

ROYAL COURT  
(SAMEDI DIVISION)

67.

Friday, 10th April, 1992

Before the Judicial Greffier

<b>BETWEEN</b>	<b>Anthony Peter Cooley</b>	<b>PLAINTIFF</b>
<b>AND</b>	<b>Gillian Wood</b>	<b>DEFENDANT</b>
<b>AND</b>	<b>Hambros Bank (Jersey) Limited</b>	<b>PARTY CITED</b>

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Application of the Plaintiff under Rule 6/17(4) of the Royal Court Rules, 1982, as amended, for an Order that the sum of £47,000 held by the Party Cited, in the name of Fedora Investments Limited, be forthwith released to the Plaintiff.

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Advocate P.M. Livingstone for the Plaintiff  
Advocate M.M.G. Voisin for the Defendant

**JUDGMENT**

**JUDICIAL GREFFIER:**

This action relates to a dispute between the parties as to the division of the proceeds of sale of certain properties in Portugal which were formerly owned by Fedora Investments Limited, a Company which was formerly beneficially owned by the parties. The Plaintiff's case in relation to the summons is that the Defendant has admitted both in correspondence and in her

pleadings that at least the sum of £47,000 out of the disputed monies, which are currently held with the Party Cited in the name of Fedora Investments Limited, belong to the Plaintiff. The Defendant has raised a whole series of objections to this. One of his objections is that the Plaintiff is seeking an Order which is not set out in the prayer of the Order of Justice.

Rule 6/17(4) of the Royal Court Rules, 1982, as amended, reads as follows:-

*"Where admissions of fact are made by a party to the proceedings either by his pleadings or otherwise, any other party to the proceedings may apply to the Court for such judgment or order as on those admissions he may be entitled to, without waiting for the examination of any other question between the parties, and the Court may give such judgment or make such order, on the application as it thinks just."*

Advocate Livingstone, for the Plaintiff, asked me to find that the wording of that Rule was sufficiently wide to enable me to grant relief which went beyond the prayer of the amended Order of Justice. He conceded that paragraph (ii) of the prayer of the amended Order of Justice was otiose and had been overtaken by other amendments and did not apply in these circumstances. However, he asked me to either apply the terms of paragraph (v) of the prayer or to extend those terms to the situation. Paragraph (v) of the prayer of the amended Order of Justice reads as follows:-

*"That further or alternatively the Defendant pay to the partnership all monies found to be due by her to it;"*.

This paragraph appears to be linked with paragraph (iv) which requests that the Defendant be ordered to produce an account of all her dealings with the Company's assets and those of the partnership for the period from 1st May, 1989 to date.

Paragraph (v) of the prayer is dealing with payments by the Defendant to the partnership between her and the Plaintiff and is not dealing with payments of the monies held by the Party Cited directly to the Plaintiff. The Order of Justice was last amended as recently as 5th February, 1992. It is clear to me that the Order that is being sought goes beyond the prayer of the Order of Justice.

It has clearly been the practice of the Royal Court for many years not to grant any relief sought by a Plaintiff which goes beyond the prayer. There are very obvious and good reasons for this. A Defendant ought to be able to safely assume that even if he defaults in appearing before the Court, the Court will not grant more than the prayer. It appears to me that in the case of an application for a Judgment on admissions the same principle must apply. The application for Judgment on admissions is carved out of the original action. If the Court would not give the relief sought at trial or at any earlier stage of the proceedings then it should not be given on such an application. Accordingly, I am dismissing this application. I shall need to be addressed on the matter of costs.

However, although I am not finally deciding these issues, it appears to me that it may be of some assistance to counsel if I make some general comments upon the other grounds for opposition to the application. If the prayer of the Order of Justice were to be suitably amended then, no doubt, the Plaintiff will wish to make a further application. In those circumstances, and subject to further address by both counsel, it appears to me, that provided that I am satisfied that a suitable sum has been left in the bank account with the Party Cited to cover the existing Orders for costs, provision for security for costs and provision for security for the undertaking in damages, then it may well be appropriate for an Order to be made for the sum of £47,000 or

some reduced sum be paid in the manner sought. At any future hearing I will need to receive more detailed information in relation to the quantum of costs, security for costs and security for the undertaking in damages than were provided at this hearing on behalf of the Defendant. I shall also need to receive better evidence that Fedora Investments Limited is not the underlying beneficial owner of the monies held with the Party Cited but merely holds these as a nominee for the parties to this action. I hope that these general comments will be of some guidance to counsel.

AUTHORITIES.

Royal Court Rules, 1982, as amended: Rule 6/17(4).