

Judgment 13/2006 De Carteret v Mann and Mann – Royal Court (Civil Action File 953) – 10th March, 2006

Civil appeal from the Court of the Seneschal of Sark – direction by the Seneschal that any notice of appeal must be lodged within 28 days – notice lodged one day later – appeal period declared as 40 days (see Le Mesurier v de Carteret Cour des Judgements et Records 2nd July, 1700) – Seneschal did not give parties an opportunity to be heard before fixing the 28 day period – appropriate to extend the time period, insofar as that was necessary – service of the notice of appeal by fax held to be sufficient on this occasion (See also Judgment 38/2006)

IN THE ROYAL COURT OF GUERNSEY

The 10th day of March, 2006 before Richard John Collas Esquire, Deputy Bailiff; sitting alone

In the matter of:

JACQUELINE GERMAINE DE CARTERET

(Appellant)

v.

MICHAEL JAMES MANN

and

JULIE ALISON MANN

(Respondents)

Whereas on 8th February 2006 the Deputy Bailiff considered an application for leave to appeal out of time and heard thereon Advocates N. J. Barnes and S. H. Davies, Counsel for the Appellant and Respondent respectively, the Deputy Bailiff this day handed down judgment in the terms attached hereto and ALLOWED the appeal and DIRECTED the parties to list the matter at an Interlocutory Court for further directions.

S. M. D. ROSS
Her Majesty's Deputy Greffier

**IN THE ROYAL COURT OF
GUERNSEY
(Ordinary Division)**

**On Appeal from the Court of the
Seneschal of Sark**

Between Jacqueline Germaine DE CARTERET Appellant

-v-

**Michael James MANN & Respondents
Julie Alison MANN**

Judgment handed down: 10 March 2006

Before: Richard John COLLAS Esq., Deputy-Bailiff

Counsel for the Appellant: Advocate N J Barnes

Counsel for the Respondents: Advocate S Davies (as agent for Advocate S Gomoll)

Case referred to: *Le Mesurier v de Carteret* 2nd July 1700 (decision of the Royal Court sitting as the Cour des Jugements et Records)

1. On 13 September 2005, the Seneschal handed down a written Judgment in this matter following a hearing held on 24 August 2005. In the final sentence of the judgment, the Seneschal directed that "*Notice to appeal this decision is to be made within 28 days of the date of this Judgment*". The period in which any appeal was to be lodged therefore expired on 11 October 2005.
2. Advocate Barnes issued a Notice of Appeal on 12 October 2005 in the mistaken belief that the time period allowed was one month, rather than 28 days.
3. The Respondents objected to the late issue of the Notice of Appeal so the Appellant has applied for leave to appeal out of time, if leave is required.
4. The first issue for me is to decide what is the time period laid down by Sark Law during which an appeal against a decision of the Court of the Seneschal may be commenced. I have not been referred to any piece of legislation defining the notice period. The absence of any statutory provision inevitably gives rise to uncertainty.
5. Advocate Barnes has drawn my attention to a decision of the Royal Court sitting as the Cour des Jugements et Records in *Le Mesurier v de Carteret* 2nd July 1700 establishing that appeals from Sark had to be instituted within 40 days. A decision of the Cour des Jugements et Records is of course binding

upon me sitting in this case as the Ordinary Division of the Royal Court. It is also binding on the Court of the Seneschal.

6. Advocate Barnes informed me that there was no discussion in the Sark Court of the period of time that should be allowed for an appeal. The Seneschal does not explain in his Judgment (which was issued by post, not in the presence of counsel) why he allowed a period of 28 days. It may be that he was, like me, under the misapprehension that there is some uncertainty as to the period allowed. If so, he is to be commended for attempting to resolve that uncertainty by specifying a period of time in his judgment. 28 days cannot be said to be manifestly unreasonable as it is very similar to the period of one month that is allowed when appealing decisions of the Royal Court in civil matters.
7. The Seneschal may not have been aware of the decision of the Cour des Jugements et Records of 2nd July 1700 and hence may have been unaware that he was abridging the time period permitted under the customary law. It is not necessary for me in this judgment to decide conclusively whether he has the power to abridge a time period because, even if he has that power, I am of the opinion that the well established principles of fairness and natural justice dictate that he should not exercise such a power without giving the parties the chance to be heard and/or without giving his reasons for the decision. In my judgement a decision in such circumstances to abridge the time period to 28 days is not a proper exercise of judicial power and hence may be set aside.
8. If I am wrong on that and if the Seneschal had the power and if he validly exercised the power to shorten the time period to 28 days, then there is nothing to say that I do not have the power to extend the time period.
9. Advocate Davies, on behalf of the Respondents, argued that any application for an extension of time should have been made to the Seneschal in the first instance rather than to the Royal Court. I question whether the Seneschal would have the power to extend the time period if an application is made after the expiry of the time period he decided upon. In the absence of any written rules to the contrary, I consider that the Royal Court has the power to extend the time period where no application has been made to the Seneschal. I therefore do not fault the Appellant for bringing this application in the Royal Court in the first instance.
10. If I am required to exercise a discretion to allow this appeal to proceed out of time then I am persuaded it is appropriate for me to do so, despite the forceful submissions to the contrary from Advocate Davies. I am not persuaded that there is any prejudice to the Respondents. They wish to sell the lease of the property which is the subject of this appeal and Advocate Barnes has indicated that his client will do whatever is required to reassure a purchaser that the Appellant will not be challenging the purchaser's title. Also, the delay was only 24 hours and arose as a result of an honest mistake on the part of the Advocate.
11. Advocate Davies submitted that the appeal is completely lacking as to any merit. I do not propose, in this judgement, to deal with the merits of the appeal in any detail other than to say that I heard sufficient from Advocate

Barnes to satisfy me that the appeal has sufficient merit for me to allow it to proceed. In so saying, I am giving no indication as to what might be the eventual outcome of the appeal and I would wish both parties to understand that I am not expressing any view as to which of the parties will ultimately be successful.

12. One further issue was raised in the course of argument and that is the manner in which Advocate Barnes served Notice of Appeal on the Respondents. Advocate Barnes sent it by fax to the Respondent's Advocate in Sark on the 12th October 2005. Advocate Davies (his Guernsey agent) told me his instructions were that Advocate Gomoll did not receive the Notice of Appeal by fax. That is questioned by Advocate Barnes because the Respondents have lodged with the court a copy of the Notice of Appeal bearing a date and time which indicates that it was indeed received on Advocate Gomoll's fax machine on the same day and at a similar time to when Advocate Barnes transmitted it. I invited Advocate Davies to obtain an affidavit from Advocate Gomoll to clarify the position but no such affidavit has been received prior to handing down this judgment. I therefore accept Advocate Barnes' word that it was duly transmitted.
13. Advocate Davies argued that Advocates Gomoll and Barnes had not agreed that documents could generally be served by fax, although he said that on one occasion when it was convenient for Advocate Gomoll to do so he had agreed with Advocate Barnes that on that occasion only he could serve by fax. Advocate Barnes denied there was such an agreement. I am aware from my time in private practice (and I am sure that the position has not changed in the short period since I have retired) that there is a general understanding between Advocates that documents can be served on Advocates' offices by e-mail, fax or hand delivery. To do so saves clients the expense of paying a fee to HM Sergeant. It also saves the staff of HM Sergeant and HM Sheriff from having to spend time serving documents on Advocates' offices, thereby freeing HM Sheriff's staff to carry out their other duties.
14. I will therefore accept that the service by fax was sufficient on this occasion. However, if there is any doubt between Advocates as to the manner in which documents are to be served in future, Advocate Barnes will be well advised to clarify it with Advocate Gomoll, and perhaps with other Advocates, so that there will be no doubt as to service on future occasions.
15. For the reasons given I allow the appeal to proceed and direct the parties to list the matter in an Interlocutory Court for further directions.