

Judgment 66/2005

**Town and Country Estate Agents Limited v.
Peter Kevin Blondel and Peter Kevin Blondel v.
Town and Country Estate Agents Limited – Royal
Court (Civil action file 936) 21 November, 2005**

Application for full indemnity costs – costs incurred up to 21st April, 2004 to be paid by Mr Blondel on the recoverable basis, and thereafter on a full indemnity basis.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 21st day of November, 2005 before Richard John Collas Esquire, Deputy Bailiff; sitting alone

In the matter of:

TOWN AND COUNTRY ESTATE AGENTS LIMITED
(Plaintiff)

v.

PETER KEVIN BLONDEL
(Defendant)

and

PETER KEVIN BLONDEL
(Plaintiff)

v.

TOWN AND COUNTRY ESTATES AGENTS LIMITED
(Defendant)

Whereas on 14th October, 2005, the Deputy Bailiff heard argument in the above proceedings and heard thereon Advocate J. D. Loveridge, Counsel for Town and Country Estate Agents Limited, and Peter Kevin Blondel in person, and gave judgment in favour of Town and Country Estate Agents Limited, and whereas Advocate Loveridge applied for his clients costs on a full indemnity basis, the Deputy Bailiff this day gave judgment on the said application in the terms attached hereto and ORDERED that Mr Blondel shall pay costs to Town and Country Estate Agents Limited on the following basis: -

- (1) Costs and fees incurred on and prior to 21st May, 2004 are to be paid on a recoverable basis in accordance with the Royal Court (Costs and Fees) Rules 2000.
- (2) Costs and fees incurred after 21st May, 2004 are to be paid on a full indemnity basis.

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

Approved Text

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

| | | |
|----------------|---|------------------|
| Between | TOWN & COUNTRY ESTATE AGENTS LIMITED | Plaintiff |
| | -v- | |
| | PETER KEVIN BLONDEL | Defendant |
| | and | |
| | PETER KEVIN BLONDEL | Plaintiff |
| | -v- | |
| | TOWN & COUNTRY ESTATE AGENTS LIMITED | Defendant |

Judgment re costs handed down: 21 November 2005

Before: Richard John COLLAS Esq., Deputy-Bailiff

**Advocate for Town & Country Estate Agents Ltd: J D Loveridge
Mr Peter Kevin Blondel appearing in person**

Cases, texts & statute referred to:

1. Royal Court Civil Rules 1989, Rule 48(3) ad (4)
2. *Hulme v Matheson Securities (Channel Islands) Limited (No.2) 1997*
Guernsey Court of Appeal – Civil Appeal No 234; 24GLJ 47
3. *Silver Falcon v Cochrane and Others* Royal Court 8 June 2001
4. *Thompson and Le Noury v Masterton and Bourne* Royal Court 1 December 2003

Background

- 1 This is my Judgment on Town and Country Estate Agents Limited's application to recover their costs in the above proceedings from Mr Blondel on a full indemnity basis.

The Proceedings

- 2 In January 2004, Town and Country issued proceedings against Mr Blondel to recover the sum of £14,426.12 and interest which was alleged to be due under the terms of a loan agreement between the two parties. Those proceedings were tabled in Court for the first time on 12 March 2004 when Mr Blondel indicated they would be defended and they were then placed on the Rôle Des Causes à Plaider. I refer to this first set of proceedings as the ‘Loan Action’. On 16 April 2004, Mr Blondel filed defences to the Loan Action including a counter claim and set off seeking payment of £9,212 as commission allegedly owed to him as the former Managing Director of Town and Country. Those defences included exceptions de forme. I will refer to the second proceedings as the ‘Commission Action’. On 21 May 2004, Town and Country filed a defence to the Commission Action. By letter dated 11 August 2004, the parties agreed to a withdrawal of the exceptions de forme. Up until this time Mr Blondel was represented by Ashton Allen Barnes. It is not clear from the Court file when they ceased to act for him but in a letter dated 5 April 2005, Ashton Allen Barnes informed Advocate Loveridge that they were no longer instructed by Mr Blondel.
- 3 The matter first came before me on 15 July 2005 when Advocate Loveridge applied for a hearing date. Mr Blondel was unable to be present on that occasion. In his absence, a provisional trial date was set for 19 September with a review to be held on 2 September. Unfortunately Mr Blondel was also unable to appear on 2 September, but appeared before me for the first time on 9 September. On the 9 September, Mr Blondel admitted owing the monies due in the Loan Action and accordingly I gave judgment in favour of Town and Country on the Loan Action. I reserved the question of costs and also stayed enforcement of the judgment. Regarding the Commission Action, Advocate Loveridge indicated that in its defence, Town and Country would rely upon a letter dated 8 October 2003 signed by Mr Blondel, accepting from Town and Country the sum of £1,000 in full and final settlement of any monies due to Mr Blondel from Town and Country. Mr Blondel told me he would assert that he was not bound by that compromise and settlement. I questioned whether there was any legal basis for such an assertion and also drew to his attention that what he was now asserting had not been pleaded. I adjourned the Commission Action for one week to enable Mr Blondel to take some legal advice as to his position and to obtain legal assistance in amending his pleadings if he was going to pursue the point. The hearing before Jurats was put back by one week.
- 4 On 23 September, the parties again appeared before me. Mr Blondel indicated that he had been able to obtain some legal advice, but as he could not afford an Advocate, only limited assistance was available to him. I was also informed that some without prejudice correspondence had been exchanged. Mr Blondel told me that he still wished to pursue an argument that he was not bound by the terms of the 8 October 2003 letter, but he had not been able to amend the pleadings. The hearing date before the Jurats was vacated. The Directions Hearing was adjourned for one week to 23 September.
- 5 On 23 September 2005, Mr Blondel tabled a revised claim, headed “Counter Claim”, seeking £15,551. This was an amended Commission Action in which he alleged some profit commissions were owed to him in addition to the commissions he had originally claimed. Advocate Loveridge indicated that he wished to file an amended defence to the revised Commission Action.

He said Town and Country would still be relying upon the compromise letter of 8 October 2003. As Mr Blondel did not dispute the letter, nor its contents, we recognised that there was a matter for me to decide sitting alone, as a matter of law, namely to determine the legal effect of the letter. Depending upon my ruling, there might be no need for the matter to proceed to a hearing before Jurats. A timetable was therefore set for the exchange of pleadings, further documents and authorities with a view to a hearing before me sitting alone on Friday 14 October 2005.

- 6 On 14 October 2005 I heard argument and issued an oral judgment in which I held that the letter of 8 October 2003 provided a complete defence to Mr Blondel's Commission Action. I gave judgment on that action in favour of Town and Country, dismissing the Commission Action in full.
- 7 Advocate Loveridge applied for his client's costs on a full indemnity basis. I directed Advocate Loveridge to file a written application with supporting reasons and gave Mr Blondel the opportunity to respond to it. Both parties have now indicated that they do not require to appear before me to argue the matter any further. This is my judgment on Advocate Loveridge's application for costs.

The Law Regarding Indemnity Costs

- 8 The Court has power to order full indemnity costs under Rule 48(3) and (4) of the Royal Court Civil Rules 1989. The local courts have had to consider the question of indemnity costs on a number of occasions. I have referred in particular to the Judgment of Southwell JA in *Hulme* as well as to the Judgments of Deputy Bailiff (and Lieutenant-Bailiff) Day in *Silver Falcon* and *Thompson and Le Noury* in which he very helpfully identified a number of statements of principle derived from the earlier cases.

Has Mr Blondel pursued the Loan Action and defended the Commission Action unreasonably?

- 9 What I have to decide is whether Mr Blondel has at any time defended the Loan Action or pursued the Commission Action unreasonably. In my Judgment, a critical date was 21 May 2004 when Town and Country filed its defence to the Commission Action. The defences included the following Pretention:

“On the 8 October 2003, the defendant was paid £1,000 for commissions due to the defendant by the plaintiff of which payment was accepted by the defendant in full and final settlement of any monies due to him from the plaintiff, by letter dated 8 October 2003”.

- 10 Even if Mr Blondel had previously forgotten the existence of the letter of 8 October 2003, and/or had failed to draw it to the attention of the Advocate who was then acting for him, Mr Blondel's memory must, or should, have been refreshed on receipt of the defences. Furthermore his Advocate, who was then still acting for him, would or should have seen the defences and appreciated the significance of the letter.
- 11 I am therefore satisfied that it was unreasonable of Mr Blondel to continue to pursue the Commission Action after the 21 May 2004. As the only substantive defence pleaded to the Loan Action was the Commission Action

and a right of set-off , I am also satisfied that it was unreasonable for Mr Blondel to continue to defend the Loan Action after 21 May 2004.

- 12 I also have to decide whether Mr Blondel unreasonably defended the Loan Action prior to 21 May 2004. By pleading an exception de forme in his defences to the Loan Action, Mr Blondel requested a copy of the duly executed loan agreement and further particulars of the terms of the loan. That information was provided to him some time prior to 11 August 2004 when the exception was withdrawn, although I do not have a precise date.
- 13 If Mr Blondel was awaiting a copy of the loan agreement and further particulars of the terms of the loan, then, in my Judgement, it was not unreasonable for him to have defended the Loan Action while he awaited the provision of that further information. So, I will not order costs in favour of Town and Country on a full indemnity basis for the period prior to 21 May 2004.
- 14 Consequently, my Order is that in respect of both the Loan Action and the Commission Action, Mr Blondel shall pay costs to Town and Country on the basis that:
 - 1 Costs and fees incurred on and prior to 21 May 2004 are to be paid on the recoverable basis in accordance with the Royal Court (Costs and Fees) Rules 2000; and
 - 2 Costs and Fees incurred after 21 May 2004 are to be paid on a full indemnity basis.