

JERSEY / JUDGMENT

Mackinnon v Regent Trust [2005] JCA 018 (23 February 2005)

[2005] JCA 018

COURT

COURT OF APPEAL

BEFORE

M. C. St. J Birt, Esq., Deputy Bailiff,
sitting as a Single Judge.

Between

Andrew Kinross MacKinnon

Plaintiff/ APPELLANT

And

The Regent Trust Company Limited

First Defendant/ RESPONDENT

And

Kenneth James MacKinnon

Second Defendant

And

Elizabeth Victoria MacKinnon (née
Sharman)

Third Defendant

And

Sebastian James MacKinnon

Fourth Defendant

And

Benjamin Thomas Skok MacKinnon

Fifth Defendant

And

Thomasin Anne Skok MacKinnon

Sixth Defendant

And

Sophie Linda Skok MacKinnon

Seventh Defendant

And

Alistair Kinross MacKinnon

Eighth Defendant

And

Ian James MacKinnon

Ninth Defendant

IN THE MATTER OF

an appeal by the Plaintiff/APPELLANT against the Order of the Royal Court
of 6th December, 2004, whereby the Royal Court ordered that certain paragraphs
of the Plaintiff/APPELLANT's Order of Justice be struck out as disclosing no
reasonable cause of action.

Joint

application by the Plaintiff/APPELLANT and the First Defendant/ RESPONDENT for
an adjournment of the said appeal.

Advocate

N. M.

Santos

Costa for the Plaintiff/ APPELLANT.

Advocate J. P. Speck for the First Defendant/
RESPONDENT.

Advocate C. G. P. Lakeman for the Second,
Third, Eighth and Ninth Defendants.

The Fourth to Seventh Defendants did not
appear and were not represented.

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JUDGMENT

The DEPUTY BAILIFF: 1. I have before me today an application made jointly by the Plaintiff and the First Defendant to adjourn an appeal which is listed for hearing next Monday. The appeal arises out of an application made by the First Defendant to strike out certain parts of the Order of Justice, which can conveniently be referred to as a claim in quasi sham. The Bailiff struck those paragraphs out. The Plaintiff now appeals against that decision of the Bailiff. 2. The reason for my sitting today is that the parties, by which I mean at this stage the Plaintiff and the First Defendant, have been engaged in some negotiations in recent weeks. Hitherto, the First Defendant, as Trustee of the three Settlements under attack, has in effect led the defence against the Plaintiff's claim which challenges the validity of the Settlements. The remaining Defendants are all beneficiaries, but it is fair to say that they have simply ridden on the coat tails of the Trustee. 3. What is now proposed, although it has not yet been finally agreed, is that the First Defendant should revert to what might be called the traditional position of a trustee, namely one of neutrality, leaving the Plaintiff on the one hand and the various Defendants on the other - primarily the Second Defendant who is the other brother - to fight it out. I am told by Mr Speck and Mr Santos Costa that it is believed that there is a window of opportunity at the moment to try and resolve the wide variety of matters which are in dispute, primarily between the two brothers and that a move from the Trustee from its present position as a leading contestant to one of neutrality would assist that process. I have heard today also from Mr Lakeman on behalf of the Second Defendant who has said that he is rather less optimistic. In particular, the negotiations so far have been between the Plaintiff and the First Defendant and have not on the whole involved the Second Defendant. Nevertheless, he agrees negotiation is desirable. 4. One of the terms of the proposed agreement between the Plaintiff and the Trustee would be that the Trustee does not oppose the Plaintiff's appeal in connection with the strike out application. It is equally clear that

it would be quite wrong for such an appeal to be allowed without the Second Defendant being given the opportunity of joining in the appeal and defending the Bailiff's decision. At the hearing before the Bailiff, the Bailiff recorded Mr Lakeman as not having appeared, but having indicated that he supported the contentions of the Trustee. 5. Mr Lakeman, not surprisingly, tells me that he would not be in a position to do justice to the appeal on Monday, having only just been informed of the possibility of the Trustee moving to a neutral position. Conversely, he does not disagree with the contentions of the other two parties that it would be undesirable to force the Trustee to defend the appeal on Monday when the Trustee is on the point of moving to a position of neutrality and in circumstances where such an action might lead to the breakdown of the negotiations between the Plaintiff and the Trustee, with a consequent adverse impact on the overall negotiations. 6. All in all, therefore, there would seem to be no advantage in forcing the Trustee to take that course and possibly endangering the negotiations. It does, therefore, seem sensible to agree that this substantive appeal cannot be heard on Monday. However, I am very conscious that the members of the plenary Court will already have read into the papers and may well have their own views about how this matter should proceed in the light of current developments. I think it would be quite wrong for me to make orders about the future conduct of this matter; in particular, whether it should simply be adjourned to the next sitting of the Court of Appeal, as has been suggested, and whether directions should be given as to the joining of the Second Defendant. There will no doubt be other matters as well. 7. So, at this stage, I think the parties must go before the Court of Appeal on Monday morning in order to outline the position to the plenary Court and seek directions from that Court, as appropriate. However, I do think that the parties have to know today whether they are at risk of having to argue the substantive appeal on Monday or not. I am informed and accept that no work has been done on this recently because the parties have been concentrating on the negotiations. Accordingly, if I do not make an order and leave it to the Court of Appeal on Monday, the parties will not know for certain and will therefore have to spend time preparing for this very complex appeal in circumstances where this might well be prejudicial to the chances of an overall compromise. Clearly, an overall compromise is in everyone's interests if it can be achieved. So, therefore, I do rule that the substantive appeal will not be heard on Monday, but I leave all other matters to the plenary Court and all the parties must attend on Monday in order to make submissions on the future conduct of this case before that Court. No Authorities. Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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