

Judgment 14/2007

**Albany Hotel Limited v Wrench – Royal Court (Civil
Action File 926) – 23rd May 2007**

Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 (ss. 6 and 7) – leave granted to register Act of Court against Albany – Albany wish to consent to a new bond and for that new bond to have priority over the Act of Court – powers of the Court reviewed – held that priority arose from the act of registration, not from the Order giving permission to register - the 1987 Law did not give power to the Court to dictate or alter the priority attaching to a registry - application dismissed

IN THE ROYAL COURT IN THE ISLAND OF GUERNSEY

Civil 926

The 23rd day of May, 2007, before Richard John Collas, Esquire, Deputy Bailiff; sitting alone.

In the matter of

Between:

ALBANY HOTEL LIMITED

Applicant

- v -

PAUL WRENCH

Respondent

Whereas on 4th May, 2007, the Deputy Bailiff considered an application by the Applicant for an order that a bond to be consented to in the sum of TWO MILLION ONE HUNDRED AND EIGHTY THOUSAND POUNDS (£2,180,000) in favour of Guernsey Home Loans Limited be granted priority to an existing charge against Albany's realty in favour of the Respondent and heard thereon Advocate M.G. Ferbrache for the Applicant and Advocates J.M. Wessels and J.T. Le Tissier Counsel for the Respondent and DISMISSED the said application, THE DEPUTY BAILIFF this day HANDED DOWN his reasons for the said decision in the terms attached hereto.

S M D ROSS

Her Majesty's Deputy Greffier

2. On 7 September 2005 the Royal Court proceedings was stayed by consent to allow the parties to pursue arbitration.
3. The arbitration proceedings are still continuing and I am told that the Respondent's claim is now pleaded in the sum of approximately £380,000 plus interest and costs.
4. The Applicant wishes to borrow £2,180,000 from Guernsey Home Loans Limited who require a first charge over the Applicant's realty in that amount. The Applicant wishes to consent to a new Bond and to give it priority over the Respondent's Act of Court.
5. The Applicant owns realty valued at £3,625,000 and therefore argues that the Respondent would still have reasonable security for its claim, especially as approximately £140,000 is being held by Advocates on behalf of the Applicant in relation to the claim.
6. The Respondent opposes the application and does not wish to lose its existing priority.
7. Having heard from both parties, I dismissed the application on the basis that the court had no power to grant it and without hearing detailed argument on the merits. As I believe this is the first occasion that the Royal Court has been asked to decide this point of law, I am handing down a written judgment with my reasons.

The Law

8. Section 6 and 7 of the 1987 Law provides as follows:-
 - “6. *An act or order of the Court made, in any proceedings, before the Court makes a final judgment in the proceedings or before the proceedings are otherwise concluded, including an order for an adjournment, shall not be registered in the Livre des Hypotheques, Actes de Cour et Obligations-*
 - (a) *without the leave of the Court; and*
 - (b) *[Not relevant]*
 7. *The order of the Court by which leave to register is given under section 6 of this Law-*
 - (a) *may be made ex parte;*
 - (b) *may limit the pecuniary amount which may be registered to such amount as may be specified;*
 - (c) *may be varied or revoked on the application of either party to the proceedings;*
 - (d) *may direct that the registration shall be removed-*

- (i) *after such time;*
- (ii) *upon such contingency or event;*
- (iii) *upon the deposit with the Court by the defendant to the proceedings of security of such amount,*

as in each case may be specified.”

9. The application is brought under section 7(c) seeking a variation of the Order of the Court granting permission to register the claim.
10. Advocate Wessels argues that it is important to distinguish between the Court Order granting permission to register and the act of registration. He drew my attention to the following passage in the Judgment of Clarke J A in *Moed v Cockram (Court of Appeal 23 July 1999)* (at page 10):-

“In my judgment, that which gives the Plaintiff his security is the act of registration. That is not an Act of Court, it is something done by the Plaintiff. Prior to the law of 1987 he could register without leave. Now he needs leave. But that does not turn his act in registering the Act of Court into an Act of the Court itself.”

Conclusion

11. The Applicant is seeking to vary the priority attaching to the registration. Priority arises from the act of registration, not from the Order giving permission to register. As the court’s power to vary or revoke under section 7(c) of the 1987 law refers to the order of the court by which leave to register is given and not to the act of registration it cannot, in my view, confer upon the court the power to alter the priority attaching to the registration.
12. I know of no other situation where the Royal Court has the power to dictate or alter the priority attaching to a registry. If the States had intended to confer such a power upon the court in the 1987 Law it would have had to do so in clear and unambiguous terms.
13. Where a borrower consents to more than one charge against his property, he may agree with his lenders the order of priority of their charges and if that is different from the date of registration, the agreement may be recorded in the terms of the Bond. That is a matter of agreement between the parties and may be witnessed by the Lieutenant Bailiff and Jurats when taking consent on the Bond, but it is not a result of a judicial decision.
14. In my view, the court’s power to vary under section 7(c) of the 1987 Law relates to the pecuniary amount registered and which is specified in the court’s Order as required by section 7(b). In other words, if the registered value of a claim clearly exceeds the amount the plaintiff is likely to recover the court could order that the amount of the registry be reduced. That could arise where part of the claim has been struck out at an interlocutory stage, or the claim has otherwise been amended or maybe even if the court is satisfied the claim has been pleaded in a sum which is

manifestly excessive such that the registry is more than sufficient to provide adequate security for the amount of any judgment to be delivered in due course. In such circumstances the court would have the power in doing justice between the parties to reduce the amount of the registry by varying the court order.

15. Alternatively, Advocate Ferbrache argues that as the court has the power to revoke the Order, it also has the power to vary it in any way less than full revocation. That is correct but it does not overcome the issue identified by Clarke J A that the priority arises from the act of registration not the order giving leave to register.
16. I accept that the court may revoke the order granting leave to register and some of the circumstances in which it may do so are considered by Clarke J A (at page 13 of his judgment in *Moed -v- Cockram*). He concluded by saying:-

“It is not, in my judgment, appropriate or desirable to attempt to identify all the factors that could be relevant to the exercise of a section 7 discretion.”
17. Advocate Ferbrache submitted that the court has power to order the revocation of the Order to enable a new Bond to be registered with a first priority and then has the power to give leave to re-register the claim as a second priority.
18. I can not say that there would never be a set of circumstances where that would be the appropriate remedy but it did not arise on the facts of the application before me. I did not need to consider the exercise of discretion in this case as Advocate Ferbrache did not invite me to do so once I had indicated that in my judgment the court does not have the power to grant the application.