

Vanessa Broadway v Salamanca Trust (Jersey) Ltd and Salamanca Co-Trustees (Jersey) Ltd

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	25 April 2016
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Text

[2016] JRC 89A

ROYAL COURT

(Samedi)

Before:

T. J. Le Cocq, **Esq.**, Deputy Bailiff, **sitting alone**

Between
Vanessa Broadway
Plaintiff
and

Salamanca Trust (Jersey) Ltd and Salamanca Co-Trustees (Jersey) Ltd
Defendants

Mrs Vanessa Broadway **appeared in person.**

Advocate J. P. Speck appeared for the Defendants.

Authorities

Royal Court Rules 2004.

Grant and Reva Holdings Limited v Dineen [\[2013\] JRC 187](#) .

Pitman and another v Jersey Evening Post Limited and another [\[2013\] JCA 149](#) .

Trusts (Jersey) Law 1984.

Trust — application by the plaintiff for an extension of time to appeal against a number of decisions which struck out the plaintiff's claims against Salamanca trust (Jersey) Ltd and Salamanca Co-Trustees (Jersey) Ltd

Deputy Bailiff

The

- 1 This is an application by Mrs Vanessa Broadway (“the Plaintiff”) for an extension of time to appeal against a number of decisions of the Deputy Judicial Greffier and Assistant Judicial Greffier (collectively “the Greffier”), which struck out the plaintiff's claims against Salamanca Trust (Jersey) Ltd and Salamanca Co-Trustees (Jersey) Ltd (“the Defendants”) and made certain cost orders attendant on that striking out.
- 2 This application was initially before the Court on 8th December, 2015. At the end of that hearing I gave the plaintiff leave to file further submissions in response to written reasons advanced for certain of the decisions of the Greffier of which the plaintiff had only recently become aware. I also gave her leave to file an affidavit relating to her means and any other matters of fact that she wished to put before me concerning her application and, specifically, the question of potential third party funding for her proceedings and her reasons for delay. I directed that any such submissions and affidavits must be filed by the end of January 2016 and thereafter the defendants would have three weeks to respond. The plaintiff availed herself of the opportunity to file additional submissions and to file an affidavit and a brief written submission was received from the defendants.

Background

- 3 The background to this matter is not without its complexities but in summary is as follows:-

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- (i) The defendants are trustees of a settlement known as The Renfrew Settlement which was established on 19th April, 1989, ("the Trust").
- (ii) The plaintiff and her father Mr Andrew Baber ("Mr Baber") were amongst the potential beneficiaries of an appointed part of the Trust.
- (iii) Seymour Park Properties Limited ("SPPL") is an asset of the Trust and Mr Baber was a director of SPPL until he was removed on 1st October, 2008, by the defendants in the light of concerns that he had failed to involve other members of the board of directors in the management of SPPL and had mismanaged SPPL.
- (iv) On 21st October, 2008, the plaintiff, who was also a director and secretary of SPPL, was also removed.
- (v) On 20th November, 2008, SPPL and a company called Renfrew Holdings Limited brought proceedings in England against Mr Baber and the plaintiff effectively to enforce the removal of Mr Baber and the plaintiff from SPPL.
- (vi) Further, there were proceedings in England by Renfrew Holdings Limited against Mr Baber for the delivery up of a Lister Jaguar motor vehicle which was an asset of the Trust.
- (vii) On 12th May, 2011, both sets of English proceedings were compromised by virtue of a settlement deed which was on 20th May, 2011, recognised by the English court under a consent order.
- (viii) On 9th September, 2011, the plaintiff filed her original Order of Justice which was followed by an answer filed by the defendants on 5th July, 2012, and a reply filed by the plaintiff on 6th August, 2012. An application for directions at the instance of the plaintiff followed and a further summons for directions from the defendants was also issued. Those applications were adjourned *sine die* to provide the opportunity for the plaintiff and the defendants to agree directions if possible.
- (ix) There were a number of interlocutory stages which included, on 23rd April, 2013, an order that the plaintiff amend her Order of Justice and the defendants amend their answer.
- (x) On 11th September, 2013, the plaintiff filed her Amended Order of Justice (the "Amended Order of Justice") and on 20th November, 2013, the defendants issued their summons to strike out the Amended Order of Justice.
- (xi) That matter was dealt with on 17th March, 2014, at which time the Greffier struck out the majority of the allegations contained in the plaintiff's Amended Order of Justice. The plaintiff was ordered at that time to file a further Amended Order of Justice with the relevant parts of the original Amended Order of Justice "struck through".

(xii) On 9th June, 2014, an Act of Court was issued ordering the plaintiff to pay the defendants costs on the standard basis incidental to the application to strike out and any costs thrown away as a result of the defendants pleading to those parts of the Amended Order of Justice struck out. The plaintiff was also ordered to pay an amount on account of costs and the proceedings otherwise stayed pending that payment.

(xiii) On 21st October, 2014, the defendants' costs were taxed in the sum of £19,882.73.

(xiv) On 12th March, 2015, the plaintiff filed a summons requesting leave to re-submit her Order of Justice. That matter was dealt with on 30th April, 2015, when it was ordered that the defendants should receive the sum of £37,442.73 from the plaintiff by a specified date (25th June, 2015,) failing which the remaining sections of the plaintiff's Amended Order of Justice would be struck out. It was further ordered that should the sum be received from the plaintiff by that date then she would have liberty to apply by summons to file a re-amended Order of Justice provided that that summons together with a copy of the re-amended Order of Justice was filed by 3pm on 25th June, 2015.

(xv) On 25th June, 2015, no payment having been made, an Act of Court was issued ordering that the remainder of the parts of the plaintiff's amended Order of Justice be struck out.

(xvi) On 25th September, 2015, the plaintiff filed her summons, notice of appeal and an affidavit in connection with the present application.

(xvii) On 29th September, 2015, the Judicial Greffier issued reasons for the decision to strike out the plaintiff's amended Order of Justice that covered both the hearing of 17th March, 2014, and the hearing on 30th April, 2015.

- 4 Rule 20/2 of the Royal Court Rules 2004 provides that any appeal from an order or decision of the Judicial Greffier must be served within 10 days of the making of the order or decision complained of. Accordingly the time limit against which appeals could be filed with regard to the Deputy Judicial Greffier's decision of 17th March, 2014, the Assistant Judicial Greffier's decision of 21st October, 2014, the decision of the Deputy Judicial Greffier of 30th April, 2015, and the Act of Court of 25th June, 2015, were respectively 27th March, 2014, 31st October, 2014, 10th May, 2015, and 5th July, 2015. On any analysis, therefore, the time for filing notices of appeal has long expired and, in connection with the earlier strike out decision of 17th March, 2014, the delay is in the order of some 18 months.
- 5 The Court has the power to extend the time within which an appeal may be brought notwithstanding the fact that the time limit within which it should have been brought has expired. The factors that the Court will take into account when considering whether or not to exercise this power are set out in *Grant and Reva Holdings Limited v Dineen*

[\[2013\] JRC 187](#) which adopted the principles set out for extending time for appeal to the Court of Appeal from the decision of the Royal Court for the purposes of an appeal from a decision of the Master to the Royal Court. Summarising the principles set out in the case of *Pitman and another v Jersey Evening Post Limited and another* [\[2013\] JCA 149](#) the Royal Court identified the following as relevant factors:-

The reasons for the delay

“(i) It is in the discretion of the Court to grant or refuse an extension of time;

(ii) The factors which are normally taken into account include the length of the delay, the reasons for the delay, the chances of the appeal succeeding if time for appeal is extended and the degree of prejudice to the potential respondent if the application is granted;

(iii) Where the delay in serving a notice of appeal is short and there is an acceptable excuse for not bringing the application in time, an extension of time will not be refused on the merits unless the appeal is hopeless;

(iv) The settled practice of the court is to assess and take into account the merits of the proposed appeal in deciding whether or not to grant an extension of time for appealing.”

- 6 The plaintiff, who is of course a litigant in person, has advanced a number of reasons for the delay in bringing her appeal against the various orders and in support of her request for an extension of time to appeal. In essence her reasons are as follows:-

The evidence in support

(i) As a litigant in person she has found it difficult to obtain appropriate procedural advice from the Court and in her view she has not had sufficient assistance to enable her to formulate her claims in accordance with the Royal Court Rules.

(ii) She has not had the means to pay for legal advice and although she has explored the possibility of third party funding she only became aware that such might be available in January 2015.

(iii) The plaintiff has now identified a Jersey law firm which might be willing to explore the possibility of using third party funding on the basis that the original Order of Justice was re-written.

(iv) One of the causes of the plaintiff's inability to proceed has been a lack of information and transparency from the defendants.

(v) The plaintiff did not understand that she was able to object to legal costs – she did not understand the procedure.

(vi) The plaintiff was unable to meet the legal costs ordered against her.

- 7 In terms of the difficulties that the plaintiff has allegedly encountered in securing assistance from the Court or the Judicial Greffe I was shown exchanges of e-mails between the plaintiff and members of the Judicial Greffe and the Bailiff's Chambers. Advice can be provided to a litigant in person as to the form that a document should take but no advice can be given as to the detail of the content. Advice has been provided although, of course, it was and could only have been of a procedural nature and not substantive. It does not appear to me that the type of advice given, although perhaps there were some gaps in which more timely advice might have been proffered, is other than one would expect that the Judicial Greffe could give a litigant in person. I appreciate that pleading an Order of Justice, particularly one that in effect alleges mismanagement by a trustee of trust assets, can be a complex matter. There is, however, a limit to the assistance that a litigant in person can expect from the Court or the Bailiff's Chambers in preparing a document to be submitted in proper form.
- 8 Of course much of the difficulty exists because the plaintiff does not have a lawyer to assist her with her claim. She claims that she cannot afford one. It was not apparent from the papers that evidence as to her financial circumstances was before this Court rather than simply forming part of her submissions made during the course of the hearing. It was in part for that reason that I invited her to prepare an affidavit which she did. Her affidavit, dated 26th January, 2016, is brief comprising three paragraphs. The first indicates her income prior to July 2015 which suggests that she has little means and modest income, the second that since July 2015 having married, she states that she and her new spouse reside at a particular property called Hawthorne House together with her son and from time to time children from her husband's former marriage and, thirdly, she explains that she has no other assets. The affidavit is silent, however, about the detail of her means from the time of the commencement of the Order of Justice throughout the time when she was not legally represented nor does it speak to her current means by reference to the means of her spouse. I do not know from her affidavit, therefore, whether since July 2015 she may have had the means to employ legal advisers or not. Whilst dealing with her affidavit it is perhaps also appropriate to observe that it does not deal with either the question of third party litigation funding nor with any information relating to the Jersey law firm who may be prepared to assist her going forward. These were parts of her submission on which she placed weight. There is, accordingly no evidence before me that third party funding might be available, and, if so, the basis on which it would be available, and the extent to which it would be available. Neither is there evidence about the Jersey law firm with which the plaintiff has had communication, so she informs me in submission, who will support her on the basis of the third party funding available.
- 9 Further, in submissions from the plaintiff I was told that third party funding would only be available if the claim was reinstated in its entirety as there was a minimum level of claim below which funding is not available. As I have said, however, this submission was not underpinned by clear evidence. In her submissions the plaintiff indicated that she had become aware of third party litigation funding in January 2015. It is difficult to understand why information could not have been provided to the Court or indeed to the defendants in

that intervening period.

- 10 Whilst it appears to be the case that the plaintiff has suffered some ill health, the plaintiff, in her submissions, did not expand upon this and did not rely on it. She did not indicate that she was seeking to justify the delay overall as a result of that but in any event, as argued by the defendants, that elements post-dated the time limit within which appeals should have been brought and could not of itself have excused the delay.
- 11 A litigant in person (whether by choice or by an inability to afford legal services) might be expected in certain cases to justify some delay from time to time which the Court could view sympathetically in considering whether time might be extended. Essentially, however, the plaintiff, to get anywhere, needs to overturn the decision of 17th March, 2014. This was handed down some 18 months before the plaintiff filed an application seeking an extension of time within which to appeal. That is to my mind a very long period indeed and in dealing with a delay of that length in my view it would be necessary for the Court to be satisfied that the plaintiff's claim was a very strong one before the Court, in attempting to do justice between the parties, could go so far as to extend time to that extent.
- 12 It is incumbent upon litigants, whether legally represented or litigants in person, to progress their claims with due diligence and in a timely manner and to inform themselves of relevant time periods.
- 13 The plaintiff's claim is set out in the Amended Order of Justice filed, as I have said, on 11th September, 2013. In essence the plaintiff complains about five aspects of the defendant's actions as a trustee of the Trust. She complains, firstly, that the defendants failed to communicate with Mr Baber (who she describes as the "main beneficiary") about complaints made about his management of SPPL by another potential beneficiary, the plaintiff's sister. Secondly, she complains about the fees charged by the defendants to the Trust. Thirdly, she alleges general mismanagement by the defendants and their agents of the trust assets. Fourthly, she seeks to undermine the basis on which the English proceedings were compromised and the consent order issued by the English courts on 20th May, 2011. Lastly, she makes allegations relating to the alleged mismanagement of certain valuable motor vehicles which were trust assets.
- 14 The Amended Order of Justice is somewhat eccentrically formatted in that some of the numbering is in Roman numerals and some in standard western numerals and in total it comprises some 19 pages. It is fair to say that many of the paragraphs contained within the Amended Order of Justice simply detail a sequence of correspondence or communications passing between the plaintiff, Mr Baber and/or the defendants which it is clear the plaintiff believes supports the main thrust of her allegations. In many respects it does not seek to tie the factual detail of the correspondence to the main allegations nor does it attempt to justify the quantum of the claims set out in it. In essence it pleads to a great extent large amounts of evidence without it being clear how that evidence necessarily supports the primary

allegations made within it. I can readily see that it would be a difficult document to plead an answer to.

15 In a document dated 25th September, 2015, the Judicial Greffier gave detailed reasons for the decisions taken to strike out the plaintiff's Order of Justice in March 2014 and finally to strike out the remainder of the Order of Justice in April 2015. In his reasons the Judicial Greffier sets out references to the law and then, at Section C of the reasons, sets out at some length the decision relating to the striking out of the larger part of the Amended Order of Justice by the Greffier in March 2014. I do not think it is necessary to go through all of the reasons advanced by the Greffier. Suffice to say that he dealt with the various parts of the plaintiff's claim in the following way:-

(a) Failure to inform the main beneficiary regarding an attack by a potential beneficiary

(b) The complaints about fees

(c) Mismanagement by the Defendant

(d) Settlement deed – consent order of 12th May 2011

(e) Classic cars – D-type Jaguar and Lister Jaguar

(i) This allegation, and the sub-paragraphs supporting it, amount to a complaint that the defendants had not communicated the detail of a potential beneficiary's complaints directly with Mr Baber or provided him with the opportunity of answering the allegations made against him. Furthermore it was alleged this communication between the other potential beneficiary had precipitated the English proceedings.

(ii) The Greffier took the view that to the extent that the allegations amounted to a failure to communicate with Mr Baber these were allegations that Mr Baber himself would have to make and could not be made by the plaintiff. Furthermore it was irrelevant, in the Greffier's mind, that the allegations made by the potential beneficiary may have precipitated the English proceedings as those proceedings have been compromised by a consent order and could not and should not form the basis for any claim before this Court. Lastly a failure of a trustee to discuss with one beneficiary what another beneficiary had said could not of itself amount to a cause of action or give rise to a claim in itself. Accordingly the entirety of that allegation should be struck out.

(i) This section of the Amended Order of justice sets out a number of paragraphs the history of communication between Mr Baber and the defendants on the matter of fees and there are concerns raised relating to the lack of transparency.

(ii) The Greffier struck out paragraphs (i) to (xxi) of the Amended Order of Justice as disclosing no reasonable cause of action and embarrassing. There was no basis within that part of the Amended Order of Justice for any claim for repayment of fees

and fees raised prior to 19th September, 2008, (three years prior to the service of proceedings in September 2011) would be time barred pursuant to Article 57(2) of the Trusts (Jersey) Law 1984.

(i) This section of the Amended Order of Justice makes a general allegation that the defendant had acted in breach of its duty of care to act in accordance with its responsibility for the administration of trust assets. There then follows what were stated to be specimen examples of this failure comprising some hundred paragraphs which detailed at length correspondence passing between Mr Baber and the plaintiff and the defendants.

(ii) The Greffier found that whilst the plaintiff had set out general complaints, the plaintiff had not pleaded how those complaints gave rise to a quantifiable claim for breach of trust. According by the larger part of the allegations contained under this headed claim were struck out.

(i) This part of the Amended Order of Justice raises concerns and allegations relating to the circumstances in which a consent order was made by the English court. In essence the Plaintiff was seeking to explain why Mr Baber and she should not be bound by the terms of the English consent order.

(ii) The Greffier struck this part of the claim out on the basis that the Royal Court had no jurisdiction to amend the terms of the consent order nor should any aspects of it be re-litigated.

(i) Allegations were made concerning alleged mismanagement by the defendants relating to the sale of a D-type Jaguar. This took place in June 2002 at a public classic car auction. It was alleged by the plaintiff that this should have been sold by private auction and could have secured a higher price.

(ii) This was struck out on the basis that the claim was prescribed and/or was frivolous and vexatious.

(iii) The second aspect of this head of claim related to the sale of a Lister Jaguar motor vehicle. This claim was not struck out in its entirety but merely certain aspects relating to Mr Baber's alleged intention for the vehicle and comments made by third parties, and Mr Baber's attitude and some aspects of correspondence.

(iii) Those aspects were struck out on the basis, largely, that they were irrelevant.

(f) Certain other orders were made striking out sections under the conclusion and "the Plaintiff's objective" in the Amended Order of Justice on the grounds of irrelevance and also in one respect on the ground that it was scandalous.

(g) In his reasons the Greffier also explained the basis for the decision in April 2015 resulting in an unless order although I do not think it is necessary for me to go into the detail of the Greffier's reasons.

- 16 There is no doubt that the plaintiff believes that the Trust has been mismanaged by the defendants. The plaintiff has placed before me letters from accountants and from a chartered surveyor suggesting the criticisms that can be laid at the door of the defendants by reason of the manner in which the defendants have managed the trust assets. Those assets do appear to have suffered significant diminution in value and responsibility for that diminution of value the plaintiff asserts and believes can be laid at the defendant's door.
- 17 However, a litany of complaint cannot by itself give rise to a claim against the trustees. It is necessary to explain why the matters complained of, if true, have caused a loss to the trust fund. The complaints might, if justified, amount to poor communication or indeed to some want of customer care on the part of the trustees but by themselves they do not amount to actionable allegations of mismanagement primarily because they do not explain why those alleged actions give rise to any loss and how any loss might be quantified.
- 18 It is very difficult to assess what substance there is in these allegations but I would not feel able to say that a case could not be made out by the plaintiff, if properly pleaded, that could go to trial. In other words the nature of the allegations made by the plaintiff do not appear to me *prima facie* to be either hopeless or doomed to failure. Can I say however that the claims are strong claims? In the circumstances it is impossible for me to say that they are.

Conclusion

- 19 In my judgment the decision of the Greffier in March 2014 to strike out the larger part of the plaintiff's Order of Justice was justified. Similarly in my judgment the Greffier was justified in striking out the remainder of the allegations contained in the amended Order of Justice in April 2015.
- 20 The plaintiff could have sought to re-plead the case. It may be that a claim could technically be pleaded but at this point it has not been pleaded and has been struck out for a very significant period. I have not been shown a draft of a re-pleaded Order of Justice nor, as I have said, do I have any basis for believing that were the plaintiff to be allowed to continue her position would be any better.
- 21 There are some reasons that might justify some delay on the part of the plaintiff in not complying with all of the time periods set out by the Court in its orders and possibly some delay that is and can be justified in not appealing in a timely fashion. However in my judgment a period of 18 months to reach a point where the plaintiff is simply seeking an extension of time and has not provided evidence of the points made in support of that application, tips the balance firmly against the grant of an extension of time in which to appeal.
- 22 Whilst I have some sympathy for the position of the plaintiff I cannot ignore the prejudice caused to the defendants by being faced for a significant period with an Order of Justice to

which it was impractical to plead and indeed I can have no confidence that even without a grant of the extension requested that there is any realistic prospect of either funding being forthcoming or the matter proceeding in an appropriate and timely way henceforth. I simply have no evidence before me on which I can base such a conclusion.

- 23 In my view, applying the factors set out above, the delay is long and the reasons for it are not sufficient or persuasive. Moreover, the strengths of the plaintiff's case do not appear to me to be strong and there is a real prejudice to the defendants in the delay and the time that this matter has been hanging over their heads.
- 24 In the circumstances I refuse to extend the period within which an appeal may be brought against the decisions of the Greffier.