

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

13th January, 1987.

Before: The Deputy Bailiff, assisted by Jurats H. Perrée and J.M. Orchard.

BARFORD LIMITED

BRIAN CHANDLER

PLAINTIFFS

AND

PAUL ALEXANDER CHURCH

CHIMERA SECURITIES INC.

DEFENDANTS

LLOYDS BANK PLC

PARTY CITED

Application by Chimera Securities, Inc., to adjourn hearing.

Adv. T.J. Le Cocq for Chimera Securities, Inc.,

Adv. R.J. Michel for the Plaintiffs,

Adv. T.J. Herbert for L.P. Phillips and D.J. Buchler,

parties given leave to intervene.

Judgment

The Deputy Bailiff: Rule 7/5 of the Royal Court Rules, 1982, provides that the Court may, if it thinks it expedient in the interests of justice, postpone or adjourn a hearing for such time and on such terms, if any, as it thinks fit.

The paramount consideration, therefore, is the interests of justice rather than the balance of convenience although, of course, the convenience of, or advantage or disadvantage to, either party, is a matter to be taken into account in arriving at the interests of justice.

Mr. Le Cocq's first submission related to Mr. Douglas Kenneth Chick's latest affidavit - delivered to him on Saturday last - comprising some 50 pages and exhibits comprising 2 files of documents. He, Mr Le Cocq, had managed only a single reading of the affidavit and he had had no opportunity to consider the documents.

In reply, Mr. Michel at first said that he did not wish to withdraw the affidavit but later said that if the affidavit, per se, meant an adjournment, he would withdraw it. The affidavit contained more up to date information than that provided previously, but it was largely repetitive.

The element of surprise was in volume rather than content; it contained only some 5 or 6...

pages of new material. Whilst he would like to make use of it he would withdraw it rather than agree to or concede an adjournment.

But, ~~OUR~~ opinion is that in the interests of justice, the paramount consideration in this matter, the Court itself should have the benefit of this new affidavit and the benefit of addresses from both counsel upon it, and we have to recognize that Mr Le Cocq has had insufficient time to consider it. Therefore, it is expedient, in the interests of justice, that we should adjourn the hearing.

Mr Le Cocq's second submission related to the Plaintiffs' statement of claim in the English proceedings - some 124 pages of it. He had had nothing but a cursory glance at it. He was, at present, in a state of unpreparedness to attack the ~~jurisdictional~~ question.

Mr Michel, stated that because the statement of claim is not relevant to the present proceedings, it must be ignored.

Nevertheless, Mr Michel conceded that the statement of claim, which was made available as an an act of courtesy and was not relevant to the present proceedings, constituted illuminating and instructive reading and gave the background to the whole matter.

Again, we are concerned with the interests of justice and it seems to us that the statement of claim, whether directly relevant or not, would ^{or might} assist the Court in deciding the jurisdictional question, and that we are entitled to be addressed upon it.

Mr Le Cocq's third submission related to the evidence which Mr Chick is to give by deposition in the Florida proceedings on the 22nd January, 1987. Mr Le Cocq argued that the evidence to be given by Mr Chick could be highly germane because, if he says that nothing took place in Jersey at any time, that would be highly relevant to the consideration by the Jersey Court of the jurisdictional issue, and, in any event, his evidence would increase the information before the Court.

We are satisfied that the American issues are virtually identical to those we shall have to decide in Jersey, albeit the objective is different assets. No authority was produced to us to show that the evidence to be given by Mr Chick could not be available to the Jersey Court in some form. Therefore we do not decide that question but express the hope that, in the interests of justice, we shall receive every possible assistance from whatever source.

An adjournment at this stage does not mean that ultimately Mr Miller will be able to deny the Plaintiffs' access to the documentation; it merely means that the issue will be fully argued, with both sides fully prepared, to the great benefit of the Court and thus of the interests of Justice.

Further, we have taken a view on the issue of the undertaking given by Chimera Securities in the Court of Appeal, but we do not adjudicate on it. It is enough that we should delay until the question whether or not Mr Chick will give evidence is resolved elsewhere.

The only other matter that we have to consider is that of prejudice. The injunction will remain and the Plaintiffs are thus protected to the extent of \$233, 329, 58. . . Moreover, the documentation will remain in the hands of the Viscount and thus safely preserved for the Plaintiffs, if they succeed after the adjournment. The delay has not been inordinate and the Plaintiffs have contributed to it by late delivery of documentation. The prejudice is not such as to cause us to refuse an adjournment that we believe to be in the interest of justice.

Accordingly, we grant an adjournment to a date to be fixed by the parties in consultation with the Deputy Bailiff when the issues relating to the Florida proceedings on the 22nd January, 1987, have been resolved or at least clarified. In the meantime Mr Le Cocq will consider the documentation and if appropriate submit an affidavit in response to the most recent affidavit of Mr Chick, but we stipulate that he must deal with these matters as matters of urgency.

Finally the terms, if any, on which we grant the adjournment are in our discretion and we order that Chimera Securities Incorporated, will pay all the costs of and incidental to the application for an adjournment - we think the term used in England is "the costs of the day".