

**Judgment 25/2007**

**Williams v (i) Dixcart Trust Corporation Limited; (ii)  
Corlett – Royal Court (Civil Action File 1077) – 15<sup>th</sup>  
June 2007**

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**Royal Court Civil Rules, 1989 (Rule 36) – allegation of breach of fiduciary duty –  
strike out application – pleadings sufficiently precise and clear to enable a  
substantive defence to be filed – application dismissed**

**IN THE ROYAL COURT OF GUERNSEY**

The 15th day of June, 2007, before Richard John Collas, Esquire, Deputy Bailiff;  
sitting alone.

Civil 1077

In the matter of

IAN WILLIAMS

Plaintiff

V

DIXCART TRUST CORPORATION LIMITED

First Defendant

and

ALAN CORLETT

Second Defendant

In the matter of the application to strike out,  
dated the 20<sup>th</sup> day of February, 2007, by the Defendants in the attached terms;

THE COURT, having heard Advocates C.H.

Edwards and J.P. Greenfield for the Defendants and the Plaintiff respectively, thereon,

GAVE JUDGMENT in the attached terms and:-

- 1) DISMISSED the application to strike out; and
- 2) ADJOURNED consideration of the summons for defences and of the issue of costs until the 29<sup>th</sup> day of June, 2007.

K H TOUGH  
Her Majesty's Greffier

**OFFICIAL TRANSCRIPT**

Williams v Dixcar15.06.07

**FRIDAY 15<sup>th</sup> JUNE 2007**

**IN ROYAL COURT 3**

**Before**

**Richard John Collas Esquire, Deputy Bailiff**

**IAN WILLIAMS v. DIXCART TRUST CORPORATION LIMITED**

**and**

**ALAN CORLETT**

DEPUTY BAILIFF:

1. This is my decision on the Defendants' application dated the 20<sup>th</sup> February 2007 that the Plaintiff's Cause be struck out pursuant to Rule 36 of the Royal Court Civil Rules on the basis it discloses no cause of action and/or that it may prejudice, embarrass or delay the fair trial of the Action.
2. At this stage in the proceedings no defences have been filed and I am required to assume that the facts are as pleaded. In short summary the facts are that the first Defendant conducts a fiduciary business including trust and company administration, the second Defendant is a Director of the first Defendant and also a Director of a Company called Woodcarving Technology Limited, which I will refer to as 'WTL', a Company administered by the first Defendant or its group of companies.
3. The Plaintiff is a retired commercial airline pilot who says he had no previous business experience and he was approached by a Philippe Abbott-Wilcox, an acquaintance of his, who discussed with him that he become an investor in WTL with a 49% shareholding. WTL was to exploit intellectual property in Beamlogic which is described as a system for joining wood beams.
4. The Plaintiff, Mr Abbott-Wilcox and the second Defendant had a meeting on the 18<sup>th</sup> September 2001 to discuss the proposal. It is pleaded that at that meeting Mr Abbott-Wilcox and the second Defendant made a number of representations concerning WTL and the second Defendant also made representations concerning himself and his own expertise and that he advised the Plaintiff to enter into a shareholder agreement with Philippe Abbott-Wilcox if the matter was to proceed.
5. As a result it is alleged that a number of fiduciary duties arose that were owed by the first and second Defendants to the Plaintiff. In reliance upon those discussions the Plaintiff agreed to invest £150,000.00 by way of capital and another £150,000.00 by way of loan. There was also a further loan of £45,000.00 and the Plaintiff paid some miscellaneous expenses as detailed in the Cause totalling £2,731.14. At a similar time, although the precise dates are unknown to the Plaintiff at this stage, the Defendants undertook, on behalf of

Mr Abbott-Wilcox, to incorporate a similarly named Company Woodcarving International Limited (“WIL”) in Nevis.

6. The second Defendant was a Director of WIL which was established to exploit a product similar to Beamlogic and a third party named Garth Evans was invited to invest, and did invest, a total of £375,000.00 in that venture.
7. On a date unknown, but prior to 25<sup>th</sup> March 2002, the Defendants also incorporated another Company Beamlock International Limited in the Isle of Man. Again the second Defendant was a Director and that company was to exploit a product the same, or substantially the same, as Beamlogic. It is alleged that the second Defendant and Mr Abbott-Wilcox, sought to procure Beamlogic International Limited to promote and exploit the product.
8. The Plaintiff pleads a number of breaches of the fiduciary duties owed to him and also that there was a mis-application of part of his investment with some funds being diverted by the Defendants to a Company called Netcom International Limited which is associated with Mr Abbott-Wilcox. In paragraph 50 of the Cause the Plaintiff pleads that:-

*‘By reason of the matters referred to above the Defendants and Mr Abbott-Wilcox acted together in concert to commit the breaches of fiduciary duty referred to in paragraphs 42 to 47 above alternatively to injure the interest of the Plaintiff’.*

9. The Plaintiff claims loss and damage and in paragraph 52 pleads that:-

*As a result of the Defendants’ breaches of fiduciary duty and/or wrongful acts and/or negligence the Plaintiff has sustained loss and damage. The Plaintiff’s investment of £413,316.18 ... ‘(which includes some interest’) ...in Woodcarving Technology has been wholly lost’.*

10. So the Plaintiff claims damages in that amount as well as seeking an account of the monies invested and profits earned by Netcom. I have been greatly assisted by the skeleton arguments and by the oral submissions from Counsel and I have to begin by asking what is the Law? The Application is under Rule 36 of the Royal Court Civil Rules as I have said and in applying this Rule the Royal Court looks to English principles as is clear from a number of previous decisions of the Royal Court including that of the former Bailiff, Sir de Vic Carey in The Wessadah Foundation v. Barings (Guernsey) Limited, Deputy Bailiff Day in IFS Investments Limited v. Manor Park (Guernsey) Limited and Others and Lieutenant Bailiff Hancox in International Steel and Tube Industries Limited v. Masood.
11. Advocate Edwards reminds me that the purpose of the pleadings is to define the issues so the Defendants know what case they have to face at trial and the Court knows what issues it must deal with. I am also reminded of the statement by Sir Godfray Le Quesne sitting as a Judge of the Court of Appeal in Silver Falcon, paragraph 34:-

*“Every conspiracy involves a combination of two or more persons, natural or legal, with a view to carrying out certain action. In the nature of things, it is*

*rarely possible for a Plaintiff who claims against alleged conspirators to particularise when, where and in what terms the combination was effected. He must be able to particularise those who he says were parties to the combination, but to expect him to give particulars of the conspiracy as if it were a commercial contract is unrealistic. Realising this, the Courts have required him to particularise the overt acts through which the conspiracy was carried out. We adopt the statement of principle laid down in this respect by Salmon, J. in Marrinan v Vibart [1963] 1 QB 234 at p.238:*

*“... the gist of the tort of conspiracy is not the conspiratorial agreement alone, but that agreement plus the overt act causing damage. It is true that the crime of conspiracy is the very agreement of two or more persons to effect an unlawful purpose, and any overt acts done in pursuance of the agreement are merely evidence to prove the fact of the agreement. The tort of conspiracy is complete only if the agreement is carried into effect so as to damage the plaintiff. Accordingly, the acts done in pursuance of the agreement are an integral part of the tort: Crofter Hand Woven Harris Tweed Co. Ltd v Veitch.”*

*On appeal, the judgment of Salmon J. was expressly approved by all three members of the Court: [1963] 1 QB 528”.*

12. The main thrust of Advocate Edward’s argument has been that some parts of the case are embarrassing and will delay the hearing and/or they are not relevant. He says these are serious allegations made against professional persons which they inevitably must take seriously and they are entitled to know with clarity and precision the case they have to meet. He is not seeking further and better particulars at this stage although there has been an exchange of correspondence in which some further particulars have been provided and he is not seeking to have those amplified. Instead he is saying the whole Cause is so bad it should be struck out although he concedes that if it is appropriate leave should be granted to re plead.
13. What then are his detailed complaints? Well he starts at paragraph 17 of the Cause and makes two complaints in relation to that. First of all he says ‘in the premises’ is not sufficiently specific, if it is intended, he says, to refer to what was pleaded in the preceding paragraph then the Cause should say so. In my view if that is not clear then that is a matter for further and better particulars and it is not a strike-out issue. Secondly in relation to paragraph 17 he says that the whole paragraph does not advance the case. Advocate Greenfield in reply says it is an essential element in establishing the fiduciary relationship and if that is correct then clearly the pleading must remain. If it was not correct would it be appropriate to strike it out? I refer to paragraph 18/19/17 of the 1998 White Book at page 351, the third paragraph:-

*“The mere fact that an opponent’s pleading contains some unnecessary matter is not sufficient ground for an application under this Rule. A statement will not be struck out merely because it is unnecessary so long as it is otherwise harmless. It is no part of the Defendant’s duty to reform the Plaintiff’s pleading but if wholly immaterial matter be set out in such a way that the Applicant must plead to it and so raise irrelevant issues which may involve*

*expense, trouble and delay then the irrelevant matter will be struck out as it will prejudice the fair trial of the Action”.*

14. In my view, this is not something that can be said to be wholly immaterial, it can easily be replied to, the Defendants know what their intentions were, they knew whether they intended the Plaintiff should have trust and confidence in them and they can reply to paragraph 17 without expense, trouble or delay. In any event their reply may well assist the Court in understanding the case it has to deal with, so I do not order it be struck out.
15. Advocate Edwards makes a similar complaint concerning the representations pleaded in paragraph 20, namely that their relevance is unclear, they are embarrassing and will add to the length of the trial. In my judgment they are to be viewed in the same light as paragraph 17 and my response is the same. Advocate Edwards accepts the fiduciary duties pleaded in paragraph 21 are all arguable and he raises no complaint in relation to them. In his written skeleton he took issue with the phrase *‘in the further premises’* as being insufficient and imprecise but if that is of any concern then it must be addressed through a request for further and better particulars and not a strike-out application.
16. In paragraph 22 Advocate Edwards says the reference to a duty to safeguard the Plaintiff’s investment is unhelpful but he does not seriously submit it should be struck-out. I leave for another day the question as to how the duty, if it exists, should be defined. I am satisfied that the Defendants can understand the case they have to answer.
17. In relation to paragraphs 23-49 of the Cause, Advocate Edwards makes a number of specific comments as to the lack of clarity, the inadequacy and/or the relevance of the Pleadings. In each case I am satisfied any shortcomings can be addressed through a request for further and better particulars at the appropriate time.
18. He makes a general complaint about the Pleadings in the Sections headed Woodcarving International Limited, Mr Garth Evans, and Beamlock International Limited (paragraphs 28 to 41 of the Cause) saying they are not relevant or their relevance is not apparent. In my view they are relevant to the overt acts of the alleged conspiracy. Some parts relate to the breaches of fiduciary duty pleaded in subsequent paragraphs.
19. Mr Edwards says the greatest mystery concerns paragraph 50 of the Cause where it is pleaded that *“by reason of the matters referred to above”* I think that is the phrase that he objects to. He says that in the absence of the matters being specifically pleaded, the Defendants will have to deduce how the facts to support a conspiracy claim could arise. Mr Greenfield’s reply is that all the facts pleaded above are relevant so there is no need to plead with any greater precision.
20. I find that the Defendants are perhaps too ready to find themselves embarrassed, to quote the words in paragraph 18-19-17 of the White Book and I reject the complaint. I am not concerned with the truth or credibility of the allegations, those will be for the day of the trial. It would not be for me to

strike-out allegations simply because they are unlikely to be proved even if that was my view.

21. Advocate Edwards does not seriously argue there is no case to answer but as the application is brought partly on the basis that the Cause discloses no course of action, I have to address that issue. The elements required for a conspiracy are set out in Lieutenant Bailiff Day's Judgment in *IFS v Manor Park* to which I have referred. I am satisfied that the parties to the alleged conspiracy are named, an agreement or combination is pleaded, the overt acts alleged are pleaded and the resulting damage is pleaded. So the elements required for conspiracy are alleged.

In relation to breach of fiduciary duty there is pleaded the facts giving rise to the alleged fiduciary duties, the duties are pleaded, breaches are pleaded and loss arising from them are pleaded.

22. The claim for negligence is perhaps the thinnest of all. The duty to take reasonable care is pleaded in paragraph 22 and it is pleaded that the investment has been lost, so although it is thinly pleaded I can see no reason to strike it out. If necessary perhaps further and better particulars need to be provided. So I am satisfied that Causes of action are disclosed.
23. Finally I have to look at the Cause in the round, as I was encouraged to do by Mr Edwards, and ask whether in the round the Pleadings are so lacking in precision and clarity that they are embarrassing to the point where they should be struck-out. I have done so. I can see that there are many deficiencies but I am satisfied that Advocate Edwards is, or should be able, to file a substantive defence even though that defence may have to be accompanied by, or may be followed by, a request for further and better particulars, so I dismiss the application.