Clive Philip Le Brun Tomes v Piers Ross Coke-Wallis

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	29 April 2002
Neutral Citation:	[2002] JRC 89
Reported In:	[2002] JRC 89
Docket Number:	ACTION NUMBER: 2000/164 ACTION NUMBER: 2000/161
Court:	Royal Court
Date:	29 April 2002

Text

[2002] JRC 89

ROYAL COURT

(Samedi Division)

Before:

M.C. St. J. Birt, **Esq**., Deputy Bailiff, **and** Jurats Le Ruez, **and** Allo.

ACTION NUMBER: 2000/164

ACTION NUMBER; 2001/05

ACTION NUMBER: 2000/161

Between
Clive Philip Le Brun Tomes

First Plaintiff
and
Piers Ross Coke-Wallis
First Defendant

and

Coke-Wallis Jones De Polignac Trustees (Jersey) Limited
Second Defendant

and

Natalie Coke-Wallis (née Jones) his Wife
Third Defendant

Between
Eric Gerard Rombaut
Applicant
and
Clive Philip Le Brun Tomes
First Respondent

and

Piers Ross Coke-Wallis
Second Respondent

and

Anthony John Quinn
Third Respondent

Advocate R.G.S. Fielding **for Clive Philip Le Brun Tomes and for Anthony John Quinn**.

No Authorities

Appeal against decision of the Master, dated 15th October, 2001, (Actions Nos. 2000/164 and 2001/05).

Appeal against decision of the Master, dated 15th October, 2001, (Action 2000/161).

Appeal against decision of the Master, dated 12th December, 2001, (Action 2000/161).

Piers Ross Coke-Wallis and Natalie Coke-Wallis (née Jones) on their own behalf and on behalf of Coke-Wallis Jones de Polignac Trustees (Jersey) Limited.

Eric Gerard Rombaut on his own behalf.

Deputy Bailiff

THE

1 We are sitting to hear appeals against decisions of the Master in three actions. It is necessary first to describe these actions briefly. The first in time is under the reference PL2000/161, which was served on the defendants on 24 th July, 2000. Mr Eric Rombaut is the plaintiff in this action and the defendants are Mr Clive Tomes, Mr Piers Coke-Wallis and Mr Anthony Quinn. We shall refer to this action as Mr Rombaut's action.

2 It concerns the ownership of a company called Diamond Trust Limited which undertook trust and company administration. At the time of the proceedings the shareholding was held as to 50% by Mr Tomes and 50% by Mr Coke-Wallis. Mr Rombaut alleged that in February, 2000, it had been orally agreed that the shareholding would be varied so that Mr Rombaut would become the owner of 51%, and the remaining 49%, would be shared equally between Mr Tomes, Mr Coke-Wallis and Mr Quinn.

3 Mr Tomes and Mr Coke-Wallis had been in partnership but difficulties had arisen between them. Mr Rombaut's action alleged that whilst Mr Tomes and Mr Quinn were willing for shares to be transferred and registered so as to reflect the agreement reached in February, 2000, Mr Coke-Wallis was not willing to do so. Hence the action asked for a declaration that Mr Rombaut was the equitable owner of 51% of Diamond, and for an order that 51% of the shares be transferred to him.

4 Mr Tomes and Mr Quinn filed answers admitting the claim. Mr Coke-Wallis filed a long answer. It is not all that easy to follow, but we understand that it is denying that Mr Rombaut had any interest in Diamond. It accepts that, as part of an agreement of 5 th August, 2000, whereby Mr Tomes and Mr Coke-Wallis brought their partnership to an end and went their separate ways, Mr Coke-Wallis agreed to transfer his 50% shareholding in Diamond to Mr Tomes. This transfer was effected in about September, 2000.

5 Although it is not clear whether Mr Tomes has transferred 51% of Diamond into the legal ownership of Mr Rombaut, we were informed by Mr Rombaut at the hearing that he is happy that he has 51% beneficial ownership of Diamond, and the remaining 49% is shared equally between Mr Tomes and Mr Quinn. Furthermore, we were told that Diamond has ceased to trade on 31 st December, 2001, and is accordingly now a dormant company which will in due course be wound-up.

6 Mr Rombaut intimated at the hearing that he might wish to bring a claim for damages

against Mr Coke-Wallis, because of the failure to recognise Mr Rombaut's entitlement to 51%. No such claim is pleaded. The reference in the prayer to further or other relief is not sufficient, and accordingly no such claim is open to Mr Rombaut on the pleadings at present.

7 It follows that Mr Rombaut's action is in effect spent, as the relief sought has already occurred. The only outstanding issue is one of costs.

8 We should add that on 12 th January, 2001, Mr Coke-Wallis and Coke-Wallis Jones de Polignac Trustees (Jersey) Limited filed what is described as a counterclaim to Mr Rombaut's action seeking damages against Mr Rombaut, Mr Tomes, Mr Quinn, Mrs Rombaut and Equinox Trustees Limited for an un-particularised conspiracy to defraud.

9 The second action has the reference PL2000/164. This is an Order of Justice dated 6 th December, 2000, brought by Mr Tomes against Mr Coke-Wallis, Mrs Natalie Coke-Wallis, his wife, and Coke-Wallis Jones de Polignac Trustees (Jersey) Limited. To avoid confusion we shall refer to this later company under its former name of Cototrust. This action relates to the break-up of the business partnership carried on by Mr Coke-Wallis and Mr Tomes.

10 As we have already mentioned, Mr Coke-Wallis and Mr Tomes signed an agreement on 5 th August, 2000, dealing with the separation of their business affairs. Amongst other things Cototrust was to become 100% owned by Mr Coke-Wallis whereas previously it had been owned equally by Mr Coke Wallis and Mr Tomes. The Order of Justice alleged that Mr Coke-Wallis had failed to comply with the agreement of the 5 th August in several respects. It sought payment of various sums, delivery up of various documents and other items, and a taking of accounts between the parties. The Order of Justice also required Mrs Coke-Wallis and Cototrust to assist where relevant. An Answer was filed on the 19 th January, 2001, denying liability. We shall refer to this second action as Mr Tomes' main action.

11 Thirdly, there is an action under the reference PL2001/05. This was begun by Order of Justice instituted by Mr Tomes against Mr Coke-Wallis, Cototrust and Mrs Coke-Wallis on 19 th January 2001. It too arose out of the agreement of 5 th August. It sought injunctions concerning the re-instatement of a computer link between Mr Tomes' new business and Cototrust; and the completion of deeds of resignation by Cototrust as trustee of certain trusts, which the agreement of the 5 th August had provided should in future be looked after by Mr Tomes.

12 The computer injunction was granted *ex parte* and, after a contested hearing, the injunction concerning the Trust Deeds was granted on the 25 th January, 2001.

13 The only outstanding matter in this case would appear to be an unspecified claim by Mr Tomes to damages, but again that has not been particularised in any way. Also outstanding

will be the question of costs, to the extent that costs have not already been dealt with by the order of the Court of the 25 th January, which awarded the costs in relation to the interlocutory hearing against the defendants in the case.

14 The defendants, that is to say Mr Coke-Wallis, Mrs Coke-Wallis and Cototrust, filed a 24 page answer and counterclaim on 20 th July, 2001. The answer consists of detailed factual and legal submissions as to why the Court was wrong to find as it did on 25 th January. The counterclaim is based, as we understand it, on seeking re-imbursement of fees charged by Equinox Trustees Limited in respect of certain specified trusts after 5 th August, 2000. We shall refer to this third action as the "injunction action".

15 Mr Coke-Wallis, Mrs Coke Wallis and Cototrust filed a number of summonses in relation to these 3 actions. They overlapped to some extent and we think it easiest to summarize the relief sought rather than refer to each summons. They sought the following orders by summonses, dated 23 rd August, 2001.

(i) That all three actions be consolidated, or heard together. Alternatively, Mr Rombaut's action should be heard immediately prior to the other two actions.

(ii) That Mr Tomes should be "put to strict proof" as to whether he encouraged, advised or otherwise assisted Mr Rombaut to bring Mr Rombaut's action.

(iii) That Mr Rombaut should be "put to strict proof" as to whether he brought his action on his own initiative or as an agent for Mr Tomes.

(iv) That Mr Quinn should be "put to strict proof" as to whether he encouraged or otherwise assisted Mr Rombaut to bring his action.

(v) That Mr Tomes should be "put to strict proof" as to whether in July, 2000, or at any other time he attended any meetings held at the offices of Crill Canavan or anywhere else, or was party to any telephone consultation or any other correspondence in respect of Mr Rombaut's action, or any other aspect of the dispute over Mr Rombaut's claim to the shares in Diamond.

16 These matters came before the Master on 15 th October, 2001. He refused to consolidate the three actions or order that they be tried together. However, by agreement he ordered that Mr Tomes' main action, and the injunction action, should be heard at the same time. He noted that the applications, which we have listed at (ii) to (v) above, were withdrawn during the course of the hearing and accordingly he dismissed them. Mr Coke-Wallis, Mrs Coke-Wallis and Cototrust now appeal against the decision refusing consolidation of all three actions; they also wish to appeal against the four matters which they withdrew before the Master.

17 On the 12 th December, the Master considered a further summons by Mr Coke-Wallis in Mr

Rombaut's action. He sought leave under Rule 6(10) 1 to convene Cototrust as a third party to Mr Rombaut's claim. He also wished to amend his answer and counterclaim “to reflect that Cototrust was a party to the counterclaim”. The Master refused this application and Mr Coke-Wallis now appeals against that decision.

18 The approach which we take in matters such as this is that the Court considers the matter afresh and exercises its own discretion whilst, of course, taking due note of the decision of the Master and the reasons for his decision.

19 Finally by way of preliminary we should add that in view of the voluminous papers submitted, on what are essentially quite short issues, the Court warned the parties on the day before the hearing that time limits would be imposed on their oral submissions. The appellants were given 1 hour for their submissions, Mr Fielding had 45 minutes in which to reply, Mr Rombaut 15 minutes and the appellants had a further half an hour to reply. In the Court's view these limits erred on the side of generosity.

Consolidation

20 We will consider first the issue of whether the 3 actions should consolidated or tried together or whether Mr Rombaut's action should be tried immediately prior to the other 2 actions. The Master of course has already ordered that Mr Tomes main action and the injunction action should be heard together, so the only issue on appeal was whether Mr Rombaut's action should also be consolidated or tried with the other two actions, or immediately before them.

21 The relevant power is contained at Rule 6/11(1) and before making such an order the Court must be satisfied that:

(i) Some common question of law or fact arises in all the actions; or

(ii) The right to relief claimed arises out of the same transaction or series of transactions; or

(iii) For some other reason it is desirable to make such an order.

22 Mrs Coke-Wallis put the case for the appellants on this issue. She made a number of factual assertions upon which it is not possible for us to comment on at this stage. We understood her central submission to be as follows: she accepted that, on the face of it, the legal and factual issues raised in Mr Rombaut's action are not the same in the other two actions, and do not arise out of the same transaction or series of transactions. She asserted strongly that this did not reflect the true position. She asserted that Mr Rombaut was put up to bringing his action by Mr Tomes in order to bring added pressure to bear on Mr Coke-Wallis at the time of the negotiation of the agreement to terminate the business relationship

between them which culminated in the agreement of the 5 th August.

23 The action over the ownership of Diamond was, therefore, closely linked to the action over the agreement of the 5 th August. Furthermore, Mr Rombaut had conspired with Mr Tomes and others to damage and/or divert business from Cototrust to Diamond, in the period leading up to the 5 th August. She accepted that, following the agreement of the 5 th August, Mr Coke-Wallis had transferred his 50% shareholding in Diamond to Mr Tomes so there was no continuing issue between Mr Rombaut and Mr Coke-Wallis in Mr Rombaut's action other than in relation to costs. She also argued that, contrary to what was said in the course of the injunction action, Mr Tomes did have an alternative available computer server, namely that used by Diamond. He did not therefore need to bring the injunction proceedings.

24 As to the request that evidence be given at this stage on whether Mr Tomes and Mr Quinn had encouraged or otherwise assisted Mr Rombaut to bring his action, she argued that the appellants needed that information in order to know how to plead their case.

25 We have carefully considered Mrs Coke-Wallis' submissions, and the lengthy skeleton argument which she filed on behalf of the appellants. However, we are in no doubt it would not be right to order consolidation of Mr Rombaut's action with the other 2 actions, or that they should be tried at the same time, or that Mr Rombaut's action should be tried immediately before the other 2 actions. Our reasons are as follows:

> ***"There may, however, be further circumstances which will militate against an order being made.*** Two actions cannot be consolidated where the plaintiff in one action is the same person as the defendant in another action, unless one action can be ordered to stand as a counterclaim or third party proceedings in another action. Moreover, as one firm of solicitors will usually be given the conduct of the consolidated action on behalf of all plaintiffs, it is generally impossible to consolidate actions in which different solicitors have been instructed unless all plaintiffs agree that one firm of solicitors shall act on their behalf, or unless there can be a partial consolidation."
>
> In this case Mr Tomes is the plaintiff in his two actions. but is a defendant in Mr Rombaut's action. Furthermore, if there were consolidation, Advocate Fielding could not act for all the plaintiffs as he could not act both for Mr Rombaut and Mr Tomes given that they have opposing interests in Mr Rombaut's action. It is true that that action is now largely spent, but there is still an outstanding issue as to costs.

(iv) We have considered the appellant's argument that all is not as it seems on the pleadings, and that matters relating to the ownership of Diamond are more closely related to the issues arising from the agreement of the 5 th August than first appears. We have to deal with the issues as they appear from the

pleadings, rather than on the basis of written or oral assertions by the appellants at the hearing. Furthermore, we note that in paragraph 37 of Mr Coke-Wallis' answer to Mr Rombaut's action, he himself asserts that the agreement of 5th August “had nothing to do with Mr Rombaut”. It cannot, therefore, be right to bring Mr Rombaut into the two actions which arise solely out of the agreement of the 5 th August.

(v) We appreciate that the counterclaim to Mr Rombaut's action opens up the whole history of Cototrust in alleging a conspiracy to defraud it, but the counterclaim is wholly deficient as a pleading. Furthermore, given that Mr Rombaut's action is now defunct, save as to costs, we think it must at least be questionable whether a counterclaim to that action is the right way to bringing a major claim alleging a general conspiracy in relation to Cototrust's affairs going back many years. However, that will be a matter for the parties and ultimately the Master to consider in due course. The existence of the counterclaim in its present form does not provide any reason for consolidation or joint trial.

(vi) We find that none of the three grounds for consolidation or trial together, referred to earlier, are satisfied. Nor in any event do we think that any saving of costs to the Court or the parties would ensue if we were to make an order as requested. On the contrary, like the Master, we think that an already complex procedural position will be made much worse with increased costs by mixing up the different actions.

(i) Mr Tomes' main action and the injunction action arise out of the agreement dated 5 th August, 2000, made between Mr Tomes and Mr Coke-Wallis in connection with the separation of their partnership. The action involves a consideration of whether or not Mr Coke-Wallis has complied with the terms of that agreement. Mr Rombaut was not party to that Agreement and has no involvement with the issues in those two actions, nor has Mr Quinn.

(ii) Mr Rombaut's action relates to the different issue of whether there was an oral agreement made in February, 2000, whereby it was agreed that he was entitled to acquire 51% of the shares in Diamond, with each of Mr Coke-Wallis, Mr Tomes and Mr Quinn sharing the remaining 49% equally. That action is now resolved to his satisfaction. There would seem to be no advantage in consolidating an action which does not relate to the same issue and in any event now only concerns the question of costs.

(iii) The Supreme Court Practice (1999 Ed'n) says the following at paragraph 4/9/2:

26 For these reasons we dismiss the appeal in respect of consolidation, or trial together, or the trial of Mr Rombaut's action immediately before the main action and the injunction action. As to the withdrawn matters, the fact that they were withdrawn would normally mean that they cannot be the subject of an appeal. However, bearing in mind that the appellants are acting in person, we have considered the matter afresh. It is not clear upon what basis the

applications are made. Is the Court being asked to order evidence to be produced ahead of the trial? Alternatively, is it being requested to order interrogatories? Whatever power the Court is being asked to exercise, we do not think it is necessary or desirable to make the orders requested. If it becomes relevant in any of these actions to explore the questions raised in the application that can be done by oral evidence or cross examination at trial in the ordinary way. If there are documents which are relevant to this issue then no doubt they will emerge on discovery.

27 We therefore dismiss this aspect of the appeal, and we add that the appellants are now on notice that if they withdraw an application during the course of a hearing they cannot expect to bring an appeal because they will have agreed to the dismissal of the matter by withdrawing.

28 That leaves Mr Coke-Wallis' summons to join Cototrust as a third party in Mr Rombaut's action. We have to say that, like the Master, we have had some difficulty in following the basis for this application. Rule 6/10 (1) of the Royal Court Rules is in the following terms:

> ***"Where a defendant in his answer to an action which has been placed on the pending list a) claims against a person not already a party to the action any contribution or indemnity or b) claims against such a person any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as the relief or remedy claimed by the plaintiff, or c) requires that any question or issue relating to or connected with the original subject matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action, the Court may after hearing the parties make an order that such person be convened as a third party."***

29 Mr Coke-Wallis confirmed that as defendant to Mr Rombaut's action he did not wish to make any claim against Cototrust in relation to Mr Rombaut's claim concerning Diamond. That is hardly surprising given that following the agreement of the 5 th August, 2000, Mr Coke-Wallis acquired 100% of Cototrust. It follows that paragraphs (a) and (b) of the Rule are not applicable. Mr Rombaut's action is concerned with the ownership of Diamond. There is no suggestion that Cototrust has any connection with this claim. In any event, Mr Rombaut's action is now about costs only. We cannot see therefore that the matter can be brought within paragraph (c) either.

30 Mr Coke-Wallis appeared to be saying that Cototrust had suffered loss as a result of the actions of Mr Tomes, Mr Rombaut and others, taken before the 5th August. Cototrust therefore needed to join in the counterclaim to Mr Rombaut's action. As to this we would comment as follows:

(i) Cototrust is already listed as a second plaintiff in the counterclaim, although we are

not clear as to whether that is possible, when Cototrust is not a defendant in Mr Rombaut's claim.

(ii) Mr Coke-Wallis singularly failed to explain how it was wished that Cototrust should be joined as third party and how he wished to amend the answer and counterclaim accordingly. As the White Book makes clear (see paragraph 20/8/4), in practice, leave to amend is given only when and to the extent that the proposed amendments have been properly and exactly formulated. This requires production of a draft pleading so that the Court can see exactly what is proposed. No such pleading has been produced, and in its absence we are unable to understand the nature of the relief sought against Cototrust or by Cototrust, and why it is necessary to join Cototrust and in what capacity. As Advocate Fielding made clear: if Mr Coke-Wallis produces a draft pleading which makes all these matters clear he will consider it; furthermore an application could then be made to the Master if appropriate.

(iii) In any event the counterclaim is simply not in a fit state as a pleading for a decision as to whether parties should be joined. If it is to be allowed to remain as a counterclaim rather than a separate action, or indeed as a counterclaim to one of the other actions, it must be properly pleaded. Only when the basis and extent of the counterclaim is made clear will it be possible for the Court to determine who should be parties and in what capacity. In particular only at that stage would the Court have any idea as to why and in what capacity it was sought to join Cototrust.

31 In summary, we dismiss the application to join Cototrust on the basis that it does not fall within Rule 6/10 and we think the Master was absolutely right in his conclusions.

32 We would make two final observations for the assistance of the parties:

(i) The litigation in relation to this dispute is essentially between Mr Coke-Wallis and Mr Tomes. It shows every sign of getting out of control. This is partly because of the prolix and discursive nature of the appellants' pleadings which do not comply with the Rules. We recommend that at the appropriate stage, which we appreciate may not yet have arrived, the Master should hold a directions hearing in order to try and put some order into these proceedings. In the meantime, steps should be taken to try and get the pleadings into good shape.

(ii) As we have mentioned, the only action which appears to have live issues left is Mr Tomes' main action in relation to the 5 th August Agreement. It is not clear from the pleadings, but we get the impression that we are not talking of large sums of money as being at stake. Indeed, Mrs Coke-Wallis asserted that the whole litigation was now 90% about costs. Yet the costs of this litigation must be increasing exponentially. The Court has been faced with endless procedural summonses; every decision is appealed and every point is taken. The appellants must be spending a large proportion of their time on the preparation and conduct of these hearings and they are incurring costs orders when they lose. They are presumably being inhibited in building up Cototrust's new business. Similarly, Mr Tomes, although not appearing in

person, must be running up very substantial legal fees. Mr Coke-Wallis and Mr. Tomes agreed to separate as long ago as 5 th August, 2000. We can only urge all the parties to try and reach some sensible compromise, and get on with their lives by building up and developing their respective new businesses. If they go on as at present they will all end up as losers.