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ROYAL COURT

9th October 1991 144.

Before the Judicial Greffier

BETWEEN	Vaucluse Court Limited	PLAINTIFF
AND	Takilla Limited	DEFENDANT

Application by the Plaintiff for separate trials of the two causes of action contained in the Order of Justice.

Advocate B. E. Troy for the Plaintiff
Advocate P. C. Sinel for the Defendant

This action is part of the ongoing dispute between Takilla Limited and its neighbours relating to properties which formerly made up the property "Eulah" at Mont Cochon. In this particular case the action was brought by Vaucluse Court Limited against Takilla Limited alleging breaches of certain covenants contained in a contract dated 8th June, 1979, between the Defendant and Ernest Farley & Son Limited, the predecessor in title to the Plaintiff. The first allegation was of the breach of a restrictive covenant creating a height restriction and the second allegation was of encroachment in breach of the terms of a covenant. The present action first came before the Royal Court on the 5th January, 1990. On the 12th January, 1990, the interim injunction imposed on the Defendant was lifted, upon the Defendant giving an undertaking to remove all roofs and gutters overhanging the Plaintiff's property. In September 1990, the Plaintiff brought a representation before the Royal Court alleging contempt of Court by reason of failure to abide by that undertaking. On 20th December, 1990, the Defendant admitted being in breach of its undertaking and the Court ordered that the boundary between the properties of the parties to this action be fixed at a Vue de Vicomte. On 5th February, 1991, the Plaintiff's advocate wrote to me and indicated that the

Plaintiff did not intend to pursue, at that stage, that part of the claim which refers to the allegations of encroachment by reason of the new roof, downpipes and gutters overhanging the Plaintiff's property. At the same time the Plaintiff's advocate indicated that he would wish the part of the action relating to an alleged breach of a height restriction to be set down. The present summons results from the Plaintiff's desire to proceed to trial in relation to the matter of the alleged breach of the height restriction without proceeding to trial at the same time in relation to the alleged encroachments.

Advocate Troy argued that the trial of the issue in relation to the breach of the height restriction ought not to be delayed by reason of the necessity for a Vue de Vicomte, which was a prior requirement to the trial of the issue in relation to encroachments. He also argued that that issue had effectively become a Héritage Division matter because a Vue de Vicomte was a Héritage Division matter. Advocate Sinel, on the other hand, argued that both disputes related back to the same properties and to the same contract of sale and that all the outstanding disputes between these parties ought to be dealt with at the same time. Advocate Sinel also argued that no steps had been taken in the previous nine months to bring about the Vue de Vicomte and that delay to the trial of the issue of the height restriction would have been preventable if the Plaintiff had taken the necessary steps to proceed with the Vue de Vicomte.

I turn now to the law in relation to the application. The Royal Court Rules do not contain any specific rule dealing with this kind of application. Rule 6/11, which corresponds closely with Order 4 Rule 9 of the Rules of the Supreme Court, deals with the matter of the consolidation or the trial together of two or more actions. Rule 6/11(2) states -

> "Actions that have been consolidated may be deconsolidated at any stage of the proceedings."

Rule 6/19 deals with the trial of preliminary issues. Rule 6/21(2), which relates to setting down, authorises the Greffier to -

> "Make any order that he deems appropriate for sending the case to proof or for determining the issue to be tried".

In England, applications to divide up the trial of particular causes of action are dealt with either under Order 33 Rule 3 or under Order 33 Rule 4(2). However, applications of this type are dealt with under Order 15 Rule 5 which reads as follows -

(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Advocate Troy argued that, notwithstanding the lack of a specific rule, the court had an inherent jurisdiction to make the order sought. Advocate Sinel agreed with that submission. On 28th June, 1991, Sir Patrick Neill, Q.C. delivered the decision of the Court of Appeal in the case of Finance and Economics Committee and Bastion Offshore Trust Company Limited. The detailed judgment of the Court of Appeal is still awaited but in that case the Court of Appeal found that the Royal Court, including the Judicial Greffier, had an inherent jurisdiction to order further and better particulars and a further and better statement of the case in relation to an appeal against an administrative decision and this in addition to the power under a rule of Court. In the present case there is no rule of Court but I can see no reason why the inherent jurisdiction of the Court should not apply. In applying that jurisdiction I am, of course, not confined to the wording of the English rules and the commentary in the White Book. However, these serve as useful guidelines as to the principles which ought to be applied in making such a decision.

The Order 15 Rule 5 power to order separate trials and the Order 4 Rule 9 power to consolidate or order trial together (which is very similar to our Rule 6/11) are really two sides of the same coin. The

ground in Order 15 Rule 5(1) is that the joinder of causes of action may embarrass or delay the trial or is otherwise inconvenient.

In the normal course of events an application for a separate trial would be made by the Defendant rather than by the Plaintiff. It is, after all, the Plaintiff's choice as to whether he seeks to bring several causes of action in one or more Orders of Justice. However, circumstances may change after an action has been commenced so that the balance of convenience as between trial together or trial separately changes. In this case the only relevant change has been the ordering of the Vue de Vicomte. This took place nine months ago and if it had been diligently pursued then that procedure would have been completed by now. Furthermore, it is apparent to me from the Order of Justice in this case that the Plaintiff did not know precisely where the boundary line lay when the action was commenced.

I turn now to the general test of whether trial together may embarrass or delay the trial or is otherwise inconvenient. Both rights of action arise from the same contract and are between the same parties. They also arise in relation to areas of the property which are in close proximity to each other. The witnesses in each case are likely to be substantially the same. It appears to me, therefore, that it would be more convenient from the point of view of the Court and in the interests of Justice that the two causes of action be tried together. If this had been an application for consolidation then I would have ordered consolidation upon the basis set out in rule 6/11(1)(b)&(c) namely -

> "(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions;
> (c) that for some other reason it is desirable to make an order under this rule;".

I am therefore dismissing the application and I will need to be addressed upon the matter of costs.

AUTHORITIES.

Royal Court Rules, 1982: 6/11; 6/19; 6/21

R.S.C. (1991): O.4, r.9; O.15, r.5; O.33, r.3, r.4(2);

Finance & Economics Committee-v-Bastion Offshore (28th June, 1991) Jersey Unreported. C. of A.