

ROYAL COURT
(Samedi Division)

10th April, 1997

66A.

Before: The Judicial Greffier

Between T.A. Picot (C.I.) Limited and Vekaplast Windows (C.I.) Limited Plaintiffs

And Richard John Michel,
Geoffrey George Crill and
Francis John Hamon
(exercising the profession of
advocates and solicitor under the
name and style of "Crills") Defendants
(by original action)

AND

Between Richard John Michel,
Geoffrey George Crill and
Francis John Hamon
(exercising the profession of
advocates and solicitor under the
name and style of "Crills") Plaintiffs

And T.A. Picot (C.I.) Limited and
Vekaplast Windows (C.I.) Limited Defendants
(by counterclaim)

Application by the Defendants in the original action (hereinafter referred to as "the Defendants") for an order for security for their costs from the date of the application onwards.

Advocate M.P.G. Lewis for the Plaintiffs in
the original action
(hereinafter referred to as "the Plaintiffs");
Advocate M.J. Thompson for the Defendants.

JUDGMENT

5 THE JUDICIAL GREFFIER: This action relates to the conduct and
settlement of certain proceedings which were brought against the
Plaintiffs by Vekaplast Heinrich Laumann K.G. in 1984 and which
came to trial in 1986 with the first named Defendant acting for
the Plaintiffs. The Plaintiffs allege that as a result of the
unfavourable outcome of those proceedings, which were
substantially conceded by the Plaintiffs on the advice of the
10 first named Defendant, their businesses have significantly

declined and have moved from being extremely profitable to making substantial losses.

5 The present action was commenced in 1989 and moved extremely slowly until 1993 when the action was struck out. The Plaintiffs succeeded in getting the striking out order overturned in 1995 since when various procedural steps have continued including a re-re-amendment of the Order of Justice. Rule 4/1(4) of the Royal Court Rules, 1992, as amended, states simply:-

10 *"Any Plaintiff may be ordered to give security for costs".*

15 That, in my view, imports a very wide discretion. The English provisions are somewhat different and Order 23 Rule 1(1) reads as follows:-

20 *"1.-(1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court -*

(a) *that the plaintiff is ordinarily resident out of the jurisdiction, or*

25 (b) *that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or*

30 (c) *subject to paragraph (2) that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or*

35 (d) *that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,*

40 *then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just."*

45 It seems to me that there are two parts to the requirements under Order 23 Rule 1 which are as follows:-

50 (1) that the case fall within one of the sub-paragraphs (a) to (d); and

(2) that the Court must think it just to order security for costs having regard to all the circumstances of the case.

5 In addition to the power under Order 23 Rule 1, in England, there is a statutory power in section 726 (1) of the Companies Act 1985 which provides:-

10 *"Where in England and Wales a limited company is plaintiff in an action or other legal proceeding, the Court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require*
15 *sufficient security to be given for those costs, and may stay all proceedings until the security is given."*

20 In Jersey, although we do not have detailed rules or any statutory provision as in England, certain principles have been followed in relation to such applications and one of those principles is that Jersey Courts make a clear differentiation between plaintiffs who are resident out of the Island and plaintiffs who are resident in the Island. In relation to the latter the general principle is that security for costs will not
25 be ordered except for exceptional reasons. This is most clearly summarised on page 7 of Heseltine v. Strachan & Co (1989) JLR 1 and I now quote from the relevant section on page 7:-

30 *"The second question can be disposed of at this stage. Reliance was placed upon Davest Invs. Ltd. v- Bryant where the Judicial Greffier said (1982 J.J. at 213-214):*

35 *"....It has been established practice not to order security for costs against a plaintiff residing within the jurisdiction. In the only recent exception to this practice, Meredith Jones v. Rose et au., an action with certain very peculiar features, although the plaintiff owned land in Jersey it was considered that the land, being 'enclavé,' might not be readily marketable if it*
40 *had to be sold to pay the defendant's costs."*

45 *Davest was in itself an exceptional case. There the plaintiff company had insufficient assets to pay the defendant's costs and the litigation was being financed by the beneficial owner of the company. The Judicial Greffier ordered security of £500.*

50 *In the present case, the defendants had set out in their grounds of appeal that, although the plaintiff company, Offco Ltd., had assets within the jurisdiction, it was established "by admissions of its counsel" that the assets were earmarked for particular purposes and would not be sufficient to pay the*

5 defendants' costs. With great candour, Advocate Mourant outlined to us the whole background to the formation and administration of Offco Ltd., which is beneficially owned by his firm, Mourant, du Feu & Jeune. We do not propose to repeat the information that he supplied to us, much of which was of a sensitive nature. He also referred us to R.H. Edwards Decorators & Painters Ltd. v. Tretol Paint Systems Ltd. where, inter alia, the Deputy Judicial Greffier set out a principle, with which we entirely agree, that - "it is well established that security for costs will not be ordered against a plaintiff residing within the jurisdiction unless for exceptional reasons."

15 We are satisfied that the second plaintiff has assets comprising gilts which have a value of some £12,500, £800 in cash, and an interest-free loan of £4,000 made to the first plaintiffs to enable them to pay in the amount of security ordered and some small disbursement commitments. Advocate Mourant gave an undertaking to Advocate Thacker that the status quo would be preserved subject to the payment of those small necessary disbursements until trial. In these circumstances we will leave the matter as it stands with no order for security being made against the second plaintiff."

25 It can be seen from the Heseltine Judgment and from the Davest case that the Court in Jersey is willing to treat the inability of a Plaintiff company to pay an order for costs as an exceptional reason although the Davest case demonstrates that the Court must be satisfied that it is nevertheless just in all the circumstances of the case. In Davest Investments -v- Bryant (1982) JJ 212 the Plaintiff company had insufficient assets to pay the Defendant's costs and the litigation was being financed by the beneficial owner of the company. I quote now the final paragraph on page 214 of that Judgment, which reads as follows:-

40 "While maintaining the rule that the provisions of foreign statutes, with certain exceptions, cannot be applied to Jersey, it is possible to follow, as a guide-line in the judicial exercise of discretion, a principle that has become encapsulated in a foreign statute. In the case where the plaintiff is a company with insufficient assets to pay the costs of litigation, so that the litigation is financed by the beneficial owner, who could not personally be made liable for the defendant's costs if the action failed, it is just to order that the plaintiff should give some security for the defendant's costs. I therefore ordered the plaintiff to give security in the sum of £500, having first ascertained that this sum would not be oppressive."

The reference in the above quotation to statute was to section 447 of the Companies Act, 1948, which is the predecessor of section 726 (1) of the Companies Act, 1985. There is also a reference to the need for the order being just.

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In the case of Pacific Investments Limited v. Christensen and others (13th September, 1995) Jersey Unreported I considered at page 8 of the Unreported Judgment the question as to the test which I should apply in Jersey and I am now quoting the relevant section from that Judgment as follows:-

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"However, the main question which I have to decide is precisely what test should I apply in relation to such a case as to the degree of probability or possibility required that the costs of the Defendants will not be paid by the Plaintiff if the Defendants are successful in their striking out action. Section 726(1) of the Companies Act 1985 imports the test of "the Court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require sufficient security to be given for those costs etc.". I am not bound by the words of the English statute and it seems to me that the test of "will be unable to pay" is unnecessarily high in the context of this case. In this case, it appears to me that there is a substantial risk that if the Defendants are successful in their application to strike out then they will not be able to enforce the whole or any part of their costs order against the Plaintiff. In these circumstances, in which the Plaintiff holds the shares merely as a nominee for a corporate body which is resident out of the jurisdiction and which is financing the action, although itself apparently bankrupt, it seems to me that the substantial risk is sufficient. In so deciding I am applying a broader test than that imported in Order 23 Rule 1(1)(b), namely:- "that there is reason to believe that he will be unable to pay the costs of the Defendant if ordered to do so" but it seems to me that the peculiar circumstances in this case warrant this."

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In that case, I decided that in the exceptional circumstances in which the Plaintiff held the shares merely as a nominee for a corporate body which was resident out of the jurisdiction and was financed in the action, although it was apparently bankrupt, that I could apply a broader test to that applied under the English statute and that the test that I was going to apply was "that there is a substantial risk that if the Defendants are successful in their application to strike out then they will not be able to enforce the whole or any part of their costs order against the Plaintiff."

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I did not, in that case, intend to create a different test to that in England for all cases but merely to find that in the exceptional circumstances of that case that test was appropriate.

In my view, in all such cases the ultimate test in Jersey is the test as to whether it is just to make an order in all the circumstances of the case.

5 The First Plaintiff is a Jersey company and the Second Plaintiff is a Guernsey company. The Defendant did not rely on the

10 place of registration of the Second Defendant in relation to this action, perhaps because both companies are managed by Mr. T.A. Picot, who lives in Jersey. Both companies are insolvent, having been effectively financed by a generous benefactor, a Mr. Fay, who appears to have injected a sum of about £400,000 into the companies since 1987. Accordingly, it appears to me, that, subject to all the matters which I must take into consideration, 15 there appears to be a possible basis for an order for security for costs being made, namely the impecuniosity of both companies. However, I must decide in all the circumstances of the case whether to make such an order would be just.

20 The Plaintiffs' advocate strongly urged upon me the fact that the application for security for costs was being made very late in the day, namely, eight years after the action had been commenced. The Defendants' advocate responded to the effect that very little had happened in the action before 1993, that the striking out and then the overturning of the striking out had 25 taken a further two years, that the action only really became active again in 1995, that it has still not been set down on the hearing list, that his clients were only seeking security for future costs, that the Defendants only became aware of the impecunious state of the Plaintiffs when certain answers to further and better particulars were provided in October 1996 and that the trial of the action would be quite some time away. The Plaintiffs alleged that the Defendants must have been aware of the impecunious state of the Defendants at a much earlier 30 stage. On page 542 of the Keary Developments Limited v. Tarmac Construction Limited and Another (1995) 3 All ER 534, there is a section dealing with the lateness of the application for security which reads as follows:-

40 "7. The lateness of the application for security is a circumstance which can properly be taken into account (see *The Supreme Court Practice 1993 vol 1, para 23/1-3/28*). But what weight, if any, this factor should have and in which direction it should weigh must depend upon matters such as 45 whether blame for the lateness of the application is to be placed at the door of the defendant or at that of the plaintiff. It is proper to take into account the fact that costs have already been incurred by the plaintiff without there being an order for security. Nevertheless it is appropriate for the court to have regard to what 50 costs may yet be incurred."

5 In this case, the Defendants have conceded that they are not seeking security for costs prior to the date of the application and the question which arises is as to whether the delay in their making the application for security for costs ought to prevent them from obtaining security for costs incurred thereafter. It does not appear to me that any injustice will arise to the Plaintiffs merely by virtue of the application having been made at this time. The action has not yet been set down on the hearing list and interlocutory matters are continuing. 10 Accordingly, it does not seem to me that this is a significant factor in relation to whether security for costs should be ordered for the period hereafter.

15 In the case of Sir Lindsay Parkinson & Co. Limited v. Triplan [1973] 2 All ER 273 there is, commencing at h on page 285, a list of a number of matters which the Court might take into account on such an application as this and I am now quoting from that section as follows:-

20 *"Counsel for Triplan helpfully suggests some of the matters which the court might take into account, such as whether the company's claim is bona fide and not a sham and whether the company has a reasonably good prospect of success. Again it will consider whether there is an admission by the defendants on the pleadings or elsewhere that money is due. If there was a payment into court of a substantial sum of money (not merely a payment into court to get rid of a nuisance claim), that too would count. The court might also consider whether the application for security was being used oppressively - so as to try and stifle a genuine claim. It would also consider whether the company's want of means has been brought about by any conduct by the defendants, such as delay in payment or delay in doing their part of the work."*

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40 Neither party is claiming that there is a high degree of probability of success or failure in this action. However, a payment into Court of the sum of £56,000 has fairly recently been made.

On page 540 of the Keary case there is a section which reads as follows:-

45 *"4. In considering all the circumstances, the court will have regard to the plaintiff company's prospects of success. But it should not go into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure (see Porzelack KG v Porzelack (UK) Ltd [1987] 1 All ER 1074 at 1077, [1987] 1 WLR 420 at 423 per Browne-Wilkinson V-C). In this context it is relevant to take account of the conduct of the litigation thus far, including any open offer or payment into court,*

indicative as it may be of the plaintiff's prospects of success. But the court will also be aware of the possibility that an offer or payment may be made in acknowledgement not so much of the prospects of success but of the nuisance value of a claim.".

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The actual claim is for a sum which can be variously calculated at £1,200,000.00 or £800,000.00 depending upon whether it is based upon alleged loss of profits or actual losses. In the context of such a claim, payment into Court of £56,000 is a small sum. The Defendant's advocate indicated that this sum had been calculated upon the basis of costs which would be incurred in taking the case to trial and which would be irrecoverable on taxation even if the Defendants were successful. It seems to me that the sum of £56,000 represents about 6% of the sum being claimed and is, therefore, an offer in an attempt to get rid of what the Defendants view as a nuisance claim which, now that striking out has failed, is likely to go to trial. Accordingly, it does not seem to me that the actual making of the payment is indicative of the degree of likelihood of success on the part of the Plaintiffs.

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The Plaintiffs' advocate also raised the issue as to whether the Plaintiffs want of means had been brought about by the conduct of the Defendants. I note that in the quotation above from the Parkinson case that examples of conduct by the Defendant, such as delay in payment or delay in doing their part of the work, are quoted. In this case, there has been no delay in payment, rather there is a dispute as to whether an action was properly conducted and whether it was correctly conceded. Even if the Plaintiffs succeed in this they will have to show that loss flowed from that and, in the context of the issue which I am addressing at the moment, that their want of means resulted from this. Security for costs is ordered as security for the situation in which the Plaintiffs fail in their case and if they fail in this case then the actions of the Defendants will not have caused their impecuniosity. Accordingly, it does not seem to me that this factor has any weight in relation to this particular application.

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The case of Keary is particularly important in relation to issues relating to stifling and oppression and I am now going to quote from various sections commencing on page 539 of the Judgment as follows:-

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"1. As was established by this court in *Sir Lindsay Parkinson & Co Ltd v. Triplan Ltd* [1973] 2 All ER 273, [1973] QB 609, the court has a complete discretion whether to order security, and accordingly it will act in the light of all the relevant circumstances.

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2. The possibility or probability that the plaintiff company will be deterred from pursuing its claim by an order for security is not without

5 more a sufficient reason for not ordering security
(see *Okotcha v Voest Alpine Intertrading GmbH*
[1993] BCLC 474 at 479 per Bingham LHJ, with whom
Steyn LJ agreed). By making the exercise of
discretion under s 726(1) conditional on it being
10 shown that the company is one likely to be unable
to pay costs awarded against it, Parliament must
have envisaged that the order might be made in
respect of a plaintiff company that would find
difficulty in providing security (see *Pearson v*
Naydler [1977] 3 All ER 531 at 536-537, [1977] 1
WLR 899 at 906 per Megarry V-C).

15 3. The court must carry out a balancing exercise.
On the one hand it must weigh the injustice to the
plaintiff if prevented from pursuing a proper claim
by an order for security. Against that, it must
weigh the injustice to the defendant if no security
20 is ordered and at the trial the plaintiff's claim
fails and the defendant finds himself unable to
recover from the plaintiff the costs which have
been incurred by him in his defence of the claim.
The court will properly be concerned not to allow
the power to order security to be used as an
25 instrument of oppression, such as by stifling a
genuine claim by an indigent company against a more
prosperous company, particularly when the failure
to meet that claim might in itself have been a
material cause of the plaintiff's impecuniosity
30 (see *Farrer v Lacy, Hartland & co* (1885) 28 Ch D
482 at 485 per Bowen LJ). But it will also be
concerned not to be so reluctant to order security
that it becomes a weapon whereby the impecunious
company can use its inability to pay costs as a
35 means of putting unfair pressure on the more
prosperous company (see *Pearson v Naydler* [1977] 3
All ER 531 at 537, [1977] 1 WLR 899 at 906).

40 5. The court in considering the amount of security
that might be ordered will bear in mind that it can
order any amount up to the full amount claimed by
way of security, provided that it is more than a
simply nominal amount; it is not bound to make an
order of a substantial amount (see *Roburn*
Construction Ltd v William Irwin (South) & Co Ltd
45 [1991] BCC 726).

50 6. Before the court refuses to order security on
the ground that it would unfairly stifle a valid
claim, the court must be satisfied that, in all the
circumstances, it is probable that the claim would
be stifled. There may be cases where this can
properly be inferred without direct evidence (see
Trident International Freight Services Ltd v

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Manchester Ship Canal Co [1990] BCLC 263). In the Trident case there was evidence to show that the company was no longer trading, and that it had previously received support from another company which was a creditor of the plaintiff company and therefore had an interest in the plaintiff's claim continuing; but the judge in that case did not think, on the evidence, that the company could be relied upon to provide further assistance to the plaintiff, and that was a finding which, this court held, could not be challenged on appeal.

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However, the court should consider not only whether the plaintiff company can provide security out of its own resources to continue the litigation, but also whether it can raise the amount needed from its directors, shareholders or other backers or interested persons. As this is likely to be peculiarly within the knowledge of the plaintiff company, it is for the plaintiff to satisfy the court that it would be prevented by an order for security from continuing the litigation (see *Flender Werft Ag v Aegean maritime Ltd* [1990] 2 Lloyd's Rep 27). In that case Saville J applied by way of analogy the approach adopted in another context, that of payment into court as a condition of leave to defend. In *M V Yorke Motors (a firm) v Edwards* [1982] 1 All ER 1024 at 1028, [1982] 1 WLR 444 at 449, 450 Lord Diplock approved the remarks of Brandon LJ in the Court of Appeal:

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'The fact that the man has no capital of his own does not mean that he cannot raise any capital; he may have friends, he may have business associates, he may have relatives all of whom can help him in his hour of need.'

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In *Kloeckner & Co Ag v Gatoil Overseas Inc* [1990] CA Transcript 250 Bingham LJ cited with approval certain remarks of the Registrar of Civil Appeals. Mr. Registrar Adams was willing to assume that the situation before him was the same as that exemplified in the *Farrer* case, that is to say that there was a probability that the defendant wrongly caused the plaintiff's impecuniosity on the basis of which security for costs was being sought. The registrar said:

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'In my judgment, the approach to be adopted in cases where, as here, there are good arguable grounds of appeal and it is within the *Farrer* principle but the appellant contends that the award of security will

5 stifle the appeal, should be the same as the
approach adopted in *MV Yorke Motors (a firm)*
v Edwards Ord 14 cases, where conditional
leave to defend is being contemplated. The
10 approach, in my view, should be that the
onus is on the appellant to satisfy the
Court of Appeal that the award of security
for costs would prevent the appeal from
being pursued, and that it is not sufficient
15 for an appellant to show that he does not
have the assets in his own personal
resources. As in the *Yorke Motors* case, the
appellant must, in my view, show not only
that he does not have the money himself, but
that he is unable to raise the money from
anywhere else.'

20 Bingham LJ's comment was : 'I cannot fault the
general approach of the registrar.' When the
matter went to the full court (1990) *Times*, 9
April) this court could see no possible grounds
upon which an appeal against Bingham LJ's decision
could succeed.

25 That case related to the power to order security
under RSC Ord 59, r 10(5), which is not the
present case. But, in my judgment, the same
approach should be adopted on applications under s
726(1). In the *Okotcha* case this court was not
30 satisfied on the evidence that a plaintiff ordered
to give security was unable to raise the money
needed. This court plainly, therefore, adopted
the same approach as that indicated in the cases
of *Flender Werft*, *Yorke Motors* and *Kloeckner*.
35 Reference was made to the *Trident* case and Bingham
LJ referred to Nourse LJ's remark that an
inference could be drawn even in the absence of
direct evidence that the claim of the plaintiff
would be stifled. He said ([1993] BCLC 474 at
40 478):

45 'I am inclined to think that the decision
itself illustrates more than anything else
the different patterns of fact which come
before the court in the course of
applications such as this.'

He was therefore distinguishing the *Trident* case
on its facts.

50 In the *Trident* case Nourse LJ commented that the
basis of an application for security was that
there was reason to believe that the company would
be unable to pay the costs of the defendant, if

5 successful, in his defence (see [1990] BCLC 263 at 266). After referring to what Megarry V-C had said in *Pearson v Naydler* to the effect that s 726 relates to companies which are likely to find difficulty in meeting orders for security for costs, Nourse LJ said:

10 'It would be pointless to insist on the company putting in evidence in order effectively to admit that which the defendant effectively asserts.'

15 With all respect to him, it seems to me that there are two quite separate questions which are relevant. One is whether the condition for the application of s 726 is satisfied. That requires the court to look ahead to the conclusion of the case to see whether the plaintiff would be able to meet an order for costs. On that the defendant, accepting the applicability of the section, need put in no evidence. The other question which is relevant, given that an application for security is made at a stage when the trial will not have occurred, is whether the plaintiff company will be prevented from pursuing its litigation if an order for security is made against it. On this, evidence from the defendant may be needed. The considerations affecting those two questions seem to me to be rather different. For example, a backer might well be prepared to put up money to assist a company to pursue a case when the trial has not yet occurred, but the same backer would be extremely unlikely to put up money after the trial has been unsuccessfully concluded against the company.

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45 However, as I have already indicated, the *Trident* case establishes that in certain circumstances it will be proper to draw inferences, even without direct evidence, that a company would probably be prevented from pursuing its claim by an order for security. But, in my judgment, such a case is likely to be a far rarer one than those cases in which the court will require evidence from the plaintiff to make good any assertion that the claim would probably be stifled by an order for security for costs."

50 In this particular case, the part of section 6 from *Keary* relating to the question as to whether the Plaintiffs are able to raise the amount needed from its directors, shareholders or other backers or interested persons is particularly important. The overall test in relation to stifling is also set out in that section and is the test that it is probable that the claim would

be stifled by any particular order that was made and as the relevant circumstances are peculiarly within the knowledge of the Plaintiffs it is for the Plaintiffs to satisfy me that they would be prevented by an Order for security from continuing litigation.

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Mr. T.A. Picot, was originally the beneficial owner of the companies and he continues to run them. However, Mr. Fay has been involved in helping to finance the companies since 1987 and, as I have said above, has already put in a sum in excess of £400,000.00. He is both a director of the companies and also has a shareholding therein. I had before me an affidavit of Mr. Fay dated 21st February, 1997, from which it is clear that he is a very generous person who has assisted the Picot family and other families generously in the past. In paragraph 11 of his affidavit he indicates that he has assisted Mr. Picot with £75,000 during the last year in order that his firms might continue to trade. I think that there can be little doubt that if Mr. Fay has the necessary means that he will continue to finance not only this litigation but also the Plaintiffs generally until this litigation is decided. Unfortunately, Mr. Fay's affidavit is not an affidavit of means and does not tell me how wealthy he is. I also did not have before me any affidavit from Mr. Picot as to his personal circumstances. In his affidavit, Mr. Fay is indicating his willingness to advance a further £10,000 as security for costs in this action. The ultimate question which I must ask myself is the question as to whether, if I ordered security for costs in a particular sum, the present proceedings would probably be stifled. In my view, it is most unlikely that they would be stifled if Mr. Fay has the means to continue to support them and as no evidence has been presented to me to the effect that Mr. Fay no longer has the means to support this action, it seems to me from his past dealings with the Plaintiffs and from the terms of his affidavit that he probably has the necessary means.

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I turn now to the question of the quantum of security which would be appropriate. The Defendants produced a very bare skeletal bill which included a claim for expert witnesses of £20,000 and which totalled £70,790 commencing with discovery. Although I am satisfied that some experts' evidence will be required, it seems to me that the estimation of £20,000 has not been substantiated and I am only allowing £10,000. In relation to other items I am taking into account the fact that a considerable amount of legal research has already been done in relation to the strike out on the question of the legal liability of counsel. A claim has also been made for a legal assistant who is an English solicitor to attend throughout the estimated three weeks of the trial and I have disallowed this altogether and assumed the trial will last twelve days. Upon the basis of these calculations I have come out with a figure for security for costs of £35,000 and, in all the circumstances of the case, I am satisfied that it is just that the Plaintiffs be ordered to furnish the Defendants with that sum by paying it to the Judicial Greffier.

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5 In estimating this figure of £35,000 I have only allowed for
the costs of the part of the counterclaim which related to work
done on the original action in 1986 and not for any work on
aspects of the counterclaim which relate to work done by the
Defendants on other cases. The matters set out in the
counterclaim are not pleaded as a defence to the action but
merely as a counterclaim although the costs relating to work done
on the case which was determined in 1986 are obviously closely
linked with issues in this case.

10 I will need to be addressed both upon the time period for
payment and upon the matter of the costs of and incidental to the
application for security for costs.

Authorities

- Pacific -v- Christensen (13th September, 1995) Jersey Unreported.
- Mayo -v- Cantrade (31st May, 1996) Jersey Unreported.
- Vekaplast Heinrich Laumann K.G. -v- T.A. Picot (C.I.) and Vekaplast Windows (C.I.) Limited (1989) JLR 269.
- Royal Court Rules, 1992, Rule 4/1(4).
- R.S.C. (1997 Ed'n) O.23, r. 1(1).
- Companies Act, 1948: s.447.
- Companies Act 1985 s.726(1).
- Heseltine -v- Strachan & Co. (1989) JLR 1.
- Davist Investments -v- Bryant (1982) JJ 213.
- Keary Developments Ltd -v- Tarmac Constructions Ltd and another (1996) 3 All ER 534.
- Sir Lindsay Parkinson & Company -v- Triplan [1973] 2 All ER 273.
- Lingren -v- Jetcat Limited (1985-86) JLR 66.
- D B Installations Limited -v- Vaut Mieux Limited (1987-88) JLR N.5; (15th July, 1987) Jersey Unreported.
- Furzer -v- IDC (1990) JLR 179.
- Rothmer -v- Hill Samuel (1991) JLR N3; (9th January, 1991) Jersey Unreported.
- Woolley -v- Kingsley (14th May, 1992) Jersey Unreported.
- Condor UK Limited -v- Hotel de France (18th May, 1993) Jersey Unreported.
- Mayo -v- Cantrade (6th February, 1996) Jersey Unreported.
- Mayo -v- Cantrade (31st May, 1996) Jersey Unreported.
- L'Eau des Iles -v- A E Smith (13th November, 1996) Jersey Unreported.