

JERSEY / JUDGMENT

Crociani -v- Crociani [2013]

JCA 192 (27 September 2013)

[2013] JCA 192

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Court of Appeal 27 September 2013 Before : The Hon. Michael Beloff, Q. C., President; Sir John Nutting, Bt., Q. C., and; Sir Hugh Bennett. Between Edoarda Crociani APPELLANTS/Defendants Paul Foortse BNP Paribas Jersey Trust Corporation Limited Appleby Trust (Mauritius) Limited Between Cristiana Crociani A (by her Guardian Ad Litem, Nicolas Delrieu) B (by her Guardian Ad Litem, Nicolas Delrieu) RESPONDENTS/Plaintiffs Advocate R. J. MacRae for the Appellants. Advocate A. D. Robinson for the Defendants.

JUDGMENT

BENNETT JA: This is the judgment of the Court. 1. During this week there was listed for hearing by us an appeal from the decision of Commissioner Clyde-Smith and Jurats Fisher and Blampied dated 10 May, 2013 which granted an anti-suit injunction restraining the defendants from pursuing the proceedings in Mauritius pending the determination of the defendant's application to challenge that Jersey was the forum conveniens of the issues raised by the plaintiff's Order of Justice dated 18 January, 2013. 2. On Monday 23 September, Commissioner Clyde-Smith and the jurats , having heard the forum dispute in August 2013, made available the judgment to us and the parties in which the defendant's application for stay of the Jersey proceedings is to be dismissed. The Royal Court has decided that the forum conveniens is Jersey and not Mauritius, where the defendant's had issued proceedings in March 2013. 3. At 3:30pm on Wednesday 25 September, Advocate MacRae (for the Appellants/Defendants) and Advocate Robinson (for the Respondents/Plaintiffs) came before us to debate whether and if so when an appeal should be determined in the light of the impending Act of Court on forum. 4. This case is a bitterly fought battle between members of the Crociani family arising out of the Grand Trust created by Mme Crociani in December 1987. The history is set out by the Royal Court in its draft judgment re forum to be handed down, between paragraphs 3 and 21. 5. We will not repeat them. 6. In the light of the Royal Court's finding and of the fact that, when the Act of Court is made dismissing the defendant's application for a stay of the Jersey proceedings, the interim anti-suit injunction granted on 10 May 2013 will lapse (which fundamentally altered the position from what it was from when the appeal was instituted) we wished to hear from both parties as to whether the appeal had any utility. 7. Whether the appeal should now be dismissed, as submitted by Advocate Robinson, or whether it should be heard at a later date, as submitted by Advocate MacRae, we will consider later in this judgment. 8. Advocate MacRae was unable to tell us whether the

defendants intended to appeal the forum decision in the absence of instructions from them and advice from leading counsel. 9. However in our opinion, given the no holds barred approach of both parties to the litigation here and in Mauritius and Advocate MacRae's statement that in his view the forum decision was flawed, it seems to us that an application for leave to appeal from the Royal Court and if refused to the Court of Appeal is highly likely. 10. The advocates, after some considerable argument, were prepared to give mutual undertakings to this Court that during such period as is allowed for an appeal decision against forum to be initiated i.e. one month or such shorter period as we might order, neither party shall take any steps in the Jersey proceedings save that the Plaintiffs may apply for an order for costs of the forum hearing and the Defendants may apply for leave to appeal the forum decision and in the Mauritius proceedings save that the defendant's may take all necessary steps to adjourn these proceedings. 11. We have read the submissions of counsel sent to us yesterday as to what, if anything, this Court should further do, for which we are grateful. 12. We have decided in the interests of expedition that we should shorten the period allowed for initiating an appeal (if leave is granted by the Royal Court) or an application for leave to appeal from the Court of Appeal (if the Royal Court refuses leave) to a period of 20 days from today. Thus, during that period the mutual undertakings will apply. 13. If no appeal or no leave to appeal application is filed within 20 days then it will be for the Royal Court to decide, upon application, whether or not any injunction should be made in respect of the Mauritius proceedings, until trial in the Jersey proceedings. 14. In the event that an appeal is filed or an application to the Court of Appeal for leave to appeal is made, we think that, again in the interests of expedition, we should now set a date for such a hearing by the full Court of Appeal, thereby by-passing the necessity for the defendants to apply for leave to appeal to a Single Judge. We have made enquiries as to the first available slot for any appeal or leave to appeal to be heard and the first available time is the week beginning 27 January, 2014. Accordingly we direct that if leave is given by the Royal Court the appeal or the hearing of the application for leave to appeal and if leave is given the appeal, shall take place in the week beginning 27 January, 2014 with a provisional timetable of 2 days. 15. The next issue is premised on the basis that the defendants do file a notice of appeal or an application for leave to appeal, which hearing would take place in the week beginning 27 January 2014. Thus, the issue, on that premise, is whether, in the absence of an unqualified undertaking from the Defendants that, pending the hearing and determination of the appeal, they will not take any steps in the Mauritius proceedings other than to adjourn them to a date after determination of the appeal, that there should be an injunction in those terms. 16. This issue was addressed by counsel both orally on Wednesday and also in the written submissions sent to us yesterday, to which we have already referred. Advocate Robinson submitted, see paragraph 11 to 20 of his submissions, that there should be such an injunction. Advocate MacRae submits to us the contrary - see paragraphs 2 to 9 of his

submissions.

We do not propose in this short judgment to set them out. 17. One of Advocate MacRae's submissions is that there is no need for an injunction because there should be a stay of both the Jersey and Mauritius proceedings pending the determination of the appeal against the forum decision. No unqualified undertaking is offered by the defendants, only an undertaking if the Plaintiffs give a similar undertaking, *mutatis mutandis*. 18. We reject this submission. The plaintiffs, having succeeded on the forum issue, are entitled *prima facie* to proceed with the Jersey proceedings. If they wish to amend their Order of Justice, a step which would not mean that the defendants had to take any steps in the proceedings then it seems to us that they could do so. If, on the other hand, they wish to pursue the Jersey proceedings which would or might involve the defendants having to take steps in the proceedings thereby incurring costs we see no reason why the Royal Court, upon application by the defendants, could, if it saw fit, direct that the defendants are not obliged to take any steps in the Jersey proceedings until after the hearing and determination of the forum appeal. But we emphasise that that is a matter for the Royal Court and the exercise of its discretion in the circumstances as they exist at the time of any such application. 19. We are therefore faced with this situation post the filing of any notice of appeal namely that, absent an unqualified undertaking from the defendants or an injunction against them that, pending the appeal or leave to appeal application, they will not take any steps in the Mauritius proceedings save for the purpose of adjourning matters until after the hearing and determination of the forum appeal, there is nothing to prevent the defendants from pursuing the Mauritius proceedings. How then is this Court to "hold the ring" in the period between the filing of the notice of appeal or leave to appeal application until the order of the Court of Appeal determining the forum appeal? Or is this a situation where we must apply the "ends of justice" test on the grounds that in reality the injunction asked for by the plaintiffs is a final injunction? 20. We do not think it necessary to decide that point. For whichever test is applied we are satisfied that in the circumstances post the filing of a notice of appeal by the defendants it is necessary to uphold the integrity of the Jersey proceedings in particular the finding that the forum *conveniens* is Jersey. Accordingly, an injunction should be granted. 21. We do not require an undertaking in damages from the plaintiffs. The period in question is short and we cannot see that the defendants are likely to suffer any loss as the result of the injunction. There will be no costs incurred in Mauritius since the proceedings will be in limbo. So far as the Jersey proceedings are concerned the only potential loss to the defendants is if the Royal Court requires them to take a step in the proceedings pending the hearing and determination of the appeal against the forum decision. However, if the Court of Appeal reverses the decision on forum then it seems to us that the defendants could apply to the Royal Court for an order that, *inter alia*, the plaintiffs do reimburse them for their costs incurred unnecessarily, as it would turn out, of having had to take steps in the proceedings during that short period of time. 22. As to the appeal against the order of 10 May 2013, the contentions are, on behalf of the plaintiffs, that we should now dismiss the appeal as having no utility and, on behalf of the defendants, that they are entitled still to ask the Court of Appeal to hear and determine this appeal notwithstanding that the injunction will lapse. We express no views as to which is correct but we direct that that appeal be heard at the same

time as the appeal in relation to the forum appeal. If there is no notice of appeal against the forum decision or if it is subsequently withdrawn, then the defendants will no doubt seriously consider whether it is advisable to continue with this appeal against the grant of the interim anti-suit injunction of 10 May 2013. In the event that the appeal in either situation is pursued the Defendants will be able to repeat and develop the submissions made to us. 23. It is clear to us that to have sought to determine this appeal against the anti-suit injunction during the course of the current sitting of the Court would not have been the correct use of this Court's time and it would obviously be more sensible for the Court of Appeal in January 2014 to make the determination of the anti-suit injunction appeal at that time in the circumstances which then obtain, and if the forum appeal is pursued at the same time as that appeal. 24. Costs of and incidental to hearings before us to be reserved. No Authorities Page Last Updated: 17 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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