

ROYAL COURT

5th April, 1989

Before: The Bailiff sitting as a Single Judge

Between	Kenneth Ancrum Forster	Plaintiff
And	States of Jersey Harbours and Airport Committee	First Defendant
And	Mr. Michael Ross Lanyon	Second Defendant

Summons by Defendants requesting that
evidence in respect of Plaintiff's
application for an injunction should
be limited to affidavit evidence.

Advocate P.C. Sinel for the Plaintiff,
Advocate C.E. Whelan for the
First and Second Defendants.

JUDGMENT

BAILIFF: This matter comes before the Court by way of a summons served by the defendants on the plaintiff asking that evidence to be heard on the plaintiff's summons for an injunction should be limited to affidavit evidence and that the affidavit of Michael Ross Lanyon should be read at the hearing on such conditions as the Court thinks reasonable.

The background to this matter goes a little further than that. It arises from the fact that the plaintiff in one of the actions was Kenneth Ancrum Forster trading as Airport Business Centre and he occupied some premises at the Airport. As a result of an order of eviction served on him, he challenged the validity of it in the Petty Debts Court which gave a ruling in March, 1989, that the notice which he had received to quit from the Harbours and Airport Committee, acting through, I assume, their servant, Mr. Lanyon, the Airport Commandant, was a good and valid order.

However in August, 1988, the plaintiff commenced what was described by Mr. Whelan, appearing for the Harbours and Airport Committee and Mr. Lanyon this morning, as parallel proceedings in this Court asking the Court, firstly, to rule that he had a valid tenancy from the Harbours and Airport Committee and, secondly, accordingly that their actions were such that he ought to be awarded damages.

There is a difficulty here inasmuch as that there seems to be no provision in the appeal provisions from the decisions of the Petty Debts Court on matters of law for the Royal Court to award damages if it upholds the appeal. It is no doubt due to that lacuna in our law that Mr. Sinel, advising Mr. Forster, commenced what had been described, I repeat, as the parallel proceedings.

In addition to those two proceedings, one in the Petty Debts Court which has been ruled upon already, as I have said, and one in the Royal Court, on the 1st February of this year the plaintiff issued a summons asking that the Court should grant an interim injunction "restraining the defendants, their servants, or agents from harassing the plaintiff or interfering with his lawful business or causing or directing port control officers to act in such a manner as to hamper or discourage his legitimate business activities ...".

The proceedings were started in that manner because I was told by counsel for the plaintiff, Mr. Sinel, that he had applied to the Deputy Bailiff for an interim injunction which was refused on the ground that the defendants were persons of means, or at any rate the States were, and that accordingly it would not be right to grant the injunction.

Rule 15/4(A) of the Royal Court Rules, 1982, as amended, provides that an Order of Justice shall be signed by the Bailiff, or by an advocate or solicitor unless an interim injunction, 'arrêt entre mains' or other judicial act is sought therein, in which case it shall be signed by the Bailiff.

What Mr. Sinel has said to me this morning is that the only way he could obtain an injunction was by means of a summons. I must disagree. He admitted that the service of this summons did not require the defendants to desist from what it is said they were doing, but that it would only be when the matter came before the Court, constituted of the Bailiff, Deputy Bailiff and two Jurats because facts would be involved, that the injunction would or would not issue. That being so, I do not think that it is right for a summons in this form to have been issued at all. I think that an application should have been made to the Deputy Bailiff or myself, not for an interim injunction which would be refused and because it had already been refused by the learned Deputy Bailiff, but for an ordinary injunction which would not take effect until the Court had adjudicated on it. I do not think that it is the proper way to apply for any form of injunction. The proper way is through an Order of Justice signed by myself or my Deputy. I do not criticise Mr. Sinel for adopting this view; he had to find some way of bringing the matter before the Court, but that is not an issue on which I have to give a formal ruling today.

I do not have much regard to the skirmishing if I may describe it, between Mr. Sinel and Mr. Whelan as regards this matter, it is not something which really concerns this Court. Obviously one expects members of the Bar to co-operate in bringing their problems to the Court in an amicable manner. There is however, one matter which is somewhat disturbing and it is this: that Mr. Whelan was able to apply and get an order from the Greffe for an abridgement of time for this summons to be heard. Originally today we were to hear witnesses and to that end Mr. Sinel himself notified Mr. Whelan and indeed followed up that notification by issuing summonses calling a number of people to be heard. But as I say, Mr. Whelan was able, without apparently filing any affidavits for approval by the Greffier.

I look at the White Book which is as near as we can have to our own rules and it would be a convenient place for me to cite our rule here in relation to affidavits: "Evidence 6/18(1). Subject to these rules and to any enactment relating to evidence any fact required to be proved at the hearing of any action by the evidence of witnesses shall be proved by the examination of witnesses orally and in open Court, provided - there are a number of exceptions - that the Court may allow any evidence to be given by affidavit". When an application is made for an order to that effect it is by summons for directions or on application; in England, by notice under it. "A draft of the proposed affidavit should be submitted for the consideration of the other side before the application, unless it is clear what it will contain", that is Order 38/2/1. "It is not practicable to make such an order where the evidence will be strongly contested and its credibility depends on the Court's view of the witness (eg the evidence of an eye witness in a running-down action) or witnesses in an action for rectification where there is little documentary evidence".

It seems to me if there is an allegation of harassment by Mr. Forster against certain people at the Airport, obviously that fact is going to be strenuously denied and equally strenuously put forward respectively by the plaintiff and defendant and it seems to me in those sort of cases that that kind of evidence should best be heard in open Court.

The difficulty I face is that Mr. Sinel, in reply to my question, said that he wanted the witnesses to be there in order that he could cross-examine them. Then Mr. Whelan quite rightly pointed out that in fact the three main witnesses whom he has not called, relying as he was on the affidavit of Mr. Lanyon, were Mr. Lanyon, Mr. Such and Mr. Peebles, all States of Jersey employees, and Mr. Wilson, who have in fact been summoned for the hearing by the plaintiff. So the plaintiff cannot both summon and at the same time require them to be cross-examined. That is inconsistent. But what Mr. Sinel said was that these gentlemen, having been summoned would be bound by the oath they would take to tell the Court the truth and that is what he was seeking. Whether it was for that reason or whether it is for the reason that if they were called by the other side they should be cross-examined I am satisfied that at the hearing of the allegations about harassment, it would be proper for the evidence to be heard viva voce before

the Court. Therefore so far as the summons of Mr. Whelan is concerned it is dismissed.

I was notified also that in addition to the Petty Debts hearing, which is now being challenged under a procedure which was agreed last Friday in the Court, and the parallel proceedings there is a notification by Mr. Whelan to Mr. Sinel that he is seeking a date to strike out what I have called the parallel proceedings as being an abuse of the process of the Court. Obviously, if that were to succeed then that part of the parallel proceedings which seeks a declaratory judgment in relation to the occupation by Mr. Forster of premises at the Airport, would become unnecessary. The difficulty that I face and I can see that Mr. Sinel also faces is that if he were to succeed on the appeal proper, leaving out the declaratory side, he might not be able to obtain any damages. But nevertheless I think that where an application is being made at any hearing to have the other side's case struck out, it is desirable that that application should be heard before the Court proceeds further. Therefore, whilst I dismiss the summons of Mr. Whelan with costs, I do say that so far as the hearing of the harassment matter is concerned, that should stand down until the issue of the parallel proceedings has been tried and Mr. Whelan's application to strike them out has been heard.

The Court will certainly be faced even at the end of that hearing with the difficulty of how, if Mr. Sinel is right eventually that there was a good lease, to compensate Mr. Forster for the wrong actions of the Harbours and Airport Committee, but that is a matter which I do not think I can speculate upon at the moment. Suffice it to say that the Court might have to find a new procedure for that matter to be brought before it.

Authorities

Royal Court Rules, 1982: Rule 15/4(A).

Royal Court Rules, 1982: Rule 6/18(1).

R.S.C. O.32/2/1.