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6 pages.

1st August, 1989.

Before the Deputy Judicial Greffier

BETWEEN	Parkwood Limited	PLAINTIFF
AND	Midland Bank plc	DEFENDANT

Application by the defendant, under Rule 4/1 (4) of the Royal Court Rules, 1982, as amended, for an order that the plaintiff furnish security for the defendants costs.

Advocate R. J. Michel for the Plaintiff.

Advocate P. A. Bertram for the Defendant.

Judgment

The Deputy Greffier: This is an application by the defendant for an order that the plaintiff furnish security for its costs. The parties accept that should I find that security for costs ought be ordered, it will not be necessary for me to consider the amount of the security, as they are agreed on the figure, which, I have noted, is in the sum of £9,400 and to include the costs the trial itself.

It is the usual practice of Jersey Courts as in England to require a foreign plaintiff to give security for costs as a matter of discretion because it is just to do so. So is it just or not to order security in the circumstances of this case ?

In his opening address, Advocate Bertram, for the defendant, submitted that this application was a classic example of an instance where security should be

ordered: the plaintiff was outside the jurisdiction (resident in the Isle of Man), without assets within the jurisdiction. Furthermore, the plaintiff was very wealthy, admitting to assets of US\$14,500,000. There was thus no question of the defendant's seeking to take advantage of a weaker party, by seeking an oppressive order for security. The action, Mr. Bertram submitted was a triable action, that is to say one which could only be decided before the Court, given the complexity of the issues, and, he maintained, his client had good and valid defences; Mr. Bertram also pointed out that instances in the United Kingdom jurisdiction where security had been refused tended in recent years to turn predominantly on a situation where there were ample statutory facilities for reciprocal enforcement between foreign jurisdictions. Mr. Bertram submitted that that did not seem to be the situation in the instant action. Given the above facts, Mr. Bertram submitted that an order for security should follow as a matter of routine. If the plaintiff opposed such an order it was for the plaintiff to demonstrate what was so exceptional about this action as to justify a decision to refuse the usual order for security.

Mr. Michel, in answer, conceded that it was unusual to refuse an order for security for costs against a wealthy plaintiff resident outside the jurisdiction, but that decision was entirely discretionary. He referred me to the Supreme Court Practice, 1988 Edn, O.23/1-3/2 (page 397): "Security may not now be ordered as of course from a foreign plaintiff, but only if the Court thinks it just to order such security in the circumstances of the case". Mr. Michel, referring to Aeronaive S.P.A.-v- Westland Charters, Ltd (1971) 1WLR 1445, pointed out that this principle was not recent, but was being applied in 1971. In inviting me to exercise my discretion in favour of the plaintiff and refuse an order for security, Mr. Michel argued that the defendant offered only two defences to the plaintiff's allegation that it had debited large sums of money from the plaintiff's account with the defendant without proper authorization neither, of which defences, Mr. Michel submitted, stood up:

The first defence was that the defendant did have proper authorization; but, Mr. Michel submitted, the defendant had been unable thus far to produce documents to support that. The defendant's second defence was that, notwithstanding that the plaintiff's bank account might have been operated other than in accordance with the mandate, the funds were nevertheless used for the benefit of the plaintiff; but, Mr. Michel submitted, from the papers he had so far been able to see, it was clear, that this was not so. Mr. Michel submitted that I should take into account whether or not the plaintiff stood a reasonably good prospect of success, before ordering it to furnish security. He submitted that the plaintiff stood a very high probability of success, and, as *Browne - Wilkinson V, - C.*, had said in Porzelack K.G. -v-Porzelack (UK) (1987) 1 All ER 1074, at page 1077, letter 'e', this should "weigh in the balance". However, Mr. Michel conceded that it was not possible for him to say that there was no triable issue.

Mr. Michel also referred to what he felt was the oppressive nature of the defendant's application: The plaintiff, admittedly, had very large assets but they were not liquid assets; he likened the plaintiff to an Isle of Man resident owning a £10,000,000 property, but with no freely disposable income. This situation had arisen as a result of a fraud perpetrated against the plaintiff, which had involved expensive litigation in order to recover the assets. In this situation, Mr. Michel argued that, in the exercise of my discretion, I should consider whether the defendant's application might not be oppressive, as the only way for the security to be paid would be for the plaintiff to sell assets, as *Parkwood Ltd*, as of now, was without liquidity to pay even legal fees incurred in the litigation. To force the plaintiff to sell assets would be to force it to act to its detriment. Finally Mr. Michel submitted that the defendants had delayed until the last possible moment before applying for security.

In reply, Mr. Bertram stated that he found it hard to accept that a plaintiff with such vast assets was unable to find the relatively small amount of security sought, or with such vast collateral, was unable to find a banker prepared to advance the money. Mr. Chick, the financier behind 'Insituform' (the process for laying underground pipes without having to dig up the surface of the ground above) from which the plaintiff's wealth originated, was a very wealthy man; Mr. Bertram felt it would be appropriate for Mr. Chick to come forth and be joined as co-plaintiff and for an order to be made against him. Mr. Bertram also referred to 90,000 \$11 'A' shares in 'Insituform', held by the plaintiff which were not crucial voting shares, and which would be available to provide security. It did not seem, Mr. Bertram submitted, that the plaintiffs were devoid of liquidity or of the means to provide the liquidity. Turning to the question of whether or not there were triable issues in the action, Mr. Bertram referred to the defendants answer, the first defence, that the Bank had acted within its mandate, was a valid one. The plaintiff had conceded that a director of a company has authority to bind that company. Mr. Tregunna had given the Bank instructions, and he was a director of the plaintiff. Mr. Tregunna had been acting in this way for some time, without objection from the plaintiff. As to the timing of the application, Mr. Bertram stated it was made only when it was obvious that there was going to be no other way out of the dispute than litigation.

In reaching my decision, I have found much force in Mr. Bertram's argument that this application for an order for security for costs against a wealthy plaintiff resident outside the jurisdiction is a classic example of an instance where security should be ordered, unless the plaintiff is able to show that there are exceptional reasons for refusing the application. I am not satisfied from the submissions made by the plaintiff that there are sufficiently exceptional grounds to justify my refusing to make the order, and therefore I am of the opinion that the usual

practice should prevail and that security be provided. The amount of the security will be that agreed between the parties beforehand and the action will be stayed until payment is made to the Judicial Greffier.

As agreed between the parties, the costs of and incidental to this application will be in the cause.

Authorities

Rules of the Supreme Court, 1989. RSC. 0.23

D.B. Installations Ltd -v- Vaut Mieux Ltd. (1987) J.J.
Unreported 15.7.87 (87/36)

Heseltine -v- Egglishaw (1989) J.J. Unreported 19.1.89 (89/3)

Lindsay Parkinson Ltd. -v- Triplan Ltd. (1973) 2 All E.R. 273

Aeronave SPA -v- Westland Charters Ltd. (1971) 3 All E.R. 531

Porzelack -v- Porzelack (1987) 1 All E.R. 1074

London Intercontinental Trust, Ltd -v- Barclay Bank, Ltd.
(1980) 11 L.L.R. 241.