

ROYAL COURT
(Samedi Division)

24th April, 1997.

76.

Before: The Judicial Greffier.

Between Victor Hugo Properties Limited Plaintiff
And Antler Property C.I. Limited Defendant

Application by the Plaintiff to strike out parts of the prayer of the Defendant's Answer.

Advocate G.R. Boxall for the Plaintiff;
Advocate S.J. Habin for the Defendant.

JUDGMENT

THE JUDICIAL GREFFIER: On 7th April, 1997, I heard this application and found in favour of the Plaintiff. However, as the application dealt with an unusual point of procedure, I indicated that I would produce a Statement of Reasons in relation thereto for the assistance of the legal profession.

The Plaintiff owned certain land at Grève D'Azette, St. Clement. It entered into certain negotiations with the Defendant with a view to the sale thereof and the Defendant, in its Answer, claimed that certain representations were made on behalf of the Plaintiff that the Defendant could purchase the land for a certain price and that by reason thereof the Defendant has a claim for damages against the Plaintiff. In fact, rather than commencing an action, the Defendant imposed a caveat on the said land in July 1996, which has been renewed from time to time. The action brought by the Plaintiff is for the lifting of the caveat.

The Defendant's Answer contained a statement of the nature of its claim against the Plaintiff and although no section of the pleading was expressly referred to as the Counterclaim, paragraphs (ii) and (iii) of the Answer contained prayers seeking damages and interest on such damages.

In February, 1997, the Plaintiff sought to have the action set down on the hearing list and I then indicated that the position ought to be clarified prior to setting down as to whether there was or was not a counterclaim. As a result of

this, the Plaintiff issued a Summons seeking to strike out the said prayers (ii) and (iii) of the Answer.

5 Advocate S.J. Habin, on behalf of the Defendant, indicated that it was his client's intention to bring a counterclaim in relation to this action. Clearly, the existing Answer was defective inasmuch that the party who seeks to make a counterclaim must clearly differentiate between the part of the document which contains the Answer to the original claim and 10 the part of the document which contains the counterclaim. The Defendant may properly repeat certain paragraphs of the Answer at the start of the counterclaim before going on to set out the facts which give rise to the counterclaim.

15 However, as there did not seem to me to be very much point in my striking out the offending parts of the prayer in the full expectation of a later application to file an amended Answer and Counterclaim, I went on to consider the issue as to whether it was appropriate to allow the proposed counterclaim to be made in 20 this action.

Rule 6/9(2) of the Royal Court Rules, 1992, as amended, reads as follow:-

25 *"(2) Where a defendant sets up a counterclaim, if the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counterclaim but in an independent action, the Court may at any time order that such counterclaim be excluded."*

30 It seemed to me that the Plaintiff, in this case, was so contending. The decision which I had to make was as to whether, where an application is brought by Order of Justice in order to lift a caveat, the underlying issue between the parties ought to 35 be tried at the same time as the lifting of the caveat.

40 Although, at first glance, this might appear to be convenient inasmuch that some consideration of the merits of the underlying claim would be necessary at the hearing in relation to the hearing of the caveat, I decided that it would never be appropriate for the two matters to be joined together in one action. I decided this for a number of reasons. Firstly, the procedure which we still have in Jersey in relation to the lifting of a caveat being applied for by Order of Justice, is 45 both antiquated and inconvenient. It is currently paralleled under the Probate (Jersey) Law, 1949, as amended, with a similar procedure in relation to caveats against grants of Probate or Letters of Administration. However, there are currently proposals, which have been approved in principle by the Royal Court, for an amendment of that procedure to bring it in line 50 with the procedure for the lifting of an injunction. It seems to me that the same ought to occur, as soon as possible, in relation to the lifting of a caveat. Secondly, the test which will be applied in relation to the strength of the case for the claim by

virtue of which the caveat is maintained, in an application to lift a caveat, will be quite different from the test to be applied on the trial of the claim itself and it will never be necessary to go into all the issues relating to the claim in order to determine that lower test. Thirdly, an application for lifting of a caveat ought to be capable of coming before a Court at an early date and ought not to be delayed by the full procedure required for the preparation of the underlying claim for trial.

Accordingly, I decided that the underlying claim ought to be dealt with separately and that the hearing of the application to lift the caveat ought to come on as soon as was reasonably possible. I struck out the offending paragraphs of the prayer of the Answer and indicated that I would not grant leave for the Defendant to file an amended Answer and Counterclaim, if such an application were subsequently to be made by the Defendant.

Finally, I ordered that the Plaintiff pay the taxed costs of the Defendant of and incidental to the application for the striking out and reduced the normal time period for mutual discovery upon setting down from twenty-eight days to fourteen days.

Authorities

Royal Court Rules 1992, as amended: Rules 6/9, 6/13, 6/21.

R.S.C. (1997 Ed'n): Vol 1: pp.327-336.

Le Gros: "Traité du Droit Coutumier de l'Ile de Jersey" (Jersey, 1943):
De l'Opposition à la Passation d'un Contrat Héritaire: pp 330-
332.