

JERSEY / JUDGMENT

Cooper -v- A.G. [2005] JCA 156 (09 September 2005)

[2005] JCA 156

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COURT OF APPEAL November Before: P. D. Smith, Esq., Q. C., President; D. A. J. Vaughan, Esq., C. B. E., Q. C.; and M. S. Jones, Esq., Q. C. Between Barrie R. Cooper Representor/APPELLANT And The Attorney General RESPONDENT Appeal by the Representor/Appellant against the declarations made by the Royal Court on 15 July 2005 that the Representor had no locus standi and that the Court could not receive the Representation. Barrie R. Cooper on his own behalf The Solicitor General for the Respondent

JUDGMENT

THE PRESIDENT: 1. This is an appeal against decisions of the Royal Court (Samedi Division), the Bailiff presiding, that the Appellant had no locus standi to present a representation to the Royal Court and that the Court could not receive it. 2. The Appellant was not legally represented either in this Court or the court below. This has given rise to difficulties which will be apparent from what follows. H. M. Solicitor General, Miss Stéphanie Nicolle, Q. C. appeared before us for the Attorney General. We are grateful to her for her assistance and to Mr Cooper for the succinctness with which he made his points. 3. The representation was in the following terms: "The Representation of Barrie Raymond Cooper entreats the court to authorise Her Majesty's Attorney-General to obtain from a court of Law with sufficient jurisdiction, a judicial adjudication on the legality of the transaction recorded in the Royal Court on 17 October 2003 concerning an Agreement signed on 27 May 2003 between Trustees of public land (in the name of the Crown) and a consortium of prospectors and lawyers (in the name of Les Pas Holdings Ltd) in a civil action started by Summons on 5 January 1990, pending in the judicial system and overridden through political intervention by the States of Jersey on 24 September 2003. In common with all Island residents within the jurisdiction of the Order in Council of 27 February 1847 - the representor claims an inalienable entitlement to a fair and impartial hearing before a competent Court or Tribunal established by Law under the European Convention on Human Rights as applies in the Bailiwick. That in the interim the Court impose an injunction/embargo on any development/exploitation of the site." 4. The " transaction recorded in the Royal Court on 17 October 2003 " was a conveyance of land by the Public to Rocher Estur Limited and was made in pursuance of an agreement of 27 May 2003 between Les Pas Holdings Limited, HM Receiver General, the Policy and Resources Committee and the Seigneur of the Fief de la Fosse, which

agreement was conditional upon the approval of the States, and was approved by the States on 24 September 2003. The agreement was in settlement of litigation pending between Les Pas Holdings Limited, HM Receiver General (for the Crown) and the Greffier of the States (for the Public). The issue at the heart of the litigation was whether the foreshore of the Island belongs to the Crown or to the Seigneur of the adjoining fief. 5. It is not clear what interpretation the Royal Court put on the representation in terms of what cause of action the Appellant was seeking to raise. There is no written judgment or authenticated version of what was said at the hearing in the Royal Court. However, there is a handwritten note on a copy of the representation which reads (in part): "Bailiff - court cannot receive representation. Mr. C. does not have standing. Court cannot direct AG. re Inj - can't be dealt with this way. for Inj - need affidavit etc., in Chambers." 6. On 29 July 2005 Mr Cooper swore an affidavit which purported (as it is put) to be in compliance with the Royal Court's challenge to his locus standi and to which is exhibited a letter from the President of the Jersey Law Society, Advocate Binnington. However, neither the affidavit nor the letter comprise anything of any relevance to the Appellant's locus standi . 7. Mr Cooper's Notice of Appeal dated 8 August 2005 sets out the following grounds: "1 That the Agreement of 27 May 2003 was ultra vires as neither party proved title of ownership of the land. That the Resolution of the States (P-117/2003) of 24 September 2003 was ultra vires as the States assembly is neither a Court nor Tribunal to determine ownership of the land. That the Conveyance registered by the Royal Court on 17 October 2003 was ultra vires as the transaction was based on political intervention on the matter pending in the Royal Court since 5 January 1990. That the Act of the Royal Court of 15 October 2005 was (ultra vires) [sic] as it attempted to hinder a fair and impartial hearing into a matter of considerable public concern." Obviously, the grounds are in quite different terms from those of the representation and suggest that, irrespective of whatever the Appellant was trying to achieve by the representation, he was now attempting to set up a judicial review. 8. When this apparent change of tack was put to Mr Cooper at the hearing before this Court he denied that this was his intention. He explained that he wished to bring the matter before the European Court of Human Rights, but had been told by the Strasbourg authorities that he must first exhaust his domestic remedies. He requires a decision from this Court in order to show that he had done so. As far as he is concerned the allegation of illegality in the representation and those of ultra vires in the Notice of Appeal are the same thing and it remains his objective that the Attorney General and not he should seek the judicial adjudication. 9. The Royal Court was clearly correct in ruling that Mr Cooper had no standing. It was not for him to seek anything from that Court on behalf of the Attorney General. As to his claim for an injunction, although the Bailiff explained the procedure to Mr Cooper, he has not followed it. Having said this, it is very difficult to see how he could succeed in obtaining one or, for that matter, how the Attorney General could pursue successfully the case set out in the representation. 10. Mr Cooper produced to us a copy of the record of the approval by Her Majesty in Council of the Order in Council of 27 February 1847 and of its registration in the Royal Court. However, he did not produce a copy of the legislation itself and we were told that it cannot be found in the Greffe. All that is known of it is that it was " ... an act proposed by the States ... for facilitating the purchase of Lands etc., required by Her Majesty's Government for the Erection of Fortifications ." 11. There is no reason to believe that the Order in Council was in force at any

material time. Furthermore, there is nothing to indicate that had it been in force it would have had any bearing on the litigation or the settlement of it. 12. Strictly speaking, what I have said disposes of Mr Cooper's appeal. However, in her written contentions the Solicitor General addressed the grounds set out in the Notice of Appeal which, as I have indicated, are suggestive of an attempt to obtain judicial review, and she produced authorities on judicial review in support of her arguments. 13. Part 16 of the Royal Court Rules 2004 deals with applications for judicial review in civil proceedings. Rule 16/2(1) provides that no application for judicial review may be made without the leave of the Bailiff obtained in accordance with that rule. Rule 16/2(11) states that the Bailiff shall not grant leave unless he considers that the applicant has "a sufficient interest" in the matter to which the application relates. 14. The only mention of interest made by Mr Cooper in the documents supplied by him to this Court or the Royal Court is his statement in his representation that he claims entitlement to a fair and impartial hearing "in common with all Island residents". The Solicitor General contended that in the light of the seminal decision of the House of Lords in *Reg v IRC, Ex p Federation of Self-Employed*

[1982] AC 617, Mr Cooper could not establish the requisite "sufficient interest". 15. In my opinion, consideration of "sufficient interest" at the leave stage requires examination of all the available material. This is because standing is a relative concept to be judged in the light of the potency of the case. The greater the possibility of an abuse of power the more likely it is that the applicant will be deemed to have a sufficient interest, particularly if otherwise the alleged abuse would probably go unexamined. 16. Looking at the material produced by Mr Cooper from this perspective, it is significant that the allegations in the representation and the Notice of Appeal are mere assertions, unsupported by any real evidence or argument. If bald assertions of illegality or lack of vires were to be held sufficient to entitle applicants to bring proceedings for judicial review of the decisions of public bodies in this Island, it would not be long before its administration would grind to a halt. Clearly more is required. 17. It is rather artificial to say that Mr Cooper would not have had "sufficient interest" if he had attempted to initiate proceedings for judicial review because he has no case. Rather, one might more realistically say that any attempt on his part to do so would be bound to fail in limine because he has no case. Either way, of course, the result would be the same. 18. The appeal must be dismissed. Authorities *In re Cooper* 1992 JLR 215 *Reg v IRC, Ex p Federation of Self-Employed*

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