

ROYAL COURT  
(Samedi Division) 35.

20th February, 1995.

Before: P.R. Le Cras, Esq., Lieutenant Bailiff and  
Jurats Myles and Vibert.

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Between Commercial Union Capital, Ltd. Plaintiff  
 And Yachtbrokers International S.A.R.L. First Defendant  
 And Russell Lunt Second Defendant  
 And Lloyds Bank Plc. Party Cited

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Application by the Plaintiff for an Order that a copy of a letter written by the Defendants to the former Bailiff in December, 1994 and/or enclosures, or such parts thereof as the Court shall consider just, be released to the Plaintiff's Advocate, with liberty to the Plaintiff to inspect the original.

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Advocate N.F. Journeaux for the Plaintiff  
 Advocate A.D. Hoy for the First and Second Defendants  
 The party Cited did not appear and was not represented.

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JUDGMENT

LIEUTENANT BAILIFF: Proceedings were begun in the Island against the Defendants and injunctions imposed on them by an Order of Justice by the then Bailiff on 23rd November, 1994.

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The order was served on the First Defendant on 20th December 1994 but not on the Second Defendant, Mr. Lunt, until 8th February, 1995.

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Notwithstanding that he had not been served, Mr. Lunt, (who is stated to be a shareholder in and the *gérant* of the First Defendant) had on 20th December, 1994, written to the then Bailiff sending him in a letter marked "Private & Confidential" what appears to be (for we have not seen it) a considerable mass of material relative to the case. In his letter he asked that the Court should alone read the papers and that after the perusal thereof would set aside the Order of Justice.

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No other effort has been made to comply with the terms of the injunction although summonses, without as yet any affidavits, have

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been taken out to contest the jurisdiction and to raise the injunction.

5 Not surprisingly the Plaintiff has issued a summons asking for sight of the papers and a representation alleging contempt of Court. In pursuing this the Plaintiff relies on the concepts of natural justice.

10 In these circumstances we must, we believe, look beyond the immediate summons. If we grant the summons today there will be, at least, the possibility of serious prejudice to the Defendants if they were to succeed on either or both of their summonses. Provided they are released from a Court hearing tomorrow (on the issue of contempt) they undertake to have their affidavit ready by  
15 close of business tomorrow. As Mr. Lunt in his letter to the Bailiff appears to have given consideration to his position, albeit before instructing lawyers, this time limit appears reasonable and practicable.

20 In our view the case should proceed on an orderly basis. We will reserve, for the moment, judgment on the present summons and will treat it first as a summons for directions.

25 In making this order we take the view, and wish to make it clear to Counsel at this stage, that we may have to have further argument on the present summons including, for example:-

30 (a) if the Defendant's summonses are successful the Plaintiff's arguments, some of which we have heard today, that the information is already "in" cannot be withdrawn and that the Plaintiff is entitled to see it or (b) if the Defendant's summonses are unsuccessful whether sufficient information is being given to comply with the terms of the injunction and specifically whether the Plaintiff is entitled to any extra information.

35 In our view such arguments are much better heard and a decision thereon made after the hearing out of the Defendant's summonses provided that they proceed with them with expedition.

40 We therefore order:-

1. that the Defendant's prepare and submit by close of business tomorrow the affidavits necessary to support their summonses contesting jurisdiction and seeking to strike out the injunctions.

45 2. that these summonses be heard as soon as possible subject to the framework of times decided by the Greffier.

50 3. that the summonses for contempt be adjourned *sans jour fixe*, with liberty to apply, Mr. Journeaux.

4. that the present summons be adjourned *sans jour fixe* with liberty to apply. The papers shall in the meantime remain with the Greffier though the Defendants may make such copies as they

require. Mr. Journeaux preserves the status quo for you, they cannot be removed from the Court files.



Authorities

In re Representation of Centenier Pearce (1987-88) JLR 109.

4 Halsbury 1: p.180: para 96.

Wade & Bradley: "Constitutional and Administrative Law" (10th Ed'n):  
pp. 642-4.

Matthews & Malek: "Discovery": pp. 31-2.

Le Maistre -v- I.D.C. (1980) JJ. 1.