

ROYAL COURT
(Samedi Division)

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12th June, 1996

Before: The Deputy Bailiff, and
Jurats Le Ruez and Jones.

Between:	T.S. Engineering Limited	Plaintiff
And:	Raymond David Bisson	Defendant

Advocate P.M.Livingstone Defendant.
Advocate D.M.Sowden for the Plaintiff.

Application for an adjournment of trial
granted. The Court's reasons.

THE DEPUTY BAILIFF: There came before us on Friday afternoon an unusual application that a trial fixed for 12th, 13th and 14th June should be adjourned to another date. We acceded to the request and said that we would set out our reasons.

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Mr. Livingstone told us that he was retained by Mr. Bisson on a fee paying basis on 4th January, 1995. Mr. Bisson had been an existing client of his firm. An *Ordre Provisoire* was sought and it was lifted after a hearing. The judgment of the Court was delivered on 11th January, 1995.

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The distraint having been discharged the Defendant gave an undertaking to the Court that for one year he would not sell, gift, transfer, dispose of, charge or mortgage his fishing vessel, "Fleur de France" and that he would leave sufficient means of communication with his advocate should he leave the jurisdiction. The pleadings proceeded in the normal way and the case was set down for hearing on 8th August, 1995. The matters to be argued were not complex. There was a claim for £15,687.52 for extra work in putting a replacement engine into the boat. The claim remains unpaid. The defendant counter-claimed with the argument that the extra work had been poorly executed, that he had already paid

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£4,000 for initial work on account and that he had lost time at sea from being unable to fish. Unfortunately, Advocate Livingstone's firm were quite unable to obtain adequate instructions from Mr. Bisson and as they apparently had a substantial amount of fees outstanding matters reached a stage on 20th February, 1996 when they withdrew. They informed their opponents and the Judicial Greffier but of course remained as Advocates on the record while Mr. Bisson was trying to obtain Legal Aid. We will not go into great detail except to say that for some three months from March until May of this year, Mr. Bisson was trying to obtain legal representation. Two other firms were appointed but withdrew because of genuine conflicts. Eventually, to his surprise, Mr. Livingstone was re-appointed on a Legal Aid certificate on 30th May. The trial, as we have said, opens on 13th June. Mr. Livingstone explained to us that his whole energies have been spent in trying to seek an adjournment. His application was first refused after a detailed hearing before the Judicial Greffier on 5th June.

Mr. Livingstone told us that witnesses were being considered on the counterclaim. Two were from France and two were from within the island. One of the island witnesses is an accountant who holds papers but will not commence an investigation until his fees are assured.

The position that we are in today is that there is now an injunction confirmed on 26th April, 1996 preventing the "Fleur de France" from being alienated in any way and a summary judgment for £6082.14 obtained by Jubilee Fishing Company Limited on 26th February, 1996. There are two significant bank charges registered against the "Fleur de France" and a Mrs. Syvret (Mr. Bisson's mother-in-law) is pressing for return of a loan of £38,000. There is a real possibility that a *désastre* application could be successfully made by one of Mr. Bisson's creditors and that the plaintiff could be prejudiced. In the notes of his reason for refusing to grant an adjournment, the Judicial Greffier stated that the defendant must, with one week still to go to trial, "*deduce all his energies to the trial*".

Mr. Livingstone has told us that he is in an impossible situation and that if he worked night and day between now and the trial date it would be time ill-spent as he has not and cannot obtain in the time available the information that he needs.

By Rule 8/5 of the Royal Court Rules "*The Court may, if it thinks it expedient in the interests of justice, postpone or adjourn a trial or hearing of any proceedings for such time and on such terms, if any, as it thinks fit*".

The English Rules of the Supreme Court include this passage under Order 35/31.

"The following matters should be taken into account when deciding whether or not to grant an adjournment:

- 5 1. The importance of the proceedings and their likely adverse consequences to the party seeking the adjournment.
- 10 2. The risk of the party being prejudiced in the conduct of the proceedings if the application were refused.
- 15 3. The risk of prejudice or other disadvantage to the other party if the adjournment were granted.
4. The convenience of the court.
5. The interests of justice generally in the efficient despatch of court business.
- 20 6. The desirability of not delaying future litigants by adjourning early and thus leaving the court empty.
- 25 7. The extent to which the party applying for the adjournment had been responsible for creating the difficulty which had led to the application.

30 (R. v. Kingston-upon-Thames Justices, ex parte Martin [1994] Imm.A.R. 172, Div.Ct.)"

35 We have found this matter difficult particularly where, as Miss Sowden has pointed out, the Plaintiff has behaved impeccably. But because we can see no way that this case can be conducted properly if it comes to trial and because we are satisfied that
40 Mr. Livingstone is not at fault, we are minded in our discretion to grant a delay of about four weeks. We cannot be more specific than that because the Court will be in vacation. We merely wish to stress that an inordinate delay will not be tolerated and that if Mr. Bisson fails to put his affairs in order by the time of the adjourned hearing, a further delay will be most unlikely.

45 The defendant, who has been dilatory, but who gained the sympathy of the Court because there was a crucial spell of some three months when he was trying without success to obtain representation, must pay the costs of and incidental to this application and also any costs of the plaintiff thrown away by reason of the adjournment on an indemnity basis.

Authorities

R.S.C. (1995 Ed'n): O.35/31.

Royal Court Rules 1992 as amended: Rule 8/5.