

ROYAL COURT
(Samedi Division)

32.

15th February, 1996

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

Between: Derek Harold Kemp, Rodney George Stubblefield,
Lionel Charles Fynn, David Gurney Stedman,
David Arthur Peck
and others practising under
the name and style of Penningtons Plaintiffs

And: Meditco Limited Defendant

Appeal of the Plaintiffs against the Orders of the Judicial Greffier of
28th February, 1995, and 23rd August, 1995, [*See Jersey Unreported
Judgment of that date*] dismissing the Plaintiffs' application for
summary judgment, pursuant to Rule 7/1 of the Royal Court Rules
1992, as amended, and awarding costs in any event to the
Defendant.

Advocate R.J. Michel for the Plaintiffs.
Advocate R.J.F. Pirie for the Defendant.

JUDGMENT

THE LIEUTENANT BAILIFF: This is an appeal from the decision of the
Judicial Greffier giving unconditional leave to defend.

5 Counsel submitted that the basis upon which the Court deals
with appeals of this nature is that it should do so *de novo*. The
Court accepts that submission. The authorities are quite clear
and there is no need to recite them again.

10 The main facts are clearly set out in the Greffier's finding
and the Court does not need to rehearse them.

To some extent the arguments and submissions put to the Court
followed those which appear to have been put to the Greffier.

In particular, the Plaintiffs' claim that the letter of 25th June, 1993, (see the Greffier's Judgment [23rd August, 1995] Jersey Unreported, at p.2 l. 50) formed the contract between the parties.

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As to the quantum, this had to be challenged in a particular way which, so far, the Defendant had failed to pursue and which, now, it was probable that it was too late to pursue.

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He conceded, however, that the account claimed covered a period both prior to and subsequent to the dates mentioned in the letter.

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As a result he conceded, as the Court thinks he had to do, that he could not argue that the letter contains the whole agreement, if his clients intend to pursue their claim for the full amount, which they do.

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In his submission the defence was incredible, because it alleges that Penningtons' acted on a contingency basis, which they were then not permitted to do.

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In all the circumstances he suggested that the appropriate course was, where the quantum was not likely to be challengeable, to give conditional leave to defend against the payment in of a sum to cover the hours between the dates in the letter of 25th June, 1993.

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The submissions of the Defendant were that quite clearly the letter of 25th June was only part of the evidence relating to the agreement between the parties; that this agreement was conditional (on success) and was proper in that the Defendants were never clients of the Plaintiffs; that what this agreement was should be decided at trial; that there is nothing to suggest that the defence is not *bona fide*; that quantum is presently irrelevant as no liability is admitted at all; that the claim is clearly wrong on the face of the statement of claim; and that it would be quite improper and wrong for the Court, given the circumstances, to do other than give unconditional leave to defend.

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The Court accepts those submissions. It is clear beyond a peradventure that this is a case where unconditional leave to defend must be and is granted.

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The decision of the Greffier was correct, and the appeal against it is therefore dismissed.

Authorities

Frere Cholmeley -v- Humphreys (20th June, 1991) transcript of
Judgment of the Court of Appeal of England.

Target Holdings -v- Redferns (1995) 3 WLR 352 (HL(E)).