

JERSEY / JUDGMENT

Eves v Troy [2000] JRC 217 (03 November 2000)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application to strike out the amended order of justice of the plaintiffs in whole or in part on the grounds that:- (a) it discloses no reasonable course of action; (b) it is frivolous and/or vexatious; (c) it is otherwise an abuse of the process of the Court. The Factual Background 2. The general background would appear from the pleadings and from the affidavits before the Court to be as follows. At all material times, the plaintiffs were the beneficial owners of Glendale Hotel (Holdings) Limited ("Glendale Limited") and Blue Horizon Holdings Limited ("Blue Horizon"). Glendale Limited was the freehold owner of the Glendale Hotel at St. Martin, Jersey. It carried on the business of guest house proprietor. The premises were managed by the plaintiffs, who were directors of Glendale Limited. Blue Horizon was a tour operator company, also run by the plaintiffs. 3. In February, 1989 the plaintiffs, Glendale Limited and Blue Horizon moved all their legal work from the firm of Bois Labesse to the defendant. 4. On 5th October, 1989, following complaints apparently received from a number of guests, the Tourism Committee revoked the registration of the Glendale Hotel under the Tourism (Jersey) Law 1948 on the grounds that it was not satisfied that the guest house was under reasonably competent management. The plaintiffs immediately contacted the defendant over the problem. The defendant acted either personally or through his employee Advocate Fielding. For convenience we shall refer simply to the defendant although some actions were undertaken by him, some by Advocate Fielding and some by both of them. 5. On 10th October the defendant and the plaintiffs attended a further meeting of the Tourism Committee. A proposal was put forward that the then chef, a Mr John, should be appointed as manager for the short period until the end of the season on 31st October. The Tourism Committee acceded to the proposal on condition that neither of the plaintiffs resided at the premises for the remainder of the season. The registration was reinstated on 13th October following acceptance by the first plaintiff of the imposed conditions. It would appear that difficulties subsequently arose over the suitability of Mr John as a manager and the registration appears to have been withdrawn once again on 31st October. 6. On 1st December, 1989 the defendant filed a notice of appeal to the Royal Court against the decision of the Tourism Committee to revoke registration under the Tourism (Jersey) Law. The Committee's statement required under the Rules of Court was filed on 17th January 1990 and the appellant's case was filed by the defendant on behalf of Glendale Limited on 23rd March 1990. 7. There appears to

have been continuing correspondence between the plaintiffs and the Tourism Committee concerning the possibility of registration for the 1990 season. The Committee was maintaining the attitude which it had adopted in 1989, namely that it was not willing to register the guest house if the plaintiffs were concerned with the management. On 24th May 1990 the Committee received the defendant and the plaintiffs at a meeting. At that meeting the Committee decided that it would be willing to register the premises but only upon the following conditions:- (i) that Mr and Mrs Eves resign their directorships and any other positions of authority in the company by 25th May; (ii) that Mr and Mrs Eves transfer their shares in the company to Advocate B. E. Troy to be held in trust for the company's creditors by 25th May; (iii) that Advocates Troy and Fielding and Mr David Brown be appointed as directors of the company, Advocate Troy being Chairman, by 25th May; (iv) that no other person be appointed to the board without the prior written consent of the Tourism Committee; (v) that Mr and Mrs Eves hand over all financial instruments relating to the company including cheque books, bank mandates etc. into the custody of the new board by 25th May; (vi) that the company undertake in writing by 25th May to the Committee that it will not permit Mr and Mrs Eves to become involved in the management of the company or of the Glendale Hotel; (vii) that the company undertake in writing by 25th May to the Committee that it will within one month furnish the Committee with a statement of the "true state of affairs" of the company. The company referred to was of course Glendale Limited. These conditions were accepted by Mr and Mrs Eves by signature of a copy of a letter dated 25th May from the Development Manager of the Tourism Committee setting out the conditions. The arrangement was then put into effect. 8. However it was not a success. The parties are at odds as to the reason for this. The defendant alleges that Blue Horizon (which remained under the control of the plaintiffs) failed to pay over sums due in respect of guests placed in the guest house through Blue Horizon. Eventually the defendant and Mr Fielding resigned as directors sometime in early August 1990 and in due course (we were informed orally that it was 8th September 1990) the Tourism Committee once again deregistered the guest house. We were informed that the guest house was subsequently sold for some £770,000 in November 1990. This was insufficient to clear the debts of the company. The Proceedings 9. The plaintiffs first brought proceedings against the defendant and others by an order of justice dated 18th November, 1997. This was prepared personally by the plaintiffs. In due course the defendant applied to have the order of justice struck out. On 19th January 2000, by consent, it was ordered that the order of justice should be struck out unless the plaintiffs applied within twenty-one days for leave to amend. On 29th March 2000, by consent, it was ordered that the plaintiffs have leave to file an amended order of justice without prejudice to the defendant's right to apply to have the amended pleading struck out. An amended answer was filed on 19th April and the defendant duly applied on 30th June to strike out the amended order of justice. The amended order of justice is complicated but, in the barest outline, it alleges that the defendant failed to show the requisite degree of skill and care in advising Glendale Limited and the plaintiffs in relation to the matters described above and that the plaintiffs have thereby suffered very considerable loss and damage. The action is brought by the plaintiffs alone. Glendale Limited no longer exists. The basis of the strike out application 10. Although the application was framed under the three headings referred in paragraph 1, Miss Lawrence accepted at an early stage that she could not succeed on the ground of no reasonable

cause of action because an application under that heading requires the Court to assume that the plaintiff will succeed in establishing the facts alleged in the order of justice. Her submission was based upon the contention that the plaintiffs were doomed to failure in establishing certain of the allegations in the order of justice and that it should therefore be struck out on the basis that it was frivolous and vexatious or an abuse of process. She did not seek to draw any distinction between the two and neither do we for the purposes of this case. 11. She brought her application under two main headings:- (i) the plaintiffs have no locus standi to bring the proceedings; (ii) even if they do have standing to bring the proceedings, the Court can be satisfied that the claim is doomed to failure and is therefore frivolous and vexatious. The test 12. Both counsel accepted that the test to be applied on a strike out application was conveniently summarised in *Floor Khan v. Leisure Enterprises (Jersey) Limited* (18th December, 1997) (Jersey Unreported) where the Bailiff said on page 5 of the judgment:- "It is well established that I should exercise the power to strike out only if it is plain and obvious that the action will not succeed. The mere fact that the case is weak and not likely to succeed is not sufficient. It must be on its face obviously unsustainable. On the other hand a striking out may "often be required by the very essence of justice to be done" (per Lord Blackburn in *Metropolitan Bank v. Poulée* (1885 10 App Cas 210, p221)". Locus Standi 13. Miss Lawrence referred to the case of *Foss v. Harbottle*

(1843) 2 Hare 461 which laid down the rule that where a wrong has been done to a company, the only proper plaintiff is the company itself. A derivative action by the shareholders of the company is not available unless one of the well established exceptions to the rule applies. The rule in *Foss v. Harbottle* has been adopted as part of Jersey law (e.g. *Floor Khan v. Leisure Enterprises (Jersey) Limited* (supra)). The action was concerned only with the events surrounding the cancellation by the Tourism Committee of the registration of the Glendale Hotel. The guest house was owned and operated by Glendale Limited and it was that company which suffered a wrong through the actions of the Tourism Committee. It was the company which the defendant was retained to advise on the matter and accordingly it was the company which had suffered a wrong if the defendant's advice was found to be wanting. 14. Mr Costa accepted that the rule in *Foss v. Harbottle* is part of Jersey law and that the plaintiffs could not avail themselves of any of the established exceptions. But he said that the plaintiffs were not bringing a derivative action and *Foss v. Harbottle* was therefore irrelevant. Paragraph 5 of the order of justice asserted the existence of a contract between the plaintiffs in their personal capacity and the defendant whereby the defendant would advise the plaintiffs on the various matters relating to the Glendale Hotel. 15. Miss Lawrence sought to show that, on the facts, this was an obviously unsustainable allegation which should be struck out at this stage. She took the Court in some detail through the pleadings and the affidavits of Advocate Troy and Mr Eves. The allegation was a transparent attempt to circumvent the rule in *Foss*

- v. *Harbottle*. There had been no allegation of such a contract in the original order of justice. She referred to the defendant's affidavit which exhibited the various fee notes submitted by the defendant to the plaintiffs, to Glendale Limited and to Blue Horizon. It was clear from these that the defendant had been meticulous in distinguishing between his various clients.

Work done for Glendale Limited was billed to Glendale Limited; work done for the plaintiffs in their personal capacity was billed to the plaintiffs; and work done for Blue Horizon was billed to Blue Horizon. All the work which related to the Glendale Hotel and the problems over its registration was billed to Glendale Limited. 16. Miss Lawrence accepted that the fee note dated 7th June 1989, addressed to Mr Eves personally, referred to certain matters concerning "the company", which in context must have been Glendale Limited. However these were not matters which related to the registration of the guest house under the Tourism Law, which was the matter in respect of which it was alleged that the defendant was in breach of contract. There was no evidential support for the bare assertion of a contract between the plaintiffs personally and the defendant in relation to the Glendale Hotel matter. Indeed paragraph 8 of the amended order of justice suggested that even the plaintiffs did not really believe that there was evidence of a contract; they had to rely upon surrounding circumstances to infer a contract. In all the correspondence concerning the guest house, the defendant had always referred to Glendale Limited as his client. Although he dealt with and took instructions from the plaintiffs, it was in their capacity as directors of Glendale Limited. 17. The distinction between the plaintiffs in their personal capacity and the company was, she said, not a pedantic one. To operate through a company conferred certain privileges such as limited liability, tax advantages etc.. It was not open to the plaintiffs to arrange their affairs to take advantage of the corporate structure but then seek to look through that structure when it suited them, by arguing that they were the clients rather than the company. They had made their decision to conduct their business through a company and they must live with the consequences of that decision. 18. In summary, all the allegations against the defendant arose out of his conduct in relation to the problems over the registration of the Glendale Hotel and he was clearly acting for Glendale Limited, the proprietor of the guest house, in those circumstances. There was no evidence of a contract agreed between the plaintiffs and the defendant and indeed the evidence was all the other way. Insofar as the plaintiffs might be asserting some form of duty in tort in the order of justice, any breach of such duty was prescribed as the cause of action would have arisen in 1990 and the order of justice was not commenced until 1997, which was more than three years after the cause of action arose. 19. Mr Costa submitted that the position was by no means as clear-cut as Miss Lawrence suggested and that no conclusions should be reached by the Court without hearing all the available evidence. The plaintiffs had asserted the existence of a contract between themselves, in their personal capacities, and the defendant whereby the defendant would advise them in relation to their interest in the Glendale Hotel, which was represented by their shareholding in Glendale Limited. They were entitled to the opportunity of presenting their evidence to the Court. The evidence at present before the Court was not all one way. For example, when the defendant first wrote to agree to act for the plaintiffs, Glendale Limited and for Blue Horizon on 23rd March 1989, he agreed to act for the plaintiffs "... for all purposes". Furthermore he asked for £1,000 "... on account of my professional costs in connection with your affairs and those of the companies" without distinguishing between the plaintiffs and the companies. In reply Mr Eves sent a cheque for £1,000 which he expressed to be "... on account of costs in respect of your agreement to

represent myself and any of my companies for any legal matters which will arise". 20. Mr Costa placed particular reliance on the case of *R. P. Howard Limited & Witchell v. Woodman Matthews*

- (1983) BLC 117. That case concerned a claim by the shareholders of a private company against the company's solicitors. The question arose as to whether the shareholders could bring such a claim either in contract or in tort. In correspondence, the solicitor had referred to the company as his client but Staughton J. had the following to say at 120:- "But what is clearly proved is that Mr Mason knew the Company to be a family company of Mr Witchell, even if he did not know the precise shareholding. Against that background, it is plain that Mr Mason owed a duty of care to the Company. It was the Company which featured as lessee in the 1962 lease as varied in 1969; it was the Company that Mr Mason referred to as his client in his letter to Mobil of 23 October 1975. The more difficult question is whether he also owed a duty of care to Mr Witchell. He had first come to know Mr Witchell socially; he owned an air field, and Mr Witchell an airplane. His internal records, such as files and file cards, betrayed some slight confusion as to who was his client on various matters. I do not regard that as a matter for either surprise or censure. What is of rather more relevance is that his bill for services in connection with renewal of the lease at Baddow Road was addressed to Mr Witchell. It was paid by the Company. ... In my judgment, in the circumstances of this case, Mr Witchell as well as the Company, was the client of Mr Mason. That seems to me to reflect the reality of the situation. Mr Mason knew that Mr Witchell, apart from matters such as tax and the claims of creditors, was the Company. He probably knew that Mr Witchell derived his livelihood and some profit from the Company and was vitally concerned in its well-being. Mr Witchell had first been his personal friend, and had then come to him in connection with other matters for legal advice, both as a representative of the Company and in a personal capacity. When Mr Witchell sought his advice on the Mobil notice relating to Baddow Road, Mr Mason owed a contractual duty of care both to the Company and to Mr Witchell. If I had not reached that conclusion, I would have held that Mr Mason could be liable in tort to Mr Witchell for negligence within the test laid down by Lord Wilberforce in *Anns' case*". 21. That case was quoted with apparent approval in *Christensen v. Scott*
- (1996) 1 NZLR 273, a case decided by the Court of Appeal of New Zealand. In that case the plaintiffs were the beneficial owners of a private company and sought to bring a claim against professional advisers of the company in respect of the diminution in the value of their shareholding as a result of the alleged failure of the professional advisers to exercise reasonable skill and care in relation to the affairs of the company. The court of appeal distinguished *Foss v. Harbottle* and held that it was arguable that the professional advisers owed a separate duty to the shareholders and that accordingly the matter should proceed to trial. 22. Miss Lawrence sought to distinguish the *R. P. Howard* case by reference to the finding that the bill for services in connection with the renewal of the lease by the company had been addressed to the shareholder personally, albeit paid by the company. She said that the position was quite different here, where the evidence which she had

produced showed clearly that the defendant had at all times charged Glendale Limited for all the matters in question, not the plaintiffs personally. 23. She sought to distinguish Christensen by saying that the Court had acknowledged the possibility of a duty in care in tort, not a contractual duty. We have to say that it is not very clear what sort of duty the Court had in mind. Whilst much of the judgment is perhaps more consistent with a duty of care in tort, other passages are more indicative of a contractual duty e.g. at 278 the Court said:- . "In the course of argument, the thrust of Mr Pigeon's argument shifted somewhat. As we apprehend it, the basic duty relied upon by Mr and Mrs Christensen is not a duty to them as guarantors as such, but a general duty which the respondents allegedly assumed as their professional advisers. They undertook to advise them personally in respect of their financial affairs and to implement that advice in such a way as to promote and protect their interests, including their interest in the Company . The advisers, it is said, have breached that duty in the way in which they ordered and implemented their affairs and are therefore liable for the loss which they have suffered. The major loss is the reduction in the value of their assets and this is equivalent to, or to be measured by, the diminution in the value of their shares in the company. Towards the close of the hearing Mr Pigeon indicated that he would seek an amendment to the statement of claim to accommodate this shift in the emphasis in his case. Thus, he would add to the particulars of the respects in which Peat Marwick and McCaw Lewis were in breach of their duty in acting for and advising Mr and Mrs Christensen in respect of their personal affairs and interests , including their interests in the company, the following paragraph:- 'In failing to act with a reasonable care and skill in relation to the affairs of the company'. (Emphasis added) 24. Mr Costa submitted that many of the factors present in both of the above two cases were present in this case. The plaintiffs asserted a contract between the defendant and themselves in relation to matters which primarily concerned Glendale Limited. The Court in R. P. Howard Limited had found in that case that such a contract existed and the Court in Christensen had accepted that it was arguable. The facts in the present case were not so different that the Court could hold that the allegation of a contractual obligation was obviously unsustainable. He further pointed that if the defendant was not representing the plaintiffs in relation to the Glendale Hotel matter, then no one was looking after their personal interests. This became of particular significance once the defendant and Mr Fielding began acting as directors of Glendale Limited. If the defendant was not representing the plaintiffs in respect of their interest in the company, surely he would and should have advised them to obtain such representation. 25. In our judgment this is not a case for striking out on this issue. Miss Lawrence produced many arguments in favour of her interpretation of the factual position. However we remind ourselves of the test. An action is only to be struck out if it is plain and obvious that the action will not succeed. The mere fact that the case is weak and not likely to succeed is not sufficient. It must be on its face obviously unsustainable. Having considered the evidence to which our attention has been drawn by Miss Lawrence and Mr Costa, we do not think that that high test has been met. We think that the plaintiffs are entitled to the opportunity of presenting before the Court their evidence in support of the assertion that there was a contract

between the defendant and the plaintiffs in their personal capacity relating to the registration etc. of the Glendale Hotel. 26. We should add for the sake of completion that Mr Costa expressly disclaimed any intention to assert a duty of care in tort. He accepted that any breach of any such duty would be prescribed, more than three years having elapsed since the accrual of any such cause of action. He accepted therefore that the plaintiffs had a contractual claim or nothing. Generally frivolous and vexatious nature of the claim 27. As a second string to her bow, Miss Lawrence argued that, even if the Court assumed a personal contractual duty owed by the defendant to the plaintiffs, the claim was still obviously unsustainable on the facts. She took us in some detail through the answer and through the documents annexed to the two affidavits sworn by the defendant in an attempt to show that this was so. 28. In relation to the deregistration of the Glendale Hotel in October 1989, she pointed out that the allegations of negligence made against the defendant were that they failed to advise on and pursue timeously an appeal against the decision of the Tourism Committee, failed to advise on the obtaining of an injunction restraining the Committee from cancelling the registration and failed to advise the plaintiffs that they did not have to agree to the conditions required by the Committee. She emphasised that the defendant was not asked to advise the plaintiffs on this matter until 6th October, by which time the Committee had already cancelled the registration. The plaintiffs had brought the deregistration upon themselves by their conduct. The sole involvement of the defendant was to secure the suspension of the cancellation until 31st October, which was the date that the plaintiffs had indicated that they were going to close in any event prior to the defendant's involvement. The defendant had advised on appeal and had filed the necessary appeal on 4th December 1989. It was true that the Committee's statement was not filed until January 1990 and the appellant's case was not filed until March 1990. The respondent's case was only filed sometime in September 1990 after the defendant had ceased to represent the plaintiffs. Nevertheless this was the timetable laid down by the Royal Court Rules and accordingly it was not the fault of the defendant that the appeal had not come on for hearing before the 1990 season began. 29. As to an injunction, it would have been doomed to failure because of the reluctance of the Court to grant an interlocutory injunction preventing a public body from fulfilling its public functions. Proof of the hopelessness of such an application could easily be found in this particular case, because the legal advisers retained by the plaintiffs following the termination of the defendant's retainer in August 1990 had sought just an injunction. Although the Court had granted an ex parte injunction suspending the cancellation of the registration on 26th September (to last until 26th October, 1990), the injunction was lifted on 3rd October 1990 following an application made by the Committee. The grounds for lifting the injunction were that the Court should not grant an injunction to restrain a public body from carrying out its public duty unless there was a real prospect of success at trial and there was no such prospect in this case. (Glendale Hotel (Holdings) Limited v. Tourism Committee , (11th December 1991) Jersey Unreported. 30. In relation to the May 1990 decision of the Committee, Miss Lawrence argued that the same point arose on the merits of an injunction. As to an appeal, although one was not brought, it would have been

hopeless and there was in any event an outstanding appeal in relation to the 1989 deregistration. The conditions imposed by the Committee were caused by the conduct of the plaintiffs (to which she drew our attention). There was no alternative to agreeing to them if registration was to be achieved and indeed the plaintiffs had agreed to the conditions. She drew our attention to the financial position of Glendale Limited as alleged in the amended answer which showed that the company had been in a very poor financial state when the defendant was first instructed in March 1989 and this had not improved by the spring of 1990. She submitted that the documents showed secured creditors (excluding interest) of some £743,000 and unsecured creditors of some £67,000 i.e. total creditors of £807,000. Furthermore Hambros Bank (Jersey) Limited, the main secured creditor, had instituted proceedings against Glendale Limited for recovery of its debt of £704,593.81 returnable before the Court on 11th May, 1990. Although these proceedings has been compromised, a term of the compromise was that Hambros required monthly payments of £15,000. The re-registration of the Glendale Hotel was absolutely fundamental to the ability to meet this obligation. Given the attitude of the Committee that it was not willing to register the premises as long as either of the plaintiffs was concerned with its management, there was no alternative but to agree to the conditions stipulated by the Committee. These conditions were agreed to by the plaintiffs and it could not possibly have been negligent for the defendant to have advised acceptance of the conditions. If the conditions had not been accepted, registration would not have occurred and the bankruptcy of Glendale Limited would then have followed immediately. Finally, she contended that, even if, contrary to her submission, the defendants were shown to have been at fault, no loss had been caused thereby. A written valuation by Gothard & Trevor dated 9th March 1989 valued the guest house at £790,000 as a going concern. Mr Eves, in his affidavit, had misinterpreted this valuation in asserting that the report gave a total valuation of £1,085,000, being £295,000 for the business and £790,000 for the freehold. As the property had ultimately been sold for £770,000 in December 1990, even after all the problems of 1989 and 1990, any actions of the defendant could not be shown to have caused any loss. 31. In response, Mr Costa argued that these were all matters of evidence. This was the wrong forum for considering these points. It was perfectly possible to argue that, in the particular circumstances of the case, which would need to be established by evidence, bearing in mind the dire financial position and the need to ensure registration of the hotel for the 1990 season, the defendant should have sought an accelerated timetable for the appeal against the October 1989 decision, coupled with an interlocutory injunction allowing the hotel to remain open pending determination of the appeal. It was, after all, a question of the plaintiffs' livelihood and the Court always took great care in such cases. The defendant's approach to the appeal had been lackadaisical. 32. As to the question of an injunction, it was not plain and obvious that the Court would necessarily have made the same decision in October/November 1989 as it did in October 1990. The factual matrix would have been very different. Similarly, on the question of loss, the plaintiffs' interpretation of the valuation was arguable. The Court should not proceed on the basis that the defendant's interpretation of the valuation must be correct. It should

give the defendant an opportunity of calling evidence, if necessary from the valuer himself, in order to assess what the value of the premises was in May 1989 and whether there had been any loss in value by the time of the sale in December 1990. In summary he said that Miss Lawrence was seeking to have a trial on the affidavits and that this was wrong. Justice required that the plaintiffs should have the opportunity of presenting evidence in support of their claim. 33. We remind ourselves of the comments of Southwell J. A. in *Minorities Finance Limited v. Arya Holdings Limited*

(1994) JLR 149 at 160:- "Under Jersey law, every plaintiff is entitled to have his, her or its claim heard at trial, unless the court is satisfied that it is clear that the claim could not succeed at trial This may be because the claim as pleaded does not disclose any cause of action reasonably arguable in law: for this purpose the court must look only at the plaintiff's pleading. ... It may be because, on the facts established by simple affidavit evidence (and not by a long examination of detailed affidavit evidence), it is shown beyond contradiction that the claim cannot succeed or for other reasons is an abuse of process. Whichever ground applies, the burden on the defendant in seeking to stop the proceedings before trial is a heavy burden". 34. As we listened to Miss Lawrence developing her points, many of them sounded very persuasive. But we were conscious at all times that we had not heard the evidence. We were referred to certain documents and asked to draw conclusions from them. However we are not aware of the full factual background to the case. Nor have the plaintiffs had the opportunity of adducing their evidence in relation to these matters. We agree with Mr Costa that it must at least be arguable that the defendant should have pursued the appeal against the 1989 decision with vigour - possibly combining this with an application for an injunction - so that the appeal could be resolved prior to the Committee having to decide whether to register the premises for 1990. Whether an appeal would have stood any chance of success we cannot say at this stage, but we do not think that it would be right to find that an appeal would have been hopeless, without the plaintiffs having had the opportunity to put forward such evidence as they think fit as to why such an appeal might have been successful. 35. Similarly, we are unhappy to assume that all the financial information set out in the amended answer and referred to by Miss Lawrence is necessarily correct. Of course it may be and it may be that at trial she will succeed in establishing the points which she developed during the hearing. However we do not think it right to reach a concluded view on the financial position of the company and the effect that this may have had on the decisions taken by all the various parties in May 1990 without giving the plaintiffs the opportunity to adduce evidence in this regard. Similarly, in relation to the valuation, we do not think it right to find that Miss Lawrence's interpretation is the only possible one and that it is established therefore that no loss has been caused (even assuming negligence). We think it would be wrong to prevent the plaintiffs from having the opportunity to call evidence (perhaps from the valuer himself) to the effect that what may well be the *prima facie* meaning of the valuation is not the correct one. Furthermore it must theoretically be possible that prices generally rose strongly between May 1989 and December 1990 so that the fact that the Glendale Hotel

declined in price from £790,000 to £770,000 (if Miss Lawrence is right) would become more significant. At all events the plaintiffs should be given the opportunity of adducing their evidence on all these aspects. 36. In summary, we do not think it right to determine this case on the basis of the affidavit evidence currently before us. Nothing we say today should be taken as expressing any conclusion on the eventual outcome of the case but we have concluded that the plaintiffs' case is not so obviously unsustainable and so doomed to failure that it ought to be struck out. 37. The defendant's application is therefore dismissed. Authorities. *Floor Khan v. Leisure Enterprises (Jersey) Limited* (18th December, 1997) *Jersey Unreported*. *Foss v. Harbottle*

(1843) 2 Hare 461 . *R. P. Howard Limited & Witchell v. Woodman Matthews* (1983) BLC 117. *Christensen v. Scott* (1996) 1 NZLR 273. *Glendale Hotel (Holdings) Limited v. Tourism Committee* (11th December 1991) *Jersey Unreported*. *Minories Finance Limited v. Arya Holdings Limited*

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Prepared on 29 October 2026 · Esheria