Blenheim Trust Company Ltd v Mr. Eric Morgan and Abacus (Guernsey) Ltd and Belgrove Ltd and De Monfort Securities Ltd and Tabtim Holdings Ltd and Iona Securities Ltd and Osiris Trustees Ltd and Goodways Ltd

Jurisdiction:	Jersey
Judge:	Greffier
Judgment Date:	01 June 2000
Neutral Citation:	[2000] JRC 94A
Reported In:	[2000] JRC 94A
Court:	Royal Court
Date:	01 June 2000

vLex Document Id: VLEX-793642933

Link: https://justis.vlex.com/vid/blenheim-trust-company-ltd-793642933

Text

[2000] JRC 94A

ROYAL COURT

(Samedi Division)

Before:

J.G.P. Wheeler, Greffier Substitute.

Between
Blenheim Trust Company Limited
Plaintiff
and
Mr. Eric Morgan

First Defendant

and

Abacus (Guernsey) Limited
Second Defendant

and

Belgrove Limited
Third Defendant

and

De Monfort Securities Limited
Fourth Defendant

and

Tabtim Holdings Limited
Fifth Defendant

and

Iona Securities Limited
Sixth Defendant

and

Osiris Trustees Limited
Seventh Defendant

and

Goodways Limited
Eighth Defendant

Advocate D. F. Le Quesne **for the Plaintiff**

Advocate R. J. Michel **for the First Defendant**

Authorities

Official Solicitor -v- Clore (1984) JJ 81 CA

Alsford -v- Alsford née Boyd (1991) JLR 100

Alsford -v- Alsford née Boyd (6 th May, 1992) Jersey Unreported; CofA.

Thynne (Marchioness of Bath) -v- Thynne (Marquess of Bath) (1955) P 272 and (1955) 3 All ER 129

Halsbury's Laws of England (4 th Ed'n) Vol. 26: Judgments and Orders: paras. 556 and 557.

Application by the plaintiff for an order that the first defendant provide Further and Better Particulars of his Answer as ordered on 22nd December, 1999

THE Greffier **SUBSTITUTE:**

1 By way of background, the dispute in this action relates essentially to a joint venture agreement regarding the acquisition and development of land in the United Kingdom. The plaintiff claims an entitlement to a share in the profits arising from that joint venture and that claim is made against a number of defendants. The first defendant, Mr Eric Lyn Morgan, denies any liability on his part and asks that the claim against him be dismissed.

2 So far as relevant, the position in relation to pleadings in the action is as follows. On 18 th May, 1999, the plaintiff filed a Re-Amended Order of Justice. The first defendant filed an Answer to that pleading on 22 nd October, 1999.

3 On 6 th December, 1999, the plaintiff issued a summons requesting the first defendant to provide Further and Better Particulars of his Answer of 22 nd October, 1999. That summons came before me on 22 nd December, 1999, when I ordered that certain Further and Better Particulars be furnished. These were provided in a document dated 14 th January, 2000, which was duly filed on behalf of the first defendant.

4 The plaintiff has taken issue with some of the Particulars provided or not provided. Accordingly, on 5 th April, 2000, the plaintiff issued a summons seeking a further order that certain Particulars be given and that summons came before me on 23 rd May, 2000. There are four specific respects in which the plaintiff argues that the first defendant has failed to comply with the order which I made on 22 nd December, 1999. These will be addressed in detail in due course.

5 Before dealing with the specific requests referred to in the summons it is necessary for me to address one particular matter which was raised in argument before me on 23 rd May and was the principal reason why I reserved my decision on that day. Advocate Le Quesne submitted that as there had been a hearing before me on 22 nd December, 1999, at which certain Particulars had been ordered and no appeal had been made against my decision, it was too late for the first defendant now to argue that those Particulars should not be provided. Advocate Michel took the opposite view and urged that if an order had been made which could not or should not have been made because I was led into error, then it

was open to me to review my decision. As my finding on this particular point is highly relevant to the whole matter of the summons, I agreed to adjourn to consider the arguments put to me and to give my decision thereon.

6 The question at issue has been considered by the Courts in Jersey on a number of occasions. I quote firstly from the decision of *Official Solicitor -v- Clore* 1984 JJ 81 CA as follows:–

> ***"It may be convenient at this stage to mention an English authority drawn to our attention by Mr. Le Cras, the relevance of which and the correctness of which was not disputed by any other party.*** That is the case of *Regina v. Cripps, Ex parte Muldoon and others* (1984) 1 Q.B. 84 ***a decision of the Divisional Court.*** From a report contained in the Times newspaper of 7 th April, 1984, it emerges that the appeal was dismissed and the Court of Appeal of England there said or reaffirmed the well known principle that, save in a case where the slip rule is applicable (where the order made by a judge has inaccurately recorded something which he meant to record, as if there was some mistake about a date or the quantum of damages or some other matter like that), it is not open to a judge, having perfected an order, thereafter to return to it and to amend it or alter it or to have further thoughts in relation to what he should have said. So, applying the principle, the task of a Court coming in July, 1983, to an order made on 30 th September, 1982, was a task of interpretation, not of amendment or alteration."

7 The decision in the *Clore* case cited above was followed by the Royal Court in *Alsford -v- Alsford née Boyd* 1991 JLR 100. That decision was the subject of an appeal and the general legal position was considered in detail by the Court of Appeal in its unreported judgment given on 6 th May, 1992.

8 In its judgment of 6 th May, 1992, the Court of Appeal reviewed in detail various English authorities on the subject (see pages 13–16 inclusive of its judgment). Although it is not necessary to quote all the authorities reviewed in detail, there are particularly relevant extracts which merit repetition.

9 At page 13 of its judgment the Court of Appeal cites Halsbury's Laws of England (4th Edition Volume 26 — Judgments and Orders, paras. 556 and 557) as follows:–

> ***"556. Amendment after entry of judgment or order.***
>
> ***As a general rule, except by way of appeal, no court, judge or master has power to rehear, review, alter or vary any judgment or order after it has been entered either in an application made in the original action or matter or in a fresh action brought to review the judgment or order.*** The object of the rule is to bring litigation to finality, but it is subject to a number of exceptions. For example, a clerical error or an error arising from an accidental slip or

omission may be corrected under rules of court or the court's inherent jurisdiction. The court has inherent jurisdiction to vary or clarify an order so as to carry out the court's meaning or make the language plain, or to amend it where a party has been wrongly named or described unless this would change the substance of the judgment.

557. Amendment of clerical or accidental mistakes.

… A judgment or order will not be varied, however, when it correctly represents what the court decided and where the court itself was wrong, nor can the operative and substantive part of the judgment be varied and a different form substituted".

10 Having referred to the extract from the *Clore* case, the learned Court of Appeal then went on to consider in some detail the decision of *Thynne(Marchioness of Bath) -v- Thynne (Marquess of Bath)* (1955) P 272 and (1955) 3 All ER 129. In particular, at pages 15 and 16 of the Court of Appeal judgment there are set out illustrations as to when a court may, in the exercise of its inherent jurisdiction, vary, modify or extend its own orders if, in its view, the purposes of justice require that it should do so. I refer only to two examples cited (at pages 15 and 16 of the judgment) where such power cannot be invoked:–

"(d) If it is suggested that a court has come to an erroneous decision, either in regard to fact or law, then amendment of its order cannot be sought, but recourse must be had to an appeal to the extent to which appeal is available…"

… … … … … … … … … … … … …

"(h) Even if a judgment has been obtained by some fraud or false evidence the court cannot amend the judgment: there must be either an appeal or there must be an action to set aside the judgment: the particular circumstances may denote what procedure is appropriate; but a power to amend cannot be invoked."

11 What I consider to be the correct approach is embodied in the final paragraph of the citation from the *Thynne* case as set out on page 16 of the Court of Appeal judgment in the following terms:–

"Where a court has decided an issue and the decision of the court is truly embodied in some judgment or order that has been made effective, then the court cannot reopen the matter and cannot substitute a different decision in place of one which has been recorded. Those who seek to alter must in those circumstances invoke such appellate jurisdiction as may apply. But if a case arises where in the interests of accuracy it seems desirable to amend some part of a judgment, other than its operative and substantive part, it would seem to be regrettable if the inherent powers of the court were limited or confined."

12 In the light of the authorities to which I have referred, I consider that my position is quite clear and I cannot reopen the issues before me on 22 nd December 1999 nor substitute a different decision from the one made on that date.

13 I now turn to each of the requests for Further and Better Particulars which were the subject of argument before me on 23 rd May, 2000.

14 Request 1(b)

The Re-Amended Order of Justice at paragraph 1.b alleges that the first defendant was an original party to the joint venture agreement entered into in November 1991. It also refers to two family trusts, namely the Tabatha and Timothy Trusts as being family trusts of the first defendant. In his answer to this allegation, the averral is admitted by the first defendant, save that it is stated that Mr Morgan entered into the November 1991 Agreement as bare nominee for the second defendant Abacus Guernsey Limited ("Abacus") as trustee of the Tabatha Trust with the prior knowledge and consent of Abacus.

15 At the hearing on 22 nd December, 1999, I ordered that the first defendant should provide Particulars as to when the consent of Abacus was given. The plaintiff now contends that that information has not been provided and requests a further order for the information to be given. In response, Advocate Michel on behalf of the first defendant contends that the Answer is in fact given, albeit in paragraph 1(c) of the Particulars provided by his client dated 14 th January, 2000. I believe that Advocate Michel is correct in his submission and I therefore find that this Particular has in fact already been provided.

16 Request 5(c)

In paragraph 3.c of the Re-Amended Order of Justice the plaintiff alleges that on 10 th December, 1991, the first defendant orally agreed to the transfer of a portion of his profit share in the joint venture arrangements. That agreement was made with a Mr Richard Martin acting on behalf of his family trust of which the plaintiff is trustee. In his Answer the first defendant denies that any agreement was reached. He goes on to state that Mr Morgan advised Mr Martin that the latter would have to negotiate terms with Abacus but that he, Mr Morgan, would have no objection if Mr Martin wished to acquire up to half of the interest held by Abacus.

17 The Particular requested in paragraph 5(c) of the plaintiff's request is for the first defendant to state whether or not he informed Abacus of Mr Martin's wish to acquire the interest referred to in the Re-Amended Order of Justice and, if so, to provide details of how this was done and the response from Abacus. In the document containing Particulars furnished by the first defendant on 14 th January, 2000, the first defendant states that this is a request for evidence and that he is not prepared to answer it. For the reasons stated above, I am not

prepared to reconsider the decision which I made on 22 nd December, 1999, when I ordered that these specific Particulars be provided. Mr Michel, in his address to me, was quite candid in saying that he should have drawn my attention to this request and objected to it on the basis that it is really an "interrogatory" and not one in respect of which Particulars should be ordered. Be that as it may, I cannot review my decision and I therefore order that the Particulars requested be provided.

18 Request 8

In paragraph 4.b of the Re-Amended Order of Justice the plaintiff alleges (*inter alia*) that Berkeley Trust Company Limited ("Berkeley"), a predecessor of the plaintiff, was accepted and treated as a party to the joint venture and was treated by the other parties to the joint venture agreement as being beneficially entitled to a number of shares. In paragraph 24.1 of his Answer the first defendant admits that Berkeley, in anticipation of an agreement being reached on it becoming a shareholder, was conceded privileges in the management of the venture.

19 The request for Particulars as ordered by me asks the first defendant to state what privileges were conceded. In answer the first defendant states that the permitted privileges by way of concession were "of a similar nature to those exercised by Iona and Abacus as of right". Mr Le Quesne takes issue with this answer which, he says, is not really an answer at all. Rather, it "begs the question" and the plaintiff is placed in an impossible position as he does not know what concessions of a similar nature had been exercised by Iona and Abacus. Advocate Michel in response contends that the request for Particulars has been properly answered. Having considered matters I think Advocate Le Quesne is correct and I do not consider that the Answer furnished by the first defendant can properly be viewed as a response. I therefore order that Particulars of this paragraph be provided.

20 Request 9

In paragraph 4(b)(ii) of the Re-Amended Order of Justice the plaintiff avers that important decisions relating to the joint venture were taken unanimously by the original parties to the joint venture agreement and Mr Martin, acting as representative of Berkeley. In paragraph 24.2 of his Answer the first defendant denies that important decisions were taken unanimously, although unanimity was regarded as desirable but not obligatory. The request for Particulars asks the first defendant to state what important decisions were not taken unanimously. The Answer given on behalf of the first defendant does not, it has to be said, answer directly the question raised.

21 In the course of his address Mr Michel contended that the paragraph in his Answer, i.e. 24.2, constitutes a mere denial of the allegation contained in the Order of Justice and, as such, cannot be the subject of a request for Particulars. Unfortunately for Advocate Michel, he faces again the problem which I have previously addressed, that having ordered the Particulars to be given I cannot now review my decision. I therefore order that these Particulars be provided as I am not satisfied that the Answer presently given does address

the question. I would observe in passing, although it is not strictly necessary for my decision, that the Answer contained in paragraph 24.2 of the first defendant's Answer appears to me as not merely a denial but a denial which is “pregnant” with an affirmative allegation, particulars of which could properly be ordered.

22 Advocate Le Quesne, in his submissions, suggested that I make an “Unless Order” so that if the Particulars were not provided within say, 14 days, the Answer of the first defendant be struck out either wholly or in part. I am not, at this stage, prepared to make such an “Unless Order” and I therefore merely order that the Particulars requested described as requests 5(c), 8 and 9 be provided within 21 days.

23 Having heard argument from the parties on the question of costs I consider that the appropriate order on this occasion is that the costs of this summons be costs in the cause and I so order.