

ROYAL COURT
(Samedi Division)

68.

12th April, 1996

Before: P.R. Le Cras, Esq., Lieutenant Bailiff, sitting alone.

Between	Claes Enhörning (Trustee in bankruptcy of Alsatia Förvaltnings Aktiebolag) (originally known as Aktiebolaget L. Bergström Finans)	Plaintiff
And	Nordic Link Limited	First Defendant
And	Kleinwort Benson (Jersey) Limited	First Party Cited And Second Defendant
And	Corporate Secretaries (Jersey) Limited	Second Party Cited And Third Defendant
And	Terence Bowman	Third Party Cited And Fourth Defendant
And	Gerrard John Watt	Fourth Party Cited And Fifth Defendant
And	Peter Whiting	Sixth Defendant
And	Anthony Charles Cooper	Fifth Party Cited
And	Niklas Bergström	Sixth Party Cited
And	Leighton Private Hotel (1987) Limited	Seventh Party Cited
And	Leighton Private Hotel Limited	Eighth Party Cited
And	Queen's Hotel (Jersey) Limited	Ninth Party Cited
And	Leeward Bearing Holding Company Limited	Tenth Party Cited
And	Kleinwort Benson International Trust Corporation	Eleventh Party Cited
And	Sten Raoul Lars Bergstrom (convened at the instance of the First to First to Sixth Defendants)	First Third Party

And Lars Kurt Magnus Bergstrom Second Third Party
(convened at the instance of the
First to Sixth Defendants)

And Lars Jonas Bergstrom Third Third Party
(convened at the instance of the
First to Sixth Defendants)

And Svan Peter Jonsson Fourth Third Party
(convened at the instance of the
First to Sixth Defendants)

And Advokatfirman Carler I Fifth Third Party
Helsingborg AB
(convened at the instance of the
First to Sixth Defendants)

Appeal against decision of the Judicial Greffier of
20th February, 1996, [*See Jersey Unreported
Judgment of that date*] refusing an application,
under Rule 6/19 of the Royal Court Rules 1992, as
amended, for determination as a preliminary point
of the issue of whether the shares in a certain
company were transferred at an under-value.

Advocate N.F. Journeaux for the Plaintiff;
Advocate J.P. Speck for the Defendants;
Advocate M. O'Connell for the First, Second and Third
Third Parties;

JUDGMENT

5 THE LIEUTENANT BAILIFF: This is an appeal against the Order of the
Judicial Greffier of 20th February, 1996, refusing an application
by the Defendants for a preliminary issue to be tried in these
proceedings. The facts are clearly set out in his Judgment which
is to be attached to this Order and the Court will not rehearse
them again.

10 The Defendants' argument, that the question of whether the
shares were sold at an under value was fundamental, was again put
to the Court.

It was common ground that this, if it were to form a preliminary issue, would, if decided in favour of the Defendants, dispose entirely of the action. On that basis, Mr. Speck argued that the Order should therefore be made citing R.S.C. O.33/4/5 at p.6 line 30 of the Greffier's Judgment where it read:

"An order should therefore be made for the separate trial of a preliminary issue, e.g. a point of law, which if decided in one way is likely to be decisive of the litigation, and it is not necessary that the decision should be such as to dispose of the entire action whichever way it is decided".

His submission was that the value of the shares could be ascertained on an objective basis, by the evidence of perhaps a couple of experts on each side. It would be a self-contained exercise and would be isolated from the other issues involved.

The witnesses for this and any other issues which might be consequent on an adverse decision would be different, and their evidence would not overlap. The undervalue would have to be found as a fact and the belief of the parties, and the Defendants' evidence, would not affect the value nor would these be relevant to the objective process of analysis. The question of value should be isolated. It would narrow the issue and save costs.

Mr. O'Connell supporting him, urged the Court to consider neither the evidence nor its admissibility, but whether this issue could be carved out as it were, and isolated. Come what may the Court must deal with the valuation of the shares, as until that is done it cannot proceed.

The Court should not take the risk of hearing a welter of allegations which may lead nowhere. Put another way, it should not deal with extraneous matters unless it has to do so.

If the finding is against the Defendants then this would help the Court if it goes forward; and indeed might have an impact on the question of a settlement.

It was, he submitted, a self-contained point, one which was capable of isolation, and one where the Plaintiff had failed to point out any unfair advantage to be gained.

Mr. Journeaux for the Plaintiffs took quite a different view.

First, the general rule, see again O.33/4/5 of the Greffier's Judgment p.6 line 16, was:

"An order for the separate trial of separate issues is a departure from the beneficial object of the law that all disputes should be tried together, and therefore,

generally speaking, such an order should only be made in exceptional circumstances or on special grounds".

5 Second, these grounds were considered in Todman -v- Black
(1980) JJ 255 CofA, see again the Greffier's Judgment p.7 line 22
where the citation quoted read:

10 *"....it is only rarely convenient for the issue of
liability itself to be separated into preliminary and
subsequent issues".*

15 He conceded, quite properly, (see 4 Halsbury 37: para. 484)
that it was not necessary for the issue to be totally decisive
citing (*inter alia*) the following passage:

20 *"Under these powers the court is enabled in appropriate
circumstances to isolate particular issues or questions
for separate trial and thus avoid or at any rate reduce
the delay and expense in preparing for the trial of
unnecessary questions or issues. An order should
therefore be made for the separate trial of a preliminary
point of law or other issue which if decided in one way is
likely to be decisive to the litigation and it is not
necessary that the decision should be such as to dispose
of the entire action whichever way it is decided".*

25 In his submission the question of the value of the shares was
far from being the uncomplicated and simple issue suggested by the
Defendants.

30 Quite apart from any experts who were to be called, the
Plaintiffs would be seeking to call a whole series of witnesses
who were involved with the company and who assisted in or were
aware of its value, its prospects and the arrangements for the
35 sale.

40 Inevitably, given the serious allegations which are made, it
would be difficult to isolate this one issue alone. There would
be, inevitably in his view, what the Greffier described as a
"seepage" of other issues, which would overlap. For example, the
conduct of the Defendants was, in his submission, closely linked
with what they thought the shares were worth. In his submission
there could be large overlaps of evidence. In addition there was
45 unlikely to be any real saving of time if the Defendants were
successful; and a very considerable chance of delay should the
Plaintiffs prove their case.

50 The Greffier in his finding had considered these issues with
care and had made a careful analysis. His order was right and
should be maintained. Nothing new has been put before the Court
today to invalidate his reasoning.

The general rule is quite clear, viz. that in the ordinary way, all issues should be tried together.

5 There are, in the view of the Court, no exceptional
circumstances or special grounds for making an order for the
hearing of a preliminary issue as is sought in this case. It is
more than difficult to see how the proposed preliminary issue can
be separated and, indeed, in the view of the Court any attempt to
do so will cause unnecessary delay and expense. Although the
10 anxiety of the Defendants is appreciated it is in the interests of
justice that these proceedings should advance as expeditiously as
possible, and the way to do this is by having one trial. The
Judicial Greffier has gone very carefully into the arguments and
the law. Nothing has been put to the Court today which
15 invalidates his reasoning and his order, with both of which the
Court concurs. The appeal is therefore dismissed.

Authorities

Royal Court Rules 1992: Rule 6/19.

Purdie -v- Bailhache and Bailhache (1989) JLR 111 CofA.

R.S.C. (1995 Ed'n): 33/3,4,5.

Todman -v- Black (1980) JJ 255 CofA.

Rahman -v- Chase Bank (1987-88) JLR 81.

4 Halsbury 37: pp.366-369.

Barreto -v- Sanguy (2nd May, 1990) Jersey Unreported: (1990) JLR
N.11.