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Royal Court.
(Samedi Division) 207.

17th November, 1997.

**Before Sir Philip Bailhache, Bailiff,
and Jurats Le Ruez and Vibert.**

Between	John Arthur Bennett Bower	Appellant
And	The Planning and Environment Committee of the States of Jersey	Respondent

In the matter of an appeal by the Appellant from an administrative decision of the Respondent Committee.

Appeal by the Appellant against the Order for discovery of the Judicial Greffier of 29th August, 1997.

The Appellant on his own behalf
Advocate J.Martin for the Respondent Committee

JUDGMENT.

THE BAILIFF: This is an appeal against the order of the Greffier Substitute of 29th August, 1997, ordering discovery of documents. The Appellant, who appeared in person, also seeks to obtain certain other orders from the Court but we shall come to those in due course.

The appeal which is set down for hearing in February, 1998, relates to an enforcement notice issued by the Planning and Environment Committee, to which we shall refer as the Respondent, as long ago as 19th July, 1995, requiring certain alleged unauthorised works, namely the construction of a road-side wall and access to be removed or reconstructed.

The Greffier ordered the furnishing of a list of all documents in the categories set out the following schedule:

"

1. *Any correspondence and/or documentation relating to alleged unauthorised works; the subject of the appeal.*
2. *The alleged agreement between Mr. John Beaty and Mr. Lyons and the Appellant's father in relation to replacing an access to the Le Jardin de Devant, which access was lost on the sale of the Jardin de L'Est and in relation to raising the height of the roadside wall.*

3. *The Respondent's procedure regarding "reasonable access" from 1/1/71 up to date and continuing.*
4. *The alleged discussions and/or agreements with Mr. Alan Humphries and the Appellant's father in relation to raising the roadside wall.*
5. *Any correspondence and/or documents relating to the Appellant's father's applications to the Respondent from 1/1/71 to the date hereof.*
6. *Any correspondence and/or documents relating to the service of the enforcement notice including any complaints made against the Appellant by third parties."*

The Appellant's first ground of complaint was that there had been unethical correspondence between the Judicial Greffier and the Respondent's lawyers designed to prevent the Appellant from obtaining the facts of the case. We interpose here that we refer during the course of this judgment both to the Judicial Greffier and to the Greffier Substitute: the same individual was concerned throughout although the Judicial Greffier retired on 30th June, 1997, and was subsequently appointed the Greffier Substitute.

The Appellant referred us to the correspondence of which he complained which followed a written application on 4th June, 1997, by the Respondent for the appeal to be set down for hearing. The Judicial Greffier, as he then was, replied on 10th June, in the following terms.

"Thank you for your letter dated 4th June, 1997, requesting that this matter be set down for hearing.

I have made the appropriate order but I have not made a general order in relation to discovery of documents as I am of the opinion that, at most, a limited discovery order ought to be made in relation to such proceedings.

You should, therefore, seek to agree the ambit of discovery by reference to specific issues in the proceedings. If you are unable so to do, then you will need to issue an interlocutory Summons before me again seeking an order of discovery limited to defined issues..."

That letter was followed by a letter dated 20th June, 1997, from Advocate Costa, acting for the Respondent, to the Judicial Greffier. It is unnecessary to relate the whole of that letter. Mr. Costa expressed surprise at the indication that a general order for discovery should not be made and suggested that all orders for discovery were limited to the defined issues.

On 25th June the Appellant wrote to Mr. Costa giving notice that he would be asking for full discovery of the Respondent's files although it seems that that letter was not copied to the Judicial Greffier. On 26th June the Judicial Greffier replied to Mr. Costa's letter of 20th June in the following terms:

"...I fully understand your frustration in relation to the difficulties with dealing with Mr. Bower in relation to this case.

However, a combination of the decision of the Deputy Bailiff in the Mayo -v- F&E Committee case, which was an example of judicial review and discussions with an

English expert on Judicial review and on appeals against decisions of Public bodies, has brought me to the conclusion that it is not appropriate in the case of an administrative appeal to simply make an Order for mutual general discovery. Such an Order would never be made in England in relation to a similar matter. The problem with administrative appeals is that, unlike normal actions, there are not always clearly defined issues between the parties.

My purpose here is to ask you to work out what are the clearly defined issues between the parties so that I can make a general Order for discovery which is confined to documents which relate to those specific issues.

I fully appreciate your difficulties in trying to obtain any consent from Mr. Bower and so I would suggest that you simply put together a Summons seeking an Order for general discovery in relation to certain precisely defined issues and that you then proceed to fix a date for a hearing in relation thereto..."

That suggestion was adopted, a summons was issued by the Respondent and argument took place leading to the Order against which this appeal is brought.

The Appellant complains that the Judicial Greffier had prejudged the issue of what form of discovery should be made by stating, :*"I am of the opinion that, at most, a limited discovery Order ought to be made in relation to such proceedings."* and, that such a private correspondence was, in any event, improper.

So far as the last point is concerned we think that there is some force in the Appellant's submission. If correspondence of this kind is to take place, and we understand the administrative constraints under which the Judicial Greffier works, it should always be copied to all parties to the action. Private correspondence with one of the litigants is bound to give rise, at the least, to suspicion and misunderstanding.

So far as the allegation of prejudice is concerned it is naturally of critical importance that the Judicial Greffier when acting in an administrative capacity ought not to give the impression that judgment might later be given by him acting in a judicial capacity in one way or another.

In this instance we do not think that he was prejudging the issue. We have no doubt that he was trying, in good faith, to give an indication of the relevant legal issues which would be considered at the hearing in due course. We think that some of the phraseology employed was unfortunate but we are satisfied that the issue was not being prejudged. Indeed, it is clear that at the hearing the Greffier Substitute acceded to some of the submissions made by the Appellant and broadened some of the categories set out in the schedule to which we have referred.

The Appellant accepted that it was for the Court to define the parameters of what is relevant for the purposes of discovery. The Appellant also accepted that the Greffier Substitute had fairly summarised during the course of his judgment the categories of documents which the Appellant had argued on 29th August, ought to be included. The relevant part of the judgment reads as follows:

"Upon reading my notes of the hearing on 29th August, 1997, it appears to me that the only category of documents which was requested by Mr. Bower which I refused, was a category which I have described in my notes as 'documents between lawyers of Mr. Bower's father, and the I.D.C. in relation to the property known as Les Buttes and adjacent land from 1974 onwards.' Mr. Bower indicated that his late father had been threatened with compulsory purchase and that there had also been disagreements with the I.D.C. in relation to the closing down of a piggery. He indicated that there was also matters relating to the remise des biens of his late father. In his view, the predecessor of the Respondent had consistently showed a bias against the Bower family. In my view, these matters are not matters in issue between the parties in relation to this appeal because they are not pleaded and even if pleaded would be of doubtful relevance and an Order for discovery in relation to these matters is not necessary for disposing fairly of the appeal or for saving costs and, accordingly, I refuse this application."

In our judgment the Greffier Substitute set parameters of relevance which are fair and reasonable. It is, and will remain, open to the Appellant to make application for discovery of any further specific documents which might appear appropriate as the trial proceeds. In the meantime it appears to us that general discovery of all categories of relevant documents has been ordered. The appeal is accordingly dismissed.

Authorities.

De Smith: Judicial Review of Administrative Action (4th Ed'n): pp. 203-4; 238-40; 346-7; 578-9.