeking leave so far as is necessary for Richard to adduce further witness evidence of Robert's closing submissions in proceedings before the High Court of

England and Wales (which are related to the proceedings before this Court) and also changes that Robert has allegedly made to his case in the English proceedings. 6. The additional evidence that the Court permitted under its order of 18 th October, 2016, was limited and the Court was satisfied that it was directly relevant, or potentially so, to the issues that the Court had to determine. It was clearly not intended that further documentation of marginal, if any, direct relevance to the core issues which the Court must determine nor, in particular relating to collateral issues or side allegations contained within the submissions of counsel should be deployed under the terms of that order. 7. I do not propose in these brief reasons to analyse all of the arguments put forward on Richard's behalf or indeed on Robert's. 8. With regard to Richard's matters, Richard has filed his affidavit and supporting submissions from his counsel. Robert's response contains reference to a number of documents which were already before the Court during the substantive hearing. From that material, submissions are made by Robert, amongst other things, making an assertion that the evidence all points in his favour (referred to by Richard as " the false assertion") and allegations that the documentation and indeed evidence previously before the Court suggested that Richard was prepared to commit mortgage fraud or was prepared to engage in dishonesty in respect of his financial affairs. 9. Richard claims that he should be entitled to answer all of those allegations and to deploy such documentation to do so as he feels appropriate. 10. Robert's allegations and indeed the "false assertion", tendentious as they may be, are nothing more than counsel's submissions on the evidence. They are not evidence themselves. At the most they are a statement of conclusions that the Court is invited to draw from the documentation but it is a matter for the Jurats as to whether the conclusions are indeed to be drawn. 11. Richard has sought to deploy a significant quantity of further documentation which was not already before the Court. Having considered that documentation, it seems to me that it is of marginal, if any relevance, to the issues that the Court must decide and the documentation discloses little more than what might be referred to by Richard's counsel in written submissions. In my view that additional documentation does not need to and should not be before the Court. 12. In my view the making of those allegations by Robert on the basis both of the further documentation filed by Richard with leave and documentation already before the Court does not give rise to circumstances in which those allegations should effectively be tested in some manner by further exchanges of documentary evidence. 13. Further, Richard applies to adduce further new evidence in the form of Robert's closing submission in his proceedings before the High Court of England and Wales and the submissions of his counsel. It is not clear to me that those documents necessarily bear the interpretation that Richard would want to argue for but, more importantly, Advocate Jowitt for Robert says that the context of those submissions would make it clear that they do not bear the significance that Richard would want to place on them. How is the Court then to assess what view it should take of submissions even were they directly relevant? It seems to me that one would need to hear from the author of those submissions, in this case Robert's legal team in England, and perhaps even his counsel. In the context of this case that cannot be an appropriate way to proceed. 14. In the circumstances, within the context of the order of the Court of 18 th October, 2016, Richard is and was able to deploy his material, Robert is and was able to answer it also with the use of material already before the Court, and make whatever submissions on that material he wished. Similarly with regard to Robert's material he

was able to deploy it and Richard would be able to answer it by reference to documentation before the Court already or, after a successful application, to adduce further documentation. He could make whatever submissions on it he wished. 15. For the reasons that I have touched on above I do not view the material that Richard seeks to deploy in answer to Robert's allegations as relevant such as I should give leave to adduce that evidence and I do not do so. 16. Similarly I do not give leave to adduce any reference to what is said by Robert's counsel. 17. I am conscious that in taking this view it may be that that leaves counsel for Richard or Robert wishing that they had deployed their submissions on Richard's matters and Robert's matters differently and there may well now need to be a variation in the documentation filed with the Court to accord with the views that I have expressed. At this point, of course, neither of the Jurats have read nor considered any of the new material. 18. Accordingly I would expect counsel, within a very short delay to file any amendments to the documentation currently filed with the Court so that the Court has before it that which I have said and nothing more. I give liberty to apply in the event that an appropriate timeframe cannot be agreed between counsel or adhered to. 19. I am also very conscious that these proceedings have taken an unusual procedural course with a relatively late application to admit further evidence (which was successful) and this further hearing on matters arising from that exercise. This has inevitably delayed and will inevitably further delay the issuing of the final judgment and accordingly I would expect counsel to co-operate in finalising the documentation at the earliest opportunity so that the Court can conclude the deliberations necessary to prepare the final

judgment.

Authorities Campbell-v-Campbell and Others

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