

JERSEY / JUDGMENT

Chartier v Jersey Post [2007]

JRC 212 (15 November 2007)

[2007] JRC 212

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judgment

the COMMISSIONER: 1. On the 1 st November 2007 we refused the Plaintiff Mr Chartier leave to appeal out of time against a decision of the Master of the Royal Court dated 30 th May, 2007. We now set out our reasons. 2. We will refer to the parties as "Mr Chartier" and "Jersey Post" respectively.

Background

3. This is a personal injuries claim by Mr Chartier against Jersey Post that came before the Royal Court for trial in April 2006. The issue of damages was left over. The Judgment of the Royal Court was delivered on 8 th June 2006 (Chartier -v- Jersey Post

[2006] JRC 082A). Jersey Post appealed against the judgment and the Judgment of the Court of Appeal was delivered on 19th March 2007 (Jacques Chartier -v- States of Jersey Post

[2007] JCA 068). 4. The Court of Appeal upheld the judgment of the Royal Court on liability but set aside the judgment so far as it related to the injuries suffered by Mr Chartier and remitted this and the outstanding issues on the quantum of Mr Chartier's damages to a freshly constituted Royal Court to be dealt with as "quickly as possible". 5. The Judgment of the Royal Court on the injuries was set aside because the Jurats reached a conclusion on Mr Chartier's pattern of pain in reliance on the expert medical evidence without hearing Mr Chartier's evidence on the issue. As a result the Royal Court's conclusions on the aetiology of those injuries could not stand. The Court of Appeal concluded that there was " no alternative to the whole of the injuries aspect of the case being revisited ". 6. Following the Court of Appeal's Judgment it was, perhaps surprisingly, Jersey Post who issued a summons for directions to be given by the Master of the Royal Court to bring these issues to trial. Draft directions were not submitted by Appleby on behalf of Jersey Post to Jenners on behalf of Mr Chartier until the day before the hearing of that summons on 30 th May 2007. Those directions included a direction that each party be at liberty to file an additional expert medical report in the following discipline: radiology. Mr Blakeley responded to these draft directions by email on 29 th May, 2007, saying he could not properly consider the directions which were not standard and which he wished to discuss

with his client and to take advice. He also made the point that it was proper to try and agree directions and the lateness of supplying them had made that impossible. He did not make a specific reference to his objection to the filing of an additional expert medical report. Mr Blakeley then fell ill that evening and was advised by his doctor not to attend the hearing on the next day. Mr Winchester appeared on his behalf and sought an adjournment for two weeks. Whilst informing the Master of the Royal Court that there were areas of contention within the directions, Mr Winchester was not briefed to and did not specify which areas and why they were in contention so that neither the Master nor counsel for Jersey Post were aware of Mr Blakeley's objections to the filing of further medical evidence. 7. The Master refused the application for an adjournment and issued the directions substantially in the form submitted by Appleby. Mr Winchester's understanding of what was said at the hearing was that Mr Blakeley could apply to the Court for alternative directions at a subsequent date under the "at liberty to apply" provision. Mr Blakeley informed us that he did not file a notice of appeal within the required ten day period in order to save time and costs. Instead, on the 4th July, 2007, Mr Blakeley issued a summons seeking to amend the directions given on the 30th May, 2007 in particular by deleting the provisions by which each party were given liberty to file an additional medical report in the discipline of radiology. 8. This summons was dismissed by the Master on the 23rd July, 2007, on the ground that the "liberty to apply" provision cannot be used as a method of appeal against a substantive direction. 9. Mr Blakeley did not at that stage apply for leave to appeal out of time but wrote to the Court of Appeal itself asking it to clarify whether in its judgment it intended that new medical evidence could be adduced at the re-hearing before the freshly constituted Royal Court. The Court of Appeal responded on the 4th September, 2007 saying, not surprisingly in our view, that it did not consider its judgment or its order required clarification and that it was not the function of the Court of Appeal to supervise implementation of orders directed to the Royal Court. That was a matter for the Royal Court and it was open to parties to seek leave to appeal against any interlocutory decisions of that Court they wished to challenge. 10. Mr Blakeley then initiated this appeal by summons dated 24th September, 2007. In the result five months have elapsed from the directions given by the Master of the Royal Court on 30th May none of which directions have been implemented. Grounds for Appeal 11. There were two grounds of appeal. Under the first ground Mr Blakeley submitted that the Master erred in not permitting the adjournment to allow Mr Blakeley, who had the conduct of the case, to address him on the areas of contention. He submitted that in the context of the dates that were fixed under the directions order a further two weeks would not have prejudiced, nor indeed delayed, the ultimate trial of the matter. 12. However, in our view there was nothing out of the ordinary on the face of it in the directions being sought by Jersey Post and in particular in the direction giving leave to both parties to file an additional medical report on radiology and the Master was not addressed as to Mr Blakeley's particular concerns in that respect. Mr Blakeley conceded that evidence from a radiologist was relevant to the issues that the new Court had to determine. One of the experts had attributed the pain felt by Mr Chartier to an annular tear which was not

visible. A radiologist who is an expert in reading MRI scans and x-rays may well be able to determine the existence or otherwise of an annular tear. In refusing the adjournment and in giving directions the Master no doubt had in mind the stricture of the Court of Appeal that this case should be heard as quickly as possible. 13. The substantive ground of appeal was the second ground, namely that the Court of Appeal in its judgment did not intend any new expert medical to be adduced. Mr Blakeley submitted that the Court of Appeal was not concerned about the absence or adequacy or quantity or type of medical evidence before the Royal Court but the lack of evidence from Mr Chartier on which the learned Jurats could have based their opinion when reaching a conclusion on Mr Chartier's pattern of pain. In essence he argued that the new Court should only hear evidence from Mr Chartier as to the pattern of his pain and should otherwise be restricted to the medical and other evidence that was adduced before the Royal Court at the hearing in April 2006. 14. In our view this contention is misconceived. The Court of Appeal has set aside the Judgment of the Royal Court in so far as it relates to Mr Chartier's injuries and ordered the matter to be dealt with by a newly constituted court. It is the case that it did so because of a lacuna in the evidence given by Mr Chartier, but that is not to say, and the Court of Appeal did not say, that the new court was constrained to only hear the evidence adduced before the old court other than that of Mr Chartier on the pattern of his pain. The new court must proceed to determine the issue of Mr Chartier's injuries afresh. It must have before it all the evidence that is relevant to and can assist it in arriving at the truth and reach a fair and just conclusion. If expert medical evidence not before the old court is available and which might assist the new court then it should be able to hear it. Clearly on a second trial the parties may be able to and indeed should endeavour to reduce costs by agreeing as much of the factual and expert evidence that they can but there can be and should be no restrictions on the evidence to be adduced before the new court, subject always to the usual rules as to admissibility and the overriding discretion of the presiding judge. This is made abundantly clear in the authorities Mrs Richardson cited to us. Order 59/11/21 of the Supreme Court Practice 1999 dealing with second trials provides: "The second trial is wholly independent of the first. The rulings of the judge at the first trial are not res judicata and are not binding on the judge at the new trial which is a trial de novo (Bobolas -v- Economist Newspaper Ltd

[1987] 1 WLR 1101 ... A point which was pleaded before the first trial but which counsel said he would not rely on, can still be raised at the second (Venn -v- Tedesco

[1926] 2 KB 227 ...)...and the evidence given at the first trial is inadmissible and its findings "are got rid of" (Roe -v- Naylor

(1918) 87 LKJB 960 ...).... At the second trial a defendant is not bound by his election at the first trial to call no evidence (Horton -v- Horton

[1960] 1 WLR 987....)" 15. In Bobolas -v- Economist Newspaper Ltd

- [1987] 1 WLR 1101, the Court of Appeal agreed with the following view expressed by Tucker J presiding at first instance: "My view is this. It makes no difference whether the retrial takes place as a result of a ruling of the Court of Appeal or because the jury has failed to agree. An order or ruling made, whether in interlocutory proceedings or in the course of proceedings at trial, which is a final decision may be described as *res judicata*. But if it is raised in proceedings which have come to no final conclusion, it is not *res judicata*. It is as if it were 'writ in water.' In any event, I see no reason why a party should not re-amend their pleadings to circumvent the effect of such a ruling, whether *res judicata* or not. The retrial is a new trial. It is wholly independent of the first. The parties are not fettered by anything that took place in the previous proceedings. I do not agree that Kenneth Jones J.'s rulings are *res judicata*. In my judgment they are not". 16. Finally in *Horton -v- Horton*
- [1960] 1 All ER 503 Lord Merriman P made the following comments in relation to an order for a re-hearing: "I realise that when one orders a re-hearing in these cases it does give both sides a chance to improve their case, and there may be (though I am not going to point them out) places in which the wife could dot the i's and cross the t's in the evidence which she produced, and there would be nothing to stop her from doing so. Similarly, it may be open to the husband to give such explanation as he can of the circumstances." 17. It is clear that when considering an application for enlargement of time, the Court should consider the prospects of success of the substantive appeal (*Taunton -v- Planning and Environment Committee CA*
- [2000] JLR N 5b). In our view there are no prospects of success in this appeal. It is the case that through ill health Mr Blakeley who has the conduct of this case for Mr Chartier was not able to appear before the Master on the 30 th May. If he had done so he would have made the same contentions that he urged upon us today, namely that the Court of Appeal had not intended additional medical evidence to be adduced. That contention, if put to the Master, would have bound to have failed before him as it has before us. The Court of Appeal did not seek to restrict the evidence to be adduced before the new court in any way and there is nothing in its judgment from which it can be argued that it did so. 18. Consequently the application to appeal out of time was refused. We note that the Master will be giving further directions in this case this Monday the 5 th November and no doubt a fair but strict time table will be laid down to ensure that there are no further delays. We invite the submissions of the parties on the costs of this application. *Authorities Chartier -v- Jersey Post*
- [2006] JRC 082A . *Jacques Chartier -v- States of Jersey Post*
- [2007] JCA 068 . Supreme Court Practice 1999. *Bobolas -v- Economist Newspaper Ltd* [1987] 1 WLR 1101. *Horton -v- Horton* [1960] 1 All ER 503. *Taunton -v- Planning and Environment Committee CA*
- [2000] JLR N 5b. Page Last Updated: 20 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 23 October 2026 · Esheria