

87/24.

Royal Court1987, the 11th day of MayBefore: Mr. Commissioner Le Cras, Jurat Perrée. Jurat Le BoutillierBETWEENJohn Purdie, Elizabeth Marguerite  
Purdie (née Stevenson) and  
Lancashire Hotel (Holdings) LimitedPlaintiffsANDLewis Michael Gould, Philip Martin  
Bailhache, William James Bailhache,  
and Graeme Radford Boxall, exercising  
the profession of advocates under the  
names of "Bailhache & Bailhache"Defendants

Appeal by the Plaintiffs from the  
Deputy Judicial Greffier's decision of  
the 21st April, 1987.

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Advocate G. Le V. Fiott for the plaintiffs.  
Advocate M.C.St. J. Birt for the defendants.

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Judgment

Mr. Commissioner Le Cras: The first point is that we consider that it is not  
necessary to make any order as to whether the Deputy Judicial Greffier exceeded

his powers. We are dealing with this on the basis that either it is an appeal from the Deputy Judicial Greffier, or it is an application from Mr. Birt, which he could quite properly bring to this Court, and in these circumstances we find no need to make a decision on that point.

The application, as I will call it, is that prescription should be argued as a preliminary issue. The points at issue are those which are set out in the further and better particulars of the answer in Paragraph 1(a) and 1(b). The assertions which the Court would be asked to assume for the purposes of hearing such a preliminary issue, as put to us by Mr. Birt are that the defendants were the lawyers to the plaintiffs with regard to the purchase of the Company; that there was a binding share vending agreement rather than, as described by Mr. Birt, a preliminary agreement, dated the 21st May, 1974; that completion was to be on or before the 31st of December, 1974, that it would be accepted that the defendants owed a duty to exercise reasonable skill and care; that it was likely, though subject to evidence, that the plaintiffs knew nothing of the defects until 1984, and that for the purpose of this argument there were some defects.

I think that is what you intended to say. Wasn't it Mr. Birt?

**Mr. Birt:** I believe, Sir, that I said it was "likely", rather than "unlikely" that the plaintiffs knew nothing of the defects.

**Commissioner Le Cras:** Well, what you said was that the plaintiffs obviously knew nothing of the defects until 1984, and then you qualified that in due course by saying that you wished them, nonetheless, if required, to give evidence finally on that point, in case you wished to amend your pleadings. So I think that to say, "likely, subject to evidence", was what you asked us to say, isn't it? For the purposes of hearing the preliminary issue, the Court would propose to hear it on those assumptions.

The Court is satisfied that this is an issue which can be separated; the evidence seems to be limited and will not be repeated on the issue of liability. In Tort, it will be limited to the date on which the plaintiff made the discovery, after

which it seems to the Court that it is a pure legal point at issue; and in Contract it would be limited if any evidence is heard at all - to expert legal evidence as to what is the practice in the island, although in the latter case it appears to the Court to be a point of law, of construction, and for the Court to decide what the practice should be.

The Court has noted the delay in making the application, but in this case is prepared to disregard it, as it is, in the view of the Court, more complicated to carry on with the case as a whole than to divide it in the way it is suggested by the defendants. The Court however, would like to make it plain that the delay was an issue of some weight, and to make it clear that such applications ought to be brought at the earliest possible date.

To repeat therefore the appeal, if it is an appeal, is refused or in case the Greffier had no power to make the order, we grant the defendants' application subject to our findings as above, and we make the same order for discovery that is that it be limited to the issue of prescription, and we wish to say that we desire that this case should come on at the very earliest possible date.

