



**ROYAL COURT**  
**(Samedi Division)**

7th November, 1991 163

Before: The Bailiff, and  
Jurats Myles and Herbert

Between: **National Bank of Sharjah** Plaintiff

And: (1) **Rolf Gudmund Dellborg**  
(2) **Richard Dellborg**  
(3) **Felix Holdings Limited**  
(4) **Crescent Finance and Trading  
Company Limited**  
(5) **Chartered Holdings Limited**  
(6) **Scarab Financial Services S.A.**  
(7) **Gordon D. Abernethy**  
(8) **Wesley Investments Limited**  
(9) **Clanbrassil (Nominees) Limited**  
(10) **Ebony Fnance and Trading  
Company Limited** Defendants

(1) **AIB Bank (C.I.) Limited**  
(2) **The Royal Bank of Scotland PLC**  
(3) **The Royal Bank of Scotland  
(Jersey) Limited**  
(4) **Daniel Benedict McCann** Parties Cited

**Excelsior International Limited** Intervenor

Advocate A. D. Robinson for the Third Defendant  
and the Intervenor.

Advocate P. de C. Mourant for the Plaintiff.

Advocate N. F. Journeaux for the ninth Defendant and  
the Fourth Party Cited.

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BAILIFF: This is an application by Excelsior International Limited which is not one of the parties nor even a party cited in the action brought by the National Bank of Sharjah against a number of defendants including a ninth defendant called Clanbrassil (Nominees) Limited and citing four parties cited, one of whom is Mr. Daniel Benedict McCann, who operates his business partly through Clanbrassil (Nominees) Limited.

The application for costs by Excelsior International Limited on a reasonable basis or full indemnity basis arises because that company says that it is caught in the middle between the plaintiff and the defendants in this action and that, having done all it could, it should receive its costs for two reasons: first because, as I have already said, it is not even a party cited and secondly, because this is an implied, if not an express, undertaking in the three Orders of Justice with which I need not concern myself at the moment, obtained by the Plaintiff in the course of these proceedings.

The history of this matter seems to be that it is now accepted that the original Order of Justice, which was signed and was obtained from the Deputy Bailiff on 6th August, 1991, dealt with a clear order in respect of the fourth party cited. Nowhere in the injunction, which is on page twenty-three of the Order of Justice, is Excelsior International Limited mentioned.

However, what is mentioned in the injunction is the name of the third defendant Felix Holdings Limited.

There seems to be some suggestion that in the papers of Felix Holdings Limited there was one or possibly two papers relating to a transaction with Excelsior International Limited. If that is so, then Mr. Journeaux for, Daniel Benedict McCann and Clanbrassil (Nominees) Limited, took the view that if the injunction caught that transaction - and I express no views whether it did or did not - the proper way to release the papers was to apply to the Judicial Greffier, with the plaintiff, for an order in accordance with Rule 6/28 of the Royal Court Rules, (1982), or as has happened this morning by way of a Summons issued by Excelsior International Limited. I completely agree with that view; that is the proper way to vary an injunction. It is not open to Advocates, by an exchange of letters, to vary injunctions of this Court without Judicial assistance and therefore, although on the 10th September, 1989, a letter was sent by Mr. Olsen, suggesting that the documents which Excelsior International Limited are seeking to be released, would be released if the plaintiff signified its consent (and eventually Mourant du Feu & Jeune, for the plaintiff, through the legal assistant to Advocate Mourant did agree one month later), those two letters have no legal significance and it required something more to be done by the plaintiff and the fourth party cited and the ninth defendant if the documents were to be released. The question is at what stage should those steps have been taken. Mr. Robinson for the Intervenor and the third defendant, has very carefully set out a time table which has been of assistance to me in coming to my decision.

It looks to me almost as if both Mr. Robinson and Mr. Mourant for the plaintiff at one stage believed that it would be

open to the parties, by a mere exchange of letters, to bury the injunction but as I have said that is not the case. Therefore, merely pressing Advocate Journeaux to consent to the release of the documents, by exchange of letter, was not in my opinion in accordance with the requirements of our Rules, which are there to be followed, otherwise, chaos would result.

So looking at the position, I find that on 23rd October there was a letter from Mr. Journeaux to Mr. Robinson stating that a letter from Mourant du Feu & Jeune agreeing to release the documents (the letter of 7th October, 1991, from Miss Lacey, the assistant to Mr. Mourant) is not sufficient and that more would have to be done in the way of a formal order from the Greffier. I find that that is a proper response to a request for a variation of an injunction made by Order of this Court.

But what happens after that? The plaintiff and Mr. Robinson for Excelsior International Limited keep pressing, under a misapprehension, as I have said, that it can be done this way, and finally, Mourant du Feu & Jeune almost at the last ditch accepted on 5th November, that the injunction, to which I have referred, which was obtained in the first Order of Justice, did not attach to the Excelsior International Limited papers after all. I do not think that Advocate Journeaux's firm, Messrs. Olsen, Backhurst and Dorey, can be blamed for being cautious in matters of this sort and I think it behoved the plaintiff to act in accordance with the law and to have sought to obtain the variation to the injunction more expeditiously. In the end of course, it was the Summons issued by Excelsior International Limited which has brought this about and the variation as regards the wording is by consent.

Both Mr. Journeaux and Mr. Mourant for the Plaintiff have agreed that Excelsior International Limited should have its

reasonable costs. There appears to be some difference between reasonable costs and full indemnity costs, however the difference isn't very great. On the other hand Mr. Robinson has said that there should be a distinction and that we should mark it by awarding him, or his client company costs on a full indemnity basis because that would put it slightly higher than reasonable costs which are the costs which are given to parties cited and I think there is much in that argument.

Therefore, I order that the costs of Excelsior International Limited will be paid on a full indemnity basis, and as I have found that Mr. Journeaux was right in his legal contentions, I think these costs should be properly paid by the plaintiff and I order accordingly.

No authorities cited.