

Judgment 40/2009

Prentice v (i) Garrard and Manning (Administrators of Landsbanki Guernsey Ltd) and (ii) Lloyds TSB Offshore Ltd – Royal Court (Civil Action File 1312) – 28 August 2009

Action by depositor for recovery of monies deposited with Landsbanki – application by Administrators for the claim against them to be heard separately as a preliminary issue – Royal Court Civil Rules, 2007 (Rules 1 and 38) - need to give effect to 'the overriding objective' and ensure 'proportionality' – held that justice required one trial of the issues rather than the possible added delay, frustration and expense of separate trials

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1312

The 28th day of August 2009 before John Russell Finch Esquire, Lieutenant Bailiff, sitting alone

LINDSAY MARGARET FIONA PRENTICE

Plaintiff

and

RICHARD ANTONY GARRARD

and

LEE ANTONY MANNING

(In their capacity as Joint Administrators of Landsbanki Guernsey Limited)

First Defendants

and

LLOYDS TSB OFFSHORE LIMITED

Second Defendant

Whereas on 11th August the Lieutenant Bailiff considered an application by the First Defendants seeking directions for the Plaintiff's claim against them to be heard separately as a preliminary issue and heard thereon Advocates P T R Ferbrache and C J Hay counsel for the Plaintiff and First Defendants respectively the Lieutenant Bailiff this day handed down judgment in the terms attached hereto and DISMISSED the said application and directed that

a further procedural hearing take place within six weeks, subject to the contrary agreement of the parties and reserved the question of costs.

S M D ROSS
Her Majesty's Greffier

**Approved Text
28 August 2009**

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

Between

LINDSAY MARGARET FIONA PRENTICE

And

Plaintiff

RICHARD ANTONY GARRARD

And

**LEE ANTONY MANNING
(In their capacity as Joint Administrators of
Landsbanki Guernsey Limited)**

**First
Defendants**

And

LLOYDS TSB OFFSHORE LIMITED

**Second
Defendant**

Judgment on Hearing of 11th August 2009 on Directions

Decision handed down: 28th August 2009

Before: John Russell FINCH Esquire, Lieutenant-Bailiff

Counsel for the Plaintiff: PTR Ferbrache

Counsel for First Defendants: CJ Hay

(The Second Defendant, with the consent of the Court, did not appear at this hearing and was not represented)

Legislation and cases referred to:

- 1) Royal Court Civil Rules, 2007, Rules 1 and 38
- 2) *Fairhurst v Siteweld Limited (28th April, 2000, Royal Court, unreported)*
- 3) *Holmes v SGB Services plc [2001] EWCA Civ 354*
- 4) *Purdie v Bailhache and Bailhache [1989] JLR 111*

Background

1. The First Defendants (hereafter “D1”), seek directions for the Plaintiff’s (hereafter “P”) claim against them to be heard separately as a preliminary issue in the case. P submits that all issues involving P, D1 and the Second Defendant (hereafter “D2”), should be tried together. D2 adopts, in effect, a neutral stance and, having consulted the Court, has not appeared at this hearing. The hearing was based on the skeleton arguments and various of the supporting authorities in the respective bundles (“P’s bundle” and “D’s bundle”) sent to the Court in advance. The bundles were helpful and served in sufficient time and the oral submissions to the point and well-reasoned. I stress this because some cases are resolved without this degree of assistance to the Court.
2. Put very simply, the case involves a claim by P for the return of what was £70,199.32, and is now around £49,000, plus interest, which had been deposited with the failed Landsbanki Bank. P had instituted a CHAPS transfer to her own bank account. D2 was used to effect the transfer. Something (I use a neutral phrase) went amiss and the end result was that the payment did not go through and P’s money remained with Landsbanki, which had by then gone into administration. P now ranks as a non-preferred creditor of Landsbanki; like others in that unfortunate situation she has received a 30% dividend, and is likely to receive more, possibly up to a total of 89%. It is pleaded (again put simply), that D1 was unjustly enriched by the return of P’s monies and further, or in the alternative, D2 was negligent and/or in breach of its duty to follow P’s instructions. From the claim it appears that the problem may have been a “*filter*” at Lloyds TSB in Birmingham that had caused the monies to remain with Landsbanki for some technical reason. For the purposes of reaching a decision, this is sufficient factual background and it is obvious that as this is a preliminary matter, no factual findings have been sought or made.

Submissions

3. Advocate Hay, on behalf of D1, submitted that the Court should give effect to the “*overriding objective*” of the Royal Court Civil Rules 2007, as defined in Rule 1(2). The principle of proportionality is very important, as was laid down by the Deputy Bailiff in a briefing note on the Rules dated 24th January, 2008. Cases must be managed to ensure that costs are proportionate to the complexity of the case, the sum involved and the financial position of the parties. Other rules are also relevant, especially Rule 38 on active case management by the Royal Court. Attention was drawn to various English cases concerned with the equivalent Civil Procedure Rules, 1998. Striking the balance between the various case management considerations is a matter for the judge (*Holmes v SGB Services plc [2001] EWCA Civ 354*).
4. It was suggested that trying the claims against D1 as a separate issue will save D2 the costs of a Royal Court action which does not affect them. The scope of the dispute between P and D1 is narrow, and essentially the issue is one of law not fact - the sums involved are relatively small and D1 presents as an insolvent Bank. It is also pointed out that resolving the dispute between P and D1 is likely to dispose of the case entirely if P succeeds. Following the suggestions put forward on behalf of D1 will be expeditious, fair and proportionate, in accordance with the Civil Rules (see especially paras 21 and 22 of D’s skeleton argument in the bundle).

5. Advocate PTR Ferbrache submitted that separate trials of separate issues are a departure from the norm and exceptional circumstances or special grounds are required as justification for this. The Jersey case of *Purdie and Others v Bailhache and Bailhache [1989] JLR 111* was relied upon. Blom-Cooper JA there observed (after referring to a quote from an English case that “*too often treacherous short cuts whose price can be delay, anxiety and expense*”):

“Nevertheless some cautionary note needs to be sounded before the Courts too readily indulge in carving up parts of an action. A single trial of all issues is the traditional mode of trial under the English system of litigation. And we do not think that, in essence, the general approach has been any different in this jurisdiction.”

6. Counsel submitted further that the justice of the case and the balance of convenience lies in favour of trying all issues together. Nothing has been put forward that should countenance a departure from the usual practice. It was also pointed out that D1’s proposals are essentially for severance of the claims against D1 and D2 rather than dealing with a preliminary point.
7. In the Guernsey case of *Fairhurst v Siteweld Ltd (28th April, 2000, Royal Court)*, one consideration taken into account by Day DB in an application for the determination of a defendant’s *Exception de Fond* to be deferred until after the substantive trial was the relative means of the parties. P is an individual, forced into a situation where she is obliged to take action against two corporate defendants, where it is accepted she is in this situation through no fault of her own. Two separate trials would be unjustifiable in those circumstances.

Legal Principles

8. The Court must give effect to the “*overriding objective*” of the Royal Court Civil Rules, 2007. Dealing with cases “*justly*” includes ensuring the parties are on an equal footing, saving expense and dealing with a case in ways which are proportionate to the amount of money involved and its importance. Another consideration is the financial position of each party. The Court’s duty to manage cases under Rule 38 is consistent with this. The keyword is “*proportionality*”, as shown by the Briefing Note on the Rules (page 21 of D’s folder).
9. In resolving this point the Court, provided it acts in accordance with the overriding objective, must conduct a balancing exercise and use its discretion judicially. It must also be noted that a key factor is whether the procedure sought is likely to achieve a saving in costs, or whether it is likely to increase expense and delay. As Blom-Cooper JA said in the *Purdie* case (supra., page 52 of P’s bundle):

“...the Court must ensure that in splitting the trial neither party thereby should enjoy an unfair advantage or suffer an unfair disadvantage”.

10. The Civil Court Rules and the authorities (although the cases are not directly in point on this rather unusual issue, but still offer helpful guidance), stress something which can sometimes be forgotten in considering procedural arguments; now there is little excuse for doing so - this is the justice of the case as it presently is laid out. Whichever way the issues are turned over, the position of P comes out at the top. At an earlier hearing, Advocate Hay made the point that the pool of creditors of Landsbanki should not be put at a less advantageous position than P. But the facts as pleaded (and not in material dispute) show that P seems to have done all she could to obtain her money, being frustrated by some sort of administrative blunder or barrier. It is appreciated that the tortuous history of what took place still has to be examined and, if necessary, detailed findings made, but it appears at this stage to be accepted that P, a private person, was not at fault. It seems to me that justice requires one trial of the issues rather than the possible added delay, frustration and expense of separate trials. It is on that rather simple ground, rooted on the particular facts of this somewhat out of the ordinary set of circumstances, that my decision is based. The ordinary run of events also would be that the hearing is not split and D1 has not demonstrated strong enough grounds to justify a departure from that practice.

Decision

11. D1's well-argued application fails. All three parties should now confer to agree whatever can be agreed to enable the expeditious trial of this action and I will sit, if needed, to pour the judicial Chrism over any outstanding areas of disagreement or disharmony. A further procedural hearing will be needed to look at what progress has been made and this should be done within six weeks, subject to the contrary agreement of the parties.

Costs

12. Reserved.

Judge J R Finch