

ROYAL COURT
(Samedi Division)

230A.

2nd December, 1996

Before: The Judicial Greffier

Action 95/70

| | | |
|---------|------------------------------------|------------|
| Between | Pirunico Trustees (Jersey) Limited | Plaintiff |
| And | Jefferson Seal Limited | Defendants |

AND

Action 95/87

| | | |
|---------|--------------------------|-----------|
| Between | Jane Margaret Richardson | Plaintiff |
| And | Jefferson Seal Limited | Defendant |

AND

Action 95/89

| | | |
|---------|------------------------|-----------|
| Between | David William L. Dixon | Plaintiff |
| And | Jefferson Seal Limited | Defendant |

AND

Action 95/197

| | | |
|---------|----------------------------------|-----------|
| Between | Patricia D'Auvergne Lumley-Brown | Plaintiff |
| And | Jefferson Seal Limited | Defendant |

AND

Action 95/198

| | | |
|---------|--------------------------|-----------|
| Between | Reeb Investments Limited | Plaintiff |
| And | Jefferson Seal Limited | Defendant |

AND

Action 95/199

| | | |
|---------|------------------------|-----------|
| Between | Eileen Catherine Moore | Plaintiff |
| And | Jefferson Seal Limited | Defendant |

AND

Action 95/200

Between Patricia Margaret Louise Mayo Plaintiff

And Jefferson Seal Limited Defendant

AND

Action 95/201

Between Pamela Dawn Simon Plaintiff

And Jefferson Seal Limited Defendant

AND

Action 95/250

Between John Stuart Clements,
Lawrence Dorian Ranger and
Attendus Treuhandgesellschaft
(suing as the trustees of the J.D. Hawe
Settlements, numbers 1 and 3) Plaintiffs

And Walbrook Trustees (Jersey) Limited First Defendant

And Jefferson Seal Limited Second Defendant

And Jefferson Seal Limited
(joined at the instance of the
First Defendant) Third Party

AND

Action 95/263

Between BNP Jersey Trust Corporation Limited Plaintiff

And Jefferson Seal Limited Defendant

Summons for directions in relation to the above-mentioned ten actions.

Advocate N.M. Santos-Costa representing the Plaintiffs in
actions 95/70, 95/197 to 201 inclusive and 95/263.

Advocate M. St. J. O'Connell representing the Plaintiffs
in actions 95/87 and 95/89 and the
First Defendant in action 95/250.

Advocate A.D. Robinson representing the Plaintiff
in action 95/250.

Advocate A.D. Hoy representing Jefferson Seal Limited
in all ten actions.

THE JUDICIAL GREFFIER: All ten of the above-mentioned actions have been brought in relation to an investment in a bond issued by Confederation Life Insurance, a Canadian insurance company. This bond has eventually proved to be worthless and the various Plaintiffs are suing Jefferson Seal Limited which was the firm of Stockbrokers involved. In action 95/250 the Plaintiffs are the present trustees of a trust which invested in the bond and they are not only suing Jefferson Seal Limited but also the former trustees who have in turn third partied Jefferson Seal Limited.

The actions fall conveniently into two groups. The first group are the actions brought by individual investors or by their nominee company and these are actions 95/87, 95/89 and 95/197 to 201 inclusive. The second category of actions are those brought by trustees in relation to an investment made by a trust and those are 95/70, 95/250 (which has the added complications of the former trustees being joined as an additional Defendant and of the third party claim) and 95/263.

The Summons for directions occurred in the context of eight paragraphs of applications and, in relation to each of the ten actions, an appeal has been lodged in relation to paragraphs 1, 2, 3, 4, 7 and 8 of each Summons for directions.

Paragraphs 2 and 3 of each Summons relate to a request that, insofar as discovery has not already taken place, the parties shall make mutual general discovery within twenty-one days with inspection of documents within a further seven days. In my view, these paragraphs were completely misconceived. In relation to a number of the actions I have already made general Orders for discovery upon the setting down of the action and I could see absolutely no point in making another such Order for general discovery. If there are specific issues of discovery outstanding in those actions then they should be dealt with by means of a Summons, supported by affidavit, seeking specific discovery of those documents or categories of documents. As far as the actions which have not been set down on the hearing list are concerned, I was not provided with any reasons to depart from the normal principle that general discovery is not ordered until the pleadings are closed and that the normal time for this is when the action is set down on the hearing list.

In relation to paragraphs 1 and 7 of each Summons, what I was actually being asked to do was to Order that all the actions be tried consecutively with a particular action as the leading action and that the trial should not, in any case, take place before Trinity Term, 1997. The action which was actually suggested by Advocate Hoy, acting for Jefferson Seal Limited, as a lead action was 95/250. Advocate Hoy very helpfully produced a Schedule in which he listed the number of points which were raised by the Plaintiff in relation to each case and it was his submission that this was the case which covered the largest number of points. All the parties were agreed that, although there would be certain common areas in each case, namely the nature of the duty of care and the implied contractual duty owed by a stockbroker to an investor, each case had different elements such as the nature of the instructions given by the investor to the stockbroker, the degree of knowledge and experience of the investor with, in particular, a possible differentiation between the professional trustees and the individual investors and other individual variations.

5 The way in which the matter came before me was, in my view, of some
importance. The five actions numbers 95/197 to 201 inclusive had been
set down for hearing earlier than others and, as a result of this,
Advocate Santos Costa, for these Plaintiffs, had sought to fix a date
for trial on 21st May, 1996. The matter had been referred to the Deputy
Bailiff, in accordance with the procedure which flows from Practice
Direction 96/1, who had indicated that there ought to be a Summons for
directions before me, but the Summons for directions did not occur until
10 5th November, 1996, because of the number of parties involved. On the
other hand, some of the trust actions have not yet been set down on the
hearing list.

15 What I had to ask myself was whether there was such a significant
advantage in terms of case management and convenience in one of the
trust actions going first, in the way suggested, with the other actions
to follow consecutively and with their trial not starting before the
Michaelmas Term 1997, which was the earliest date - given that action
95/250 has not yet been set down on the hearing list - at which it was
likely to be ready for trial, to warrant the further delaying of the
20 individual investors, or in the one case their nominee company, who had
already been waiting almost six months to get an opportunity to fix a
date for trial.

25 It seemed to me that action no. 95/250 was the most complicated of
the actions and that it was also the only action to involve a claim
against the former trustee and the resulting third party claim. If the
Plaintiff were to succeed in that claim against Jefferson Seal Limited
then that would tend to be an indication that all the other Plaintiffs
had excellent chances but it would not conclusively demonstrate that
30 they would succeed. If the Plaintiffs were to fail in that case then
that would not necessarily mean that the other Plaintiffs and
particularly the individual investors would fail because a different
duty of care might be owed to them.

35 It did not seem to me that 95/250 was a suitable case to act as a
lead case both because it was the most complicated case and also because
it could not start for quite some time as it was procedurally well
behind other cases.

40 Although I was satisfied that it was highly desirable that there be
the same Judge and the same Jurats for all the cases against Jefferson
Seal Limited it was not clear to me that the actions should be tried
consecutively inasmuch as it might be desirable for some cases to be
tried first and for there then to be a delay to allow time for the
45 verdict in those cases before the other cases tried. Accordingly, I
dismissed the applications under paragraphs 1 and 7 of each Summons and
indicated that the individual investors whose cases were ready for the
fixing of a date for trial should not be prevented from proceeding with
fixing such a date. However, in order to ensure that some Order
50 remained in relation to the matters, I directed that all the parties
should attend with myself upon the Deputy Bailiff and the Bailiff's
Secretary in order to fix a date for the trial of those actions which
were ready and in order to reserve provisionally dates for the
subsequent hearing of other actions.

55 At that meeting it was decided that firm dates be fixed from 23rd
June, 1997, to 25th July, 1997, inclusive, for the hearing of the seven
actions involving individual investors and that provisional dates be
fixed from 15th September, 1997 to 17th October, 1997 for the trial of

the three actions involving trusts. The latter decisions were not part of the decision which I made on 5th November, 1996, but flowed therefrom.

5 Paragraph 4 of each Summons sought an Order that the parties to each action do exchange statements of witnesses of fact.

10 I was already aware that this was now a standard procedure in England. Whilst deciding that the Royal Court and, therefore, the Judicial Greffier, had an inherent jurisdiction in relation to procedural matters which was sufficiently wide to enable the ordering of the exchange of such witness statements, I came to the view that it would not be appropriate for me to exercise that inherent jurisdiction in this or any case without the approval and agreement of the Full Court. Witness statements which are produced for the purpose of 15 litigation are, of course, privileged documents and to Order their exchange would be to set aside the normal rule in relation to privilege. Furthermore, the element of surprise in relation to the evidence of parties to litigation is and remains a part of our judicial system. It has already been reduced in relation to the area of discovery of 20 documents and I have on a number of occasions, and did on this occasion again, order the exchange of expert reports, which required a setting aside of the normal rule in relation to privilege in the case of such reports. In my view, although the Royal Court has an inherent 25 jurisdiction to order the exchange of witness statements, a proper provision should be made for this by Rule of Court if it is deemed to be appropriate rather than by Judicial decision and, in particular, by Judicial decision by the Greffier.

30 Accordingly, I dismissed the applications contained in paragraphs 1, 2, 3, 4, 7 and 8 (which dealt with costs) of each Summons and ordered that Jefferson Seal Limited pay taxed costs of and incidental to each of those paragraphs, in any event.

Authorities

Royal Court Rules 1992 (as amended): Rule 6/11.

Mayo Associates SA & Ors -v- Anagram (Bermuda) Limited & Ors (23rd March, 1995) Jersey Unreported.

Finance and Economics Committee -v- Bastion Offshore Trust (9th October, 1991) Jersey Unreported CofA.

Stanton Ltd -v- Mourant (9th October, 1992) Jersey Unreported.

Ashmore -v- Corp of Lloyd's [1992] 2 All ER.

Channel Islands & International Law Trust Co Ltd & Ors -v- Pike & Ors (1990) JLR N6.

RSC (1995 Ed'n) O.4 r.9.