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ROYAL COURT
(Samedi Division) 74.

23rd April, 1997.

Before: F.C .Hamon, Esq., Deputy Bailiff,
Jurats M.A. Rumfitt; and A.P. Quérée.

In the matter of the Representation of Louis Emile Jean

Between	Louis Emile Jean	Representor
And	Colin Douglas Murfitt	First Respondent
And	Murco Overseas Properties Limited	Second Respondent
And	The Viscount	Third Respondent

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(1) Application by the First Respondent for an Order setting aside the finding of the Royal Court of 17th May, 1995, (*See Jersey Unreported Judgment of that date*) that the signatures of the Representor and of his late wife on the agreement referred to as the "*séparation des biens*" were not genuine and were accrodingly forged; and

(2) Application by the Representor for an Order raising forthwith the stay ordered by the Court of Appeal in its Judgment of 24th September, 1996, (*See Jersey Unreported Judgment of that date*), on the enforcement of all Orders in this action relating to the taxation of costs, until such time as the Judicial Committee of the Privy Council shall have determined the First Respondent's application for special leave to appeal to Her Majesty in Council from the Judgment of the Court of Appeal of 18th April, 1996, and if such leave is granted, pending determination of the appeal.

Advocate J. D. Kelleher for the Representor
The First Respondent in person

JUDGMENT

THE DEPUTY BAILIFF: This is a representation brought by the first respondent. He has a letter dated 9th August 1993 which was not disclosed before and which shows in his submission that a separation signed by the representor and his late wife was not a forgery.

That, if proved true, would be important. The Royal Court decided on 17th May 1995 after a hearing held over two days and where eight witnesses were heard on oath and one on affidavit to the contrary. It must be noted that the respondent was ordered to pay the representor's costs on a full indemnity basis. One of the witnesses heard by the Royal Court was Advocate Roger Alan Perrot of the Guernsey Bar.

The judgment was appealed and the Court of Appeal sat on 16th and 18th April and dismissed the appeal. The Court of Appeal also refused the application of the first respondent for leave to appeal to the Queen in Council and ordered costs against him.

The matter is therefore chose jugée and the final decision has been made by a superior Court.

What of this letter? It reads:-

"Dear Mr. Welsh,

MURCO OVERSEAS PROPERTIES LIMITED

I refer to your letter of the 4th August.

I discussed with Francois Jean the capacity or otherwise of Mr. Louis Jean Senior to conduct his affairs. Francois told me that although for quite some time Louis was not in a position to do anything at all in a legal capacity, his condition has improved markedly, to the extent that he is fully aware now of what he is doing. My understanding is that at the time when Mr. Murfitt produced his "Separation des Biens"" neither Louis nor Judy had a clue as to what was going on. I do not for a moment think that a Court would uphold the document. It is simply one of the aggravating things which Mr. Murfitt came up with which he managed to persuade an old couple, who didn't understand the first thing about it, to sign.

In view of Francois's comments, it does not seem appropriate (at least at present) to apply for a guardian to be appointed to Louis.

I would welcome your attendance at the meeting on 10th August. I have not had an acknowledgment from Mr. Murfitt in respect of my letter to you of 23rd July, a copy of which was sent to him. I am sending another copy to him."

Yours sincerely,
Sgd. R.A. PERROT."

We also have a detailed affidavit from Advocate Perrot. We are only surprised to read that the letter was discovered at a late stage on 11th March 1996 but was not before the Court of Appeal when it met in April.

We must agree with Advocate Perrot that disclosure of the letter could not have affected the outcome of the Royal Court hearing on 17th May. As Advocate Perrot says in his affidavit:-

> *"It was certainly not my intention when writing to Mr Welsh on 9th August to imply that the "Separation des Biens" had been signed by the Jeans. In fact, far from it.*
>
> *As I think I made clear in my evidence before the Royal Court on 17th May, 1995, the sequence of events in relation to this matter was as follows. Mr Murfitt produced the "Separation des Biens" document which purported to contain the signatures of the Jeans. I immediately wrote to Judy Jean on 8th March, 1993. Her reply was equivocal and, in the light of her constant instructions to me to protect her and her husband from the machinations of Mr Murfitt, highly alarming. I therefore telephoned her immediately and she told me that the signatures were not theirs. Sadly, Judy died thereafter and Louis's mental state (something the Royal Court is by now familiar with), left me with no possibility of obtaining further evidence on the signatures. This left two possibilities. First, the signatures might have been forged. This was the inevitable consequence of what Judy had told me on the telephone. Second, that Judy and Louis had signed, but did not remember having done so. This was a possibility, despite it going against everything the Jeans had previously said to me. Judy was old and infirm, and not the businesswoman she had once been; Louis had trouble recalling things, sometimes from one day to another. Mr. Murfitt was cunning and quite machiavellian in his dealings with the Jeans. A copy of the transcript of my evidence is exhibited hereto and marked "RAP8". A copy of my letter to Mrs. Jean dated 6th February 1992 is also exhibited hereto and marked "RAP9".*
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> *At the time when I wrote the letter I wished to believe Judy, but feared the worst - namely that Mr Murfitt's hounding of the Jeans had finally succeeded. With hindsight, I accept that it would have been more felicitous for me to have used more studied language and, say, to have included some form of qualification such as "(if it was ever signed by them)" after the reference to the "Separation des Biens" in the middle of the second paragraph, but I did not. The letter was addressed to Mr Welsh, an independent administrator, and I suppose I did not use the same sort of phraseology that I might when dealing with Mr Murfitt. Whatever Mr Murfitt may wish to contend (and he has suggested that I deliberately committed perjury in this case and at one stage even suggested that I had prepared the "Separation des Biens" which he retracted in Court) there is nothing*

sinister in the absence of the letter from discovery and, in my opinion, it does not affect the lack of authenticity of the "Separation des Biens".

We agree with Advocate Perrot when he says that the Royal Court relied substantially upon the evidence of two forensic experts - Mr. Hughes and Mr. Ansell. There was no evidence heard from the first respondent who chose not to give evidence and of course neither the representor nor Mrs. Jean, who died in 1993, were able to give evidence at the hearing.

There is, in our view, nothing in this new letter which would allow us to take the unusual step of awakening a matter which the Court of Appeal has very firmly put to sleep.

Mr. Murfitt has cited to us the case of Hacon v. Godel and Brocken & Fitzpatrick Ltd (27th October, 1989) Jersey Unreported; (1989) JLR N 4. That case decided "***that an appellant seeking to adduce fresh evidence before the Court of Appeal must show, inter alia, that the evidence if given will probably have an important, though not necessarily decisive, influence on the result of the case, and fails on this point if it is impossible to infer from the transcript of the trial that the lower Court attached more weight to the evidence sought to be overridden by the fresh evidence than it did to the rest***".

We can see nothing in the disclosed letter that gives us any feeling of unease.

We now turn to the second summons before us this morning, which is an application by the representor that the stay on the enforcement of costs ordered by the Court of Appeal in its judgment of 24th September, 1996, be raised forthwith.

In its judgment of 24th September, the Court of Appeal stayed enforcement of all orders in the action relating to the taxation of costs until such time as the Judicial Committee of the Privy Council had determined the first respondent's application for special leave to appeal to Her Majesty in Council from the Court of Appeal's judgment of 18th April, 1996 and if such special leave were granted until determination of the appeal. The leave was however made subject to a proviso that the first respondent lodge his petition for special leave to appeal to Her Majesty in Council on or before 31st October, 1996 and that he thereafter prosecute his petition with all due expedition with liberty to the representor to apply to the Royal Court for that purpose.

That, in effect, gives us jurisdiction in this matter.

There are three conditions attaching to a petition for leave to appeal under Rule 4 of the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982:

"4. A petitioner for special leave to appeal shall lodge:-

(a) 6 copies of the petition and of the judgment from which special leave to appeal is sought

(b) an affidavit in support of the petition as prescribed by Rule 50, and

(c) unless a caveat as prescribed by Rule 48 has been lodged upon other parties who appeared in the Court below, an affidavit of service upon such parties of notice of the intended application".

Paragraph 4(c) has not been complied with. There has been no *caveat* lodged. The Privy Council Office has not received the affidavit of service or notice of it so that there has been no way that the matter could be progressed beyond filing of the petition and judgment. We have had an explanation from Mr. Murfitt to the effect that he could not progress the matter further until he had received "the transcript." The transcript was ready on 21st March, 1997, but obviously would not be released to the first respondent until he had paid £744, being the transcription fee. Mr. Murfitt seems to take the view that the legal aid certificate D 3912 granted to him for the services of Advocate Hoy on 27th April, 1995 acted as a form of voucher to enable the transcription fee to be waived. There is a total flaw in that argument because the only way that a fee of this nature can be waived (if at all) is by Mr. Murfitt obtaining an exemption certificate from the Viscount. No such application for an exemption certificate has been made to the Viscount. There is no guarantee, of course, that the exemption certificate would issue.

We are encouraged by the fact that Mr. Murfitt has a lawyer in Jersey with whom he is in contact but who has not appeared before us today and by the fact that he now has a solicitor, albeit his cousin, (who is apparently aspiring to be a High Court Judge) and a barrister, but this Court has had no contact with them nor apparently has the Privy Council, and Mr. Murfitt is awaiting the visit to his home in Alderney of this barrister who will in due course discuss the matter with him at his leisure.

We cannot see that there is any indication from what we have heard today that Mr. Murfitt is "prosecuting his petition with all due expedition".

In the circumstances, and despite the fact that Mr. Murfitt has appeared before us and behaved with great courtesy, we are going to make an order that the matters stayed by the Court of Appeal should now be raised.

Dr. Kelleher, you shall have the taxed costs of and incidental to this day's hearing.

Authorities

Hacon-v-Godel & Brocken and Fitzpatrick, Ltd. (27th October, 1989) Jersey Unreported; (1989) JLR N.4.

Judicial Committee (General Appellate Jurisdiction) Rules Order 1982: Rule 4.