

Judgment 33/2006* Masood, Newport Financial Holding Limited and Ali v Zahoor, International Steel and Tube Industries Limited, Istil Group inc, Mahboob and Saleemi – Royal Court (Civil Action File 754) – 21 June 2006

Royal Court Civil Rules, 1989 (Rule 7 (2)) – leave to serve outside the jurisdiction – exception déclinatoire – held that each defendant is prima facie a proper party to the claim and that the Royal Court has jurisdiction to hear the action – exception dismissed

[* Reissue (originally issued 19 January 2007 with wrong judgement attached)]

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil File 754

The 21st day of June, 2006 before; Alan Robin Winston Hancox, Esquire, E.G.H., C.B.E., Lieutenant Bailiff; sitting alone.

Between:-

SOHAIL MASOOD
NEWPORT FINANCIAL HOLDINGS LIMITED
MOHAMMAD ALI

Plaintiffs

and

MOHAMMAD ZAHOOR
INTERNATIONAL STEEL & TUBE INDUSTRIES LIMITED
ISTIL GROUP INC
AZOT LIMITED
WASEEM MAHBOOB
PARVEEN SALEEMI

Defendants

WHEREAS on the 25th day of April, 2006 the Lieutenant Bailiff considered the first Exception Declinatoire that this Court does not have jurisdiction to determine this matter and consequently should not have allowed the application to serve the cause out of the jurisdiction and heard thereon Advocates J.M. Wessels and A.M. Ozanne, Counsel for the Plaintiffs and Defendants respectively;

The Lieutenant Bailiff this day handed down
judgment in the terms attached hereto and

- 1) DISMISSED the first Exception Declinatoire brought by the First, Third, Fourth, Fifth and Sixth Defendant
- 2) RESERVED the question of costs.

S M D ROSS
Her Majesty's Deputy Greffier

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

21 JUNE 2006

Between:

**SOHAIL MASOOD
NEWPORT FINANCIAL HOLDINGS LIMITED Plaintiffs
MOHAMMAD ALI**

AND

**MOHAMMAD ZAHOOR
INTERNATIONAL STEEL & TUBE INDUSTRIES LIMITED
ISTIL GROUP INC
AZOT LIMITED
WASEEM MAHBOOB
PARVEEN SALEEMI**

Defendants

Judgment handed down: 21 June 2006

Before: Alan Robin Winston HANCOX Esq., Lieutenant Bailiff

Judgment

1. The parties to this case, to which I have somewhat inaccurately referred in the Royal Court proceedings Numbered 754 as ‘The Reverse Action’, includes the two parties to that action, namely the First Plaintiff herein, who was the sole defendant in that case, and ISTIL Ltd (‘ISTIL’) which was incorporated and registered in Guernsey on 16th May, 1997, as the sole plaintiff. That company is the Second Defendant herein, and the Third Defendant in the London Proceedings (see *infra*).

2. The Second Plaintiff, Newport Financial Holdings Ltd, who did not feature in Case 754, is the Second Claimant in those which have throughout been known as ‘the London Proceedings’: the First Defendant herein, Mr. Zahoor, is also the First Defendant in those proceedings and ISTIL Group Inc, a company incorporated in Delaware in the U.S.A, is the Third Defendant herein and is the Second Defendant in the London Proceedings.

3. To continue the description of the *dramatis personæ*, Azot Ltd, the Fourth Defendant is a company registered in the British Virgin Islands, owned

by the Arman Trust, and since March 13th, 2003, has been the majority shareholder in ISTIL. Since Azot is owned by Mr. Zahoor's family trust it is said to be the vehicle through which Mr. Zahoor controls a substantial proportion of the shares of ISTIL. The connexion of the Fifth Defendant, Waseem Mahboob, (who is in the Ukraine) is that he is stated to be the registered owner of 2,307,500 shares in ISTIL, which form the subject of the prayer for relief in paragraph 127 (f) of the Cause tabled herein on or about 8th July, 2005. The Application for service of the Cause out of the jurisdiction was heard and granted as against the First and the Third to the Sixth Defendants on that day.

4. The remaining Plaintiff, Mr. Mohammad Ali, is the Trustee of the Sohail Masood Life Insurance Trust, and of Pete's Mountain Life Insurance Trust, which featured in the former Oregon Proceedings. The remaining Defendant, Parveen Salaami, is the sister of the First Plaintiff, and stated to be entitled to inherit (under the law of Pakistan) jointly with Mr. Masood, the 2,007,500 shares in ISTIL referred to in the prayer for relief in paragraph 128 (a) of the Cause, and which appear to have belonged, in part at least, to their mother, the late Khatoon Shahood. Hence, I assume, the Application for Summary Judgment filed by the Plaintiffs on or about the 9th September 2005.

5. The reason I have been at pains to set out the foregoing background facts is that is important in this increasingly complex litigation to have a clear idea of how the disputes in relation to ISTIL have developed over the years. The history of that which I may conveniently refer to as the pre-action period before Case 754 came into existence is compendiously stated in paragraphs 12 to 23 of Advocate Wessels' Skeleton Argument dated 1st February, 2005, in that case. He represents the Plaintiffs in the instant case.

6. The *First Exception Déclinatoire*, with which I am now concerned was lodged by Advocate Alison Ozanne (who appears for all the Defendants) on behalf of all save the Second Defendant, is that that this Court does not have jurisdiction to determine this matter, and, consequently, should not have allowed the Application to serve the Cause outside the jurisdiction on Defendants 1 and 3 to 6 inclusive. This *Exception Declinatoire*, which is dated the 20th October, 2005, is framed in identical terms in respect of each of these Defendants.

7. The 8th July Order was made *ex parte* under Rule 7(2) of the Royal Court Civil Rules, 1989, which provides that before making an order the Court has to be satisfied that the matter to which the document relates-

- (a) is properly justiciable before the Court; and
- (b) is a proper one for service out of the jurisdiction

8. Miss Ozanne began by emphasising that both limbs of Rule 7(2) have to be satisfied before the Court may grant leave to serve outside the jurisdiction under sub-Rule (1). She compared the corresponding 1999 English provision, Order 11 Rule 1, to which the Royal Court habitually looks for guidance when considering the local Rule, and claimed that none of the subparagraphs thereto was applicable to this case. In particular, it could not be said that any of the affected Defendants was a 'necessary or proper party' to the

claim, although she conceded that the Second Defendant, ISTIL was registered and therefore 'resident' within the jurisdiction of this Court.

9. Miss Ozanne took me first to the passage at page 170 of Mr. Dawes' book, The Laws of Guernsey and demonstrated that shares in a company are 'meubles' and are to be contrasted with, say, a house situate in Guernsey, litigation in respect of which would almost of necessity be conducted in the Royal Court. The first of the case law authorities to which Miss Ozanne referred was Spiliada Maritime Corporation v. Cansulex Ltd [1987] 1 AC 460 which appears at TAB 5 of her Bundle. That case involved the charter of a Liberian vessel to carry sulphur in bulk from Canada to India. It was alleged that the sulphur was wet when loaded and caused severe damage to the vessel, for which the shipowners claimed damages from the cargo owners. The decision involved two of the issues that arise in the instant case, namely that of service out of the jurisdiction and that of *forum conveniens*.

10. Mr. Wessels interjected to say that the Spiliada case was more appropriately an authority relevant to the *Exceptions Déclinatoire* which relate to the issue of *forum non conveniens*, with which I tend to agree. Nevertheless there are passages in that decision which are useful as regards this case as a whole, and I will shortly refer to them. At page 859 Lord Goff said. that in both groups of cases the fundamental issue for the Court to address must be:

.... . . . to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice."

Earlier he had said at page 856, it is:

".....not just to show that England' (and I interpolate here 'Guernsey') 'is not the natural or appropriate forum for the trial, but ' (and, I again interpolate, 'also') 'tbat there is another available forum which" is clearly or distinctly more appropriate tban the English forum. In this way proper regard is paid to the fact that jurisdiction has been founded in England' (Guernsey) 'as of right."

Although they are very much to similar effect I propose to refer also to the opening words of Lord Templeman in the same case at page 847:

"Where tbe plaintiff is entitled to commence his action' (as in the instant case he is vis à vis ISTIL) 'the Court, applying tbe doctrine of *forum non conveniens* will only stay the action if the defendant satisfies the Court that some other forum is more appropriate."

11. Miss Ozanne then referred to two local cases, one being a decision of mine in Shamurin v. Base Metal Trading Ltd, Yurii Zhivilo & Mikhal Zhivilo [2001] 24th July and the earlier case of Singleton v. Zetshock [1997] 28th April. Both those cases to my mind essentially decided that Guernsey was the *forum conveniens*, but it is true that in the second the jurisdictional point was taken. However Carey D.B (as he then was) reached the conclusion that the Royal Court did have jurisdiction—inasmuch as the alleged damage suffered by the plaintiff occurred within the jurisdiction.

12. The next case cited was a decision of Newman L.B. in Vardinoyannis v. Ansol Ltd & Others [2002] 24th May, which involved both

jurisdiction and *forum conveniens* points. At page 3 of Ruling 1 in TAB 9 in Miss Ozanne's Bundle she said:

“Since Ansol Guernsey is resident here, it is common ground that all the formalities ultimately connected with the control of its assets eventually are dealt with here.”

13. In the last case in Miss Ozanne's Bundle to which she referred, Johnson v. Manitoba Marine Ltd & Another [1999] 23rd March, the first defendant was a Guernsey Company, and the exception as to the appropriate forum for the trial was taken by the Second defendant, a Malta registered company, which was allegedly responsible for the wrongdoing in question. After consideration of the circumstances and the relevant Law, the then Bailiff had held on 16th November, 1998, that the Plaintiff had an absolute right to issue proceedings in Guernsey, and that the Royal Court had wide powers under the Rules and under common law to join parties in proceedings here. He nevertheless held that determination of the issues in the case depended predominately on Maltese Law and the effect of the relevant local regulations. He therefore held that Malta was the *forum conveniens*.

14. Finally, Miss Ozanne referred to Film Distribution Ltd v. Anil Chhabria & Others [2001] EWCA (Civ) 416, Massey v. Heynes [1888] 21 QBD 330, and Carvill America Inc. & Others v. Camperdown (UK) Ltd & Others [2005] EWCA (Civ) 645, the three cases at TAB's 5, 6 and 7 of Mr. Wessels' Bundle, but none of these, in my judgment, assisted her case on the jurisdictional point. Equally, the passage from paragraph 4.40 in Civil Jurisdiction and Judgments, by Adrian Briggs and Peter Rees, comprehensively covers the situation where the averments relate to breaches of contract, and contrasts the jurisdictional position depending on whether the place where application is made for service out of the jurisdiction is that of the performance of the alleged breach of the contract. I do not find this of particular assistance in the instant case.

15. As regards the Fifth Defendant, in that which I assume is the English translation of his Affidavit sworn in November, 2005, and attested on 6th December, 2005, he acknowledges that he became a shareholder of 270,000 shares in Metalsrussia in 1997, which were converted into 2,700,000 shares in ISTIL, and subsequently, on 4th May, 2005 (that is to say over two years after the Extraordinary General Meeting of 31st March, 2003, which purported to remove the First Plaintiff as a director of ISTIL) those shares were transferred to Azot Ltd, the Fourth Defendant. In the current Summary of Capital and Shares of ISTIL they are shown as 'Disputed Shares' and are in the names of the two Trusts to which I referred in paragraph 4 above.

16. The transfer of the shares from Metalsrussia to Istil is confirmed at paragraph 43 (c) of the Cause, under the heading 'Share Swap.' In Mr. Masood's Affidavit in support of the Application under Rule 7, he states at paragraph 16 that Waseem is named as a Defendant because the Disputed Shares 'are currently registered in his name, and he may claim an interest in these shares'. It may well be that Waseem has divested himself of the shares in question, but in view of the passage in the First Plaintiff's Affidavit that I have

just quoted, it seems to me that there exists, *prima facie*, valid grounds for saying, at this stage, that he is ‘a proper party’ .

17. The reason for this provision, which in 1999, appeared as paragraph (e) of Order 11 Rule 1, is shown on the page following that to which Miss Ozanne referred in Massey v. Heynes (*supra*), namely page 334, where Wills. J said:

“...the word ‘proper’ [which then appeared in paragraph (g) of Order 11 Rule 1] ‘[is]’ ‘intended to enable persons to be made parties who under the old practice could not be served with the same writ, and those cases are mutually exclusive. The injustice and hardships of dealing with them in separate actions gave rise to Order xvi, which provides for alternative claims in the same action. Before that provision was made, great injustice often arose because a plaintiff did not know and, could not find out, amongst the several persons involved in a transaction, who was really liable, when certainly some of them was so, and the persons themselves knew where the truth lay, yet it was their interest to conceal it.”

18. I think the position regarding this *Exception* is admirably covered by the passage I cited from Miss Newman’s judgment at paragraph 12 above. It is not in dispute that the Company whose shares form the subject matter of the dispute in the instant case is ‘resident’ in Guernsey. In my judgment all matters ultimately connected with the control of the company’s assets and their disposition are properly dealt with here. I take the view that the available evidence shows that each Defendant is *prima facie*, at this stage, a proper party to the claim and that the Royal Court has jurisdiction to hear the action. The other two *Exceptions*, relating to *lis alibi pendens* (taken by Defendants 1,2 3 and 6) and *forum non conveniens* (taken by all the Defendants) respectively will fall to be decided in due course.

19. In the result I dismiss the *First Exception Déclinatoire* brought by the First, Third, Fourth, Fifth and Sixth Defendant. I propose to reserve the costs of this Application unless Counsel wish to address the Court otherwise.

A.R.W.Hancox
Lieutenant Bailiff
21st June 2006