

ROYAL COURT
(Samedi Division)

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23rd September, 1996

Before: The Deputy Bailiff, sitting alone.

Between Rex Robert Wright Plaintiff
And (1) Rockway Limited
(2) Adam Lisowski
(3) Brian Thorn
(4) G. Garments Limited Defendants

Application by the Plaintiff for leave
to adduce evidence on quantum by affidavit

Advocate R.J. Michel for the Plaintiff
The Defendants did not appear and were not represented.

JUDGMENT

THE DEPUTY BAILIFF: Summons dated 10th May, 1996, the Plaintiff applied to the Royal Court for leave to adduce evidence on the question of liability by affidavit. By our Judgment dated 5th June, 1996, we granted the Plaintiff the application.

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The Plaintiff now seeks leave to adduce evidence of the quantification of his claims for general and special damages by affidavit.

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We have examined the facts of the case before us and paring them down to the barest of details severe injury was caused to the Plaintiff by reason of an accident which occurred on the 29th September, 1990, in Bangkok where he was working as a boatbuilder on a yacht. An airgun exploded, he claims, because a cylinder which was fitted to it contained not air but oxygen. The claim was disputed and there were other disputes contained within the pleadings.

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The Defendants have been kept fully informed by Advocate Lacey who has no instructions and who no longer acts but is passing on the material that she receives to Hamburg where her

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former Legal Adviser resides. The Summons for today was duly sent to her.

5 I am going to travel through ground that we have already travelled but we need to be certain that we have the power to accede to Advocate Michel's request.

10 There are a series of affidavits within the file including an affidavit from Advocate Michel and if Mr Wright were forced to come to Jersey together with highly qualified medical experts whose affidavits are before me, the costs would be very great indeed. The Defendants would not appear and the result would undoubtedly be the same.

15 Rule 6/18 of the Royal Court Rules 1992, as amended, require evidence to be heard in open Court with the proviso that evidence can be heard on affidavit. Rule 6/18(3) which states:

20 *"Where it appears to the Court that any party reasonably requires a witness for cross-examination and that such witness can be produced an Order shall not be made authorising the evidence of such witness to be given by affidavit"*

25 does not in my view apply to the facts of this case.

30 Looking at the provisions of the Supreme Court Practice, it seems to me reasonably clear that evidence by affidavit can be supplied to a Court in particular circumstances. As is said in Phipson on Evidence (14th Ed'n 1990) at 10-04:

35 *"Evidence has been allowed to be given by affidavit where the parties are poor and the witnesses resided at a distance."*

40 So in Burslem -v- Burslem 67 L.T.719 the Court gave leave to prove by affidavit bigamy, adultery and the identity of the husband. The basis of that Judgment was that the witnesses were in America and the expenses of a commission would be beyond the means of the Petitioner. We have had careful regard to the Judgment of The Finance and Economics Committee of the States of Jersey -v- Bastion Offshore Trust Company Limited, (9th October, 1991), Jersey Unreported; (1991)JLR N.1. CofA. and on the basis of that case we are satisfied that we have an inherent jurisdiction to proceed in the way suggested by Advocate Michel. In particular, the statement of the Court of Appeal on pages 15, 16, and 17 of that Judgment (we have already cited that in our earlier Judgment of the 5th June, 1996) are very much in point.

50 The Defendant is in this case a Jersey Company and the ship is registered in the Registry of British Shipping in Guernsey. I have no hesitation in giving Mr Michel the Order he requires.

I should perhaps add in passing that it seems to me, that the demeanour of the witnesses is much less important on the question of quantum than it might have been on the question of liability.

Authorities

Royal Court Rules 1992, as amended: Rule 6/18.

Phipson on Evidence (14th Ed'n): pp. 165-167; pp. 194-195.

R.S.C. (1985 Ed'n) Vol.1: 0.38.

R.S.C. (1995 Ed'n) Vol.1: 0.38.

J. Barber & Sons -v- Lloyds Underwriters (1986) WLR 515.

Finance & Economics Committee -v- Bastion Offshore (9th October, 1991)
Jersey Unreported; (1991) JLR N1.