

File 814.

7th December, 1987

Before the Judicial Greffier

BETWEEN	The Education Committee of the States of Jersey	PLAINTIFF
AND	Ruberoid Contracts Limited	FIRST DEFENDANT
AND	Hawkers Lodge Properties Limited	SECOND DEFENDANT
AND	West Sussex County Council (sued as representing the Second Consortium of Local Authorities)	FIRST THIRD PARTY (convened by first defendant)
AND	Alec Jackson, Frank Greenen, Peter Down, Richard Scott and Nicholas Lockyer, trading as Jackson Greenen Down & Partners (a firm)	SECOND THIRD PARTY, (convened by first defendant)
AND	Ruberoid Contracts Limited	THIRD THIRD PARTY (convened by second defendant)

=====  
=====

Judicial Greffier's reasons for -

- (1) making an order in respect of paragraph (e) of the Schedule to the plaintiff's summons relating to the first defendant;
  - (2) refusing to make the orders sought by the first defendant;
- following hearings on the 20th October and the 11th November, 1987.  
(Decision notified to parties on the 7th December, 1987)

=====  
=====

Plaintiff's summons

Paragraph (e) of schedule

I took the view that the notwithstanding that the photographs in question might be privileged, they should be discovered and, if appropriate, privilege claimed.

First defendant's summons

Paragraph 2 (b) and (c):

A very useful definition of "power" in the context of discovery is to be found

in Vol. 13 of Halsbury's Laws of England (4th Edition) at paragraph 39: "power" means an enforceable right to inspect (the document) or to obtain possession or control of the document from the person who ordinarily has it in fact.

I was not persuaded by what I heard from counsel that the documents in the files of Messrs. Croots & Partners and Messrs. Manning Clamp & Partners in respect of which an order for discovery was sought are in the power of the plaintiff - I would have needed to hear much more of the relationship between the plaintiff and each of the two firms concerned.

In any event, it seemed to me that the terms of paragraph (2) of my order of the 24th September, 1987, were sufficient, if indeed the documents in question are in the power of the plaintiff.

Although they did not, of course, influence my decision, the terms of paragraphs 17, 24 and 25 of the affidavit sworn by Mr. J. H. Le Marquand on behalf of the plaintiff on the 23rd October, 1987 (and therefore filed subsequent to the hearing on the 20th October), are to be noted.

Paragraph 3 (a), (c) and (e):

There is in Jersey a complete absence of case law or precedent with regard to discovery and inspection of documents, and accordingly all the authorities produced to me were English cases. Also our Jersey Rules on discovery and inspection (Rule 6/16) are much more basic than the comparable English rules.

It appears to be well established in England that a list of documents, whether verified by affidavit or not, is normally conclusive as to their relevancy (see Vol. 13 of Halsbury at paragraph 47). An application for a further list will only be granted if it can be shown either from the list of documents or from documents referred to in it, or from admissions of the party making the discovery, that there is reasonable ground for supposing that the party has or has had other documents relating to the matter in issue in his possession, custody or power, or has misconceived the principles upon which the discovery of documents should be made (see Halsbury, paragraph 49.)

In this case, all parties have made discovery but the first defendant claims that the plaintiff has failed to discover certain, unspecified, documents.

In the English case of Air Canada and others v. Secretary of State for Trade and another (No.2) (1983) 1 All E.R. 910 (a House of Lords case produced by the first third party) the headnote reads thus (p. 911 at letter c)"..... a party seeking to compel the other party..... to disclose information was required to show that the information was likely to help his own case or damage his adversary's case, in the sense that there was a reasonable probability and not just mere speculative belief that it would do so."

Having heard Advocate Michel and having read two affidavits sworn by Mr. Roger Button in support of the first defendant's application, and the affidavit sworn by Mr. A.H. Morgan on behalf of the first third party, I came to the conclusion that the application was based on a mere speculative belief and was in the nature of a "fishing expedition" - the relevant paragraphs of Mr. Button's affidavit of the 2nd October, 1987, contain phrases such as "These problems must inevitably have generated considerable documentation..... The documents could be expected to include....." (paragraph B (i); "It seems unlikely that....." (paragraph B (iv)). It seemed to me to follow that the value of the discovery sought, being of a speculative nature, would not be commensurate with the inconvenience of the party required to give it, and that to make an order would be oppressive and unnecessarily burdensome.

I also noted the assurances in Mr. Morgan's affidavit that discovery of all material considered relevant by the first party cited had already been made.

For all these reasons, I decided to refuse to make the orders sought under sub-paragraphs (a), (c) and (e) of paragraph 3 of the first defendant's summons.

Advocate Dessain on behalf of the second third party submitted that were I to refuse the first defendant's application in relation to the first party cited, it would follow that the application concerning his client should also be refused. I agreed.