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ROYAL COURT
(Samedi Division)

68.

28th March, 1994

Before The Deputy Judicial Greffier

BETWEEN

D.C. Allen Limited **PLAINTIFF**

-v-

AND

Quasar Leisure Limited **DEFENDANT**

Application by the Plaintiff for Summary Judgment, pursuant to Rule 7/1 (1) of the Royal Court Rules 1992

Advocate N.M.C. Santos Costa for the Plaintiff
Advocate D.E. Le Cornu for the Defendant

THE DEPUTY GREFFIER: This is an application by the Plaintiff for summary judgment pursuant to Rule 7/1(1) of the Royal Court Rules 1992. The Plaintiff claims the sum of £46,024.07 in respect of an interim certificate No. A 701434 issued by the architect on the 28th October, 1993, under a building contract entered into between the parties. Put simply the plaintiff's case is that Clause 4.2 of the contract provides for the architect to certify the amount of interim payments to be made by the employer to the contractor within fourteen days of the date of the certificate. That the certificate in question was issued on the 28th October, 1993, and therefore the amount therein duly certified was due and payable on the 11th November, 1993, and that the amount has been demanded but not paid.

The Defendant, in Mr. Arden's affidavit in answer to the Plaintiff's affidavit, raised a number of defences, namely, that the contract between the parties had been determined by virtue of the Plaintiff's going into liquidation; that the Royal Court was not the proper forum for this dispute and that it should be referred to arbitration, and that it had a counter-claim against

the Plaintiff for damages for breach of contract and for defective works.

Our Rules relating to summary judgment are based on Order 14 of the Rules of the Supreme Court and the principles relating thereto are clearly set out in the White Book. I do not propose to rehearse those principles in this judgment, suffice in to say that I have taken them into account as well as the judgment of the Judicial Greffier in the case of Hambros Bank (Jersey) Limited -v- and Jasper, (27th April 1993) Jersey Unreported. I quote only two passages from Section 14/3-4/8 of R.S.C. (1993 Ed'n) as follows:-

> ***"The power to give summary judgment under Order 14 is intended only to apply to cases where there is no reasonable doubt that a plaintiff is entitled to judgment, and where therefore it is inexpedient to allow a defendant to defend for mere purposes of delay. As a general principle, where a defendant shows that he has a fair case for defence, or reasonable grounds for setting up a defence, or even a fair probability that he has a bona fide defence, he ought to have leave to defend"***; and

> ***"The summary jurisdiction conferred by this order must be used with great care. A defendant ought not to be shut out from defending unless it is very clear indeed that he has no case in the action under discussion".***

I have come to the conclusion that there is a fair probability that the defendant has a *bona fide* defence. Accordingly, I dismiss the application and grant the defendant leave to defend. Costs will be in the cause.

Authorities

R.S.C. (1993 Ed'n): 0.14.

Hambros Bank (Jersey) Limited -v- Jasper (27 April, 1993) Jersey Unreported.