

ROYAL COURT
(Samedi Division) 181.

9th October, 1992.

Before: F.C. Hamon, Esq., and Jurats
Vint and Vibert

Between: Stanton Limited First Plaintiff

And: George Julien Louis
And: Sharon Margaret Louis
(née O'Brien) Second Plaintiffs

And: D.O. Moon, P. de C. Mourant,
K.S. Baker, R.V. Jeune, C.E.
Coutanche, I.C. James, A.R.
Binnington, J.D.P. Crill, T.J.
Herbert and J.A. Richomme,
exercising the profession of
Advocates, Solicitors and
Notaries Public under the name
and style of Mourant du Feu &
Jeune Defendants

Defendant's Application that Plaintiffs' be ordered to obtain a written report from one of the Plaintiffs' professional/expert witnesses and to furnish a copy to the Defendants.

Advocate P.C. Sinel for the Plaintiffs.

Advocate J.G.White for the Defendants.

JUDGMENT.

THE COMMISSIONER: Some criticism has been made of the fact that at the same time as this action was set down for hearing discovery of documents was ordered. We must remind ourselves, however, of the provisions of Rule 6/21(1) of the Royal Court Rules, 1982, as amended, which states:

"When the time limited for filing pleadings has expired, any party may, after giving not less than seven days notice to all other parties to the action, apply to the Greffier to have the action set down for trial or hearing."

And sub-paragraph (6) of that same rule, which states:

"An order made in pursuance of 2 of this rule may include any order that could be made under Rule 6/16."

And Rule 6/16 (1) which states:

"The Court may order any party to any proceedings to furnish any other party with a list of the documents which are or have been in his possession, custody or power, relating to any matter in question in this cause or matter, and to verify such lists by affidavit."

Mr. White has suggested that we might make some practice directions but I have to remind myself that these Rules have been approved by the Superior Number of the Court after consultation with the Rules Committee. We can make observations that in this case it seems unfortunate, on the face of it, that the case was set down for hearing and that there then followed a totally unsatisfactory discovery in that we had from the plaintiffs three lever arch files of documents and from the defendants a box with six separate lever arch files of documents. As Mr. Sinel so

succinctly put in his letter to the Bailiff's Secretary when he delivered his bundles: *"what these people put in their bundles is up to them. On the basis of past experience, we think it unlikely we could agree the time of day with them"*. Now that, perhaps, is a token of the way that negotiations have been conducted.

We must, however, point out that this case was set down for hearing on 14th February, 1992, and that discovery was ordered in the same Act to be made 28 days thereafter. We find it extraordinary that, on the Wednesday preceding the trial, Mr. Sinel was sent a twenty page report with twenty-two documents attached prepared by a partner of Touche Ross. He sent this bulky document to his clients and to a Mr. Lynch, who is a partner of Norman Allport and Co, and a chartered accountant. From what Mr. Sinel told us, Mr. Lynch read the report and met with Advocate Melia; he had in the meantime spoken to Mr. Bisson at Graham Le Rossignol and Partners, the plaintiffs' accountants. Advocate Melia made notes of Mr. Lynch's criticisms of the report and relayed these to Mr. Sinel. Now, this is a trial, scheduled by Counsel to last one week, in which nineteen witnesses have been called; we are now on the last day of trial and still have only the first of the second plaintiffs' witnesses (that is the first witnesses) in the witness box.

We now have before us a summons requiring the first and the second plaintiffs to *"show cause why they should not be ordered to deliver written reports, disclosing the substance of the evidence to be given by any expert witness who is to be called to give evidence in the present action by or on behalf of any one or more of the plaintiffs within twenty-eight days of the date hereof, or such other date as the Court may deem appropriate"*.

Without any reference to the White Book to which Mr. White helpfully referred us, it seems to us that the exchange of experts' opinion has several functions, and I would point out that not the least of these must be to advance the possibility of a settlement between the parties. I have only to think of such reasons as the saving of costs and the operation of fairness and mutuality between the parties. It is also clearly right that one party should not obtain one expert's report without obtaining the expert's report of the other side.

We have to be reminded of what Mr. Sinel has said, because if all that Mr. Lynch is going to do when he gets into the witness box is to criticise the report of Touche Ross, then we are concerned as to whether, in that sense, he is an expert at all. It seems to us (on that basis) that his function would be that of a professional man giving evidence on another professional man's report. If, however, he is going to go on from that criticism to give his own expert opinion of the situation as he understands it, then it seems to us that it is important that, whatever he is going to say, for the reasons we have stated, should be given to the other side.

The problem is not without difficulty, and we have listened with care to everything that counsel has said. Mr. Sinel's arguments are cogent because he says that his clients are in an extremely parlous financial state and, if he were to have to commission Mr. Lynch to prepare a report, without the funds available to pay him, then it is quite understandable that Mr. Lynch might decline.

Now that is a matter over which we really have no control and it may be, as Mr. Sinel infers, that he is bringing this action against a party which has more or less limitless resources to meet

any claim that is made against it; but he knew about that before he started the action.

We have considered very deeply the consequences of Mr. Lynch's not preparing a report, and we can only advise Counsel - we cannot make an order in that sense - that it seems to us that we can see further endless delays if the matter proceeds on the lines that Mr. Sinel suggests. That is, that he merely calls Mr. Lynch to go into the witness box to give his evidence.

In order to assist Counsel we would say this: it helps us to have a report from Touche Ross setting out the criticism of the way in which the plaintiffs conducted their affairs; it would also help us to have another expert report to balance that.

We cannot say, Mr. Sinel, that this will follow, but if you were to make a formal application to the Judicial Greffier, with whom we have consulted when we adjourned, we think that it is not inconceivable that you might be allowed another £1,000 towards the preparation of such a report.

Now, we are not saying that you should proceed on those lines, we merely say that that may be useful for you to know if you were to decide to make that application.

If you decide not to make the application then on the basis of everything that has been said, our ruling must be that if Mr. Lynch is merely going to criticise the report of Touche Ross, we will allow him to go into the witness box, as and when called, for that purpose. But, if Mr. Lynch goes on to give his own expert opinion, we would not be adverse to Mr. White adjourning the proceedings, making whatever representation he needs to make with such application as to costs as he may deem expedient.

Authorities

R.S.C. (1991 Ed'n); 38/35/2

Royal Court Rules, 1982, as amended: Rules 6/21(1); 6/16.