

**Judgment 9/2003**

**Ashton v Ansol Limited  
Court of Appeal  
(Civil Appeal 322)  
9th January, 2003**

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**Freezing and disclosure orders – main action in Guernsey and ancillary dispute in England –  
anti-suit injunction – relevant principles in considering restoration and continuance**

**IN THE COURT OF APPEAL OF GUERNSEY**

Civil Division

The 10th day of January, 2003 before Richard Charles Southwell, Q.C., presiding, Christopher Simon Courtenay Stephenson Clarke, Q.C., and Kenneth Stuart Rokison, Q. C.

ARTHUR HENRY ASHTON

Appellant

v.

ANSOL LIMITED

Respondent

In the appeal of the Appellant from the decision of the Royal Court on 16th October, 2002 discharging the anti-suit injunction made by the Royal Court on 27th February, 2002;

THE COURT, having heard Advocates J. P. Greenfield and P. T. R. Ferbrache for the respective parties thereon, ALLOWED the appeal and ORDERED

1. that the anti-suit injunction be restored and continued until further order; and
2. that if the Respondent wished to pursue the matter it must do so within the framework of the main action;

AND THE COURT AWARDED COSTS to the Appellant, on the relevant recoverable basis, in respect of the present appeal and in respect of the proceedings relating to:-

- (i) the grant of the anti-suit injunction by the Royal Court on 27th February, 2002;
- (ii) the discharge of the anti-suit injunction ordered by the Royal Court on 16th October, 2002;
- (iii) the dismissal by the Royal Court on 15th November, 2002 of the application for the stay of the order made on 16th October, 2002; and
- (iv) the dismissal by Richard Southwell Q.C., sitting as a single judge of the Court of Appeal on 2nd January, 2003, of the Respondent's application for security for costs;

AND ORDERED the return to the Appellant of the sum of twenty thousand pounds (£20,000) lodged with the Court as security for costs.

K. H. TOUGH  
Registrar of the Court of Appeal

**OFFICIAL TRANSCRIPT**

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**FRIDAY 10TH JANUARY 2003**

**IN THE COURT OF APPEAL OF GUERNSEY**

**Before**

**Richard Charles Southwell, Esq., QC; presiding**  
**Christopher Simon Courtenay Stephenson Clarke, Esq., QC**  
**Kenneth Stuart Rokison, Esq., QC**

**ARTHUR HENRY ASHTON v. ANSOL LIMITED**  
**(Civil Appeal No. 322)**

**Judgment delivered by Southwell, JA.**

1. On 4th April 2001 the Royal Court granted to Mr. Pavlos Vardinoyannis (“Mr. Pavlos”) ex parte freezing and disclosure orders (“the Freezing Order”) against Ansol Limited (“Ansol Guernsey”) a Guernsey company controlled by Mr. Avaz Nazarov, against Mr. Nazarov himself, and against other companies controlled by Mr. Nazarov, as well as a bank with which Mr. Nazarov and the companies banked, and an associated partnership of accountants. On 23rd April 2001 several of the respondents applied to the Royal Court to suspend or discharge the Freezing Order.
2. Mr. Pavlos on 6th April 2001 also sought and obtained a freezing order against Ansol Guernsey, Mr. Nazarov and others in the High Court of England and Wales. This order is apparently still in force.
3. On 27th June 2001 substantive proceedings were started in the Royal Court of Guernsey by Mr. Pavlos against Ansol Guernsey, Mr. Nazarov and Tajik Aluminium Plant of Tajikistan (“Tad AZ”). It is necessary to state briefly the gist of the allegations by Mr. Pavlos in this action (“the Main Action”). The allegations are of conspiracy to injure by unlawful means, the means including fraud by Mr. Nazarov, breaches of certain between the parties, and the use of Ansol Guernsey as a vehicle for giving effect to the fraud, by diverting money into Ansol Guernsey, causing losses in the region of US\$ 50 million. Ansol Guernsey and Mr. Nazarov have now responded on 27th November 2002 with a detailed defence and counterclaim. The trial of the Main Action is due to start in September 2003, and its estimated length is 3 months.
4. The history of this matter as it appears from the pleading of Mr. Pavlos in the Main Action can be summarised in this way.
  - (1) In June 1996 a simple partnership was formed under Liechtenstein law between Mr. Nazarov and an uncle of Mr. Pavlos, Mr. Theodore Vardinoyannis (“Mr. Theodore”) on terms that Mr. Nazarov would find raw materials for Tad AZ which Tad AZ would buy. Mr. Theodore would arrange finance for the purchase of the raw materials. Tad AZ would pay for the raw materials by delivering completed aluminium to the partnership,

which the partnership would sell on the open market. Profits of the partnership would be divided between Mr. Nazarov and Mr. Theodore in a ratio of 60:40, which would be paid to Ansol Trading Corporation Limited, a BVI company, and Aletri International Anstalt, a Liechtenstein establishment, as nominees for Mr. Nazarov and Mr. Theodore respectively.

- (2) Mr. Theodore died on 21st September 1996 and Mr. Pavlos took his place in the partnership.
- (3) From 14th June 1996 to 17th July 1997 the partnership traded with Tad AZ through Allouette Anstalt, another Liechtenstein establishment, ("AA"), and AA made two barter contracts (the 1996 and 1997 contracts) with Tad AZ on the partnership's behalf.
- (4) From 17th July 1997 until June 1998 the partnership traded with Tad AZ in a similar way through Allouette Industrie AG ("AIAG"), a Liechtenstein company, under the assigned 1997 contract.
- (5) From July 1997 Mr. Rosenberg became a partner, so that profits were after that to be divided between Mr. Nazarov, Mr. Pavlos and Mr. Rosenberg in the ratio 50:40:10.
- (6) Mr. Theodore and Mr. Pavlos arranged banking facilities for the purchase of raw materials with United European Bank with a limit of US\$ 40 million, subsequently raised to US\$ 60 million, to be repaid from the proceeds of sale of aluminium received by the partnership from Tad AZ.
- (7) It is alleged by Mr. Pavlos that in breach of the 1996 and 1997 contracts Tad AZ failed to pay sums owed in respect of raw materials delivered and payments made by AA and AIAG, with the result that at June 1998 Tad AZ owed AIAG over US\$ 127 million. Tad AZ had failed to pay this total either in money or, as anticipated, by delivery of finished aluminium.
- (8) It is not necessary to spell out in detail the conspiracy which is alleged to have to have been organised by Mr. Nazarov with his companies Ansol BVI, Ansol Switzerland and in particular Ansol Guernsey, and with Tad AZ, wrongfully to injure Mr. Pavlos by unlawful means, to defraud him and to conceal the fraud from him. Some of the means alleged to have been employed include the diversion from AA and AIAG of aluminium manufactured by Tad AZ to a value of over US\$ 65 million to Ansol Switzerland.
- (9) There were meetings between Mr. Pavlos, Mr. Nazarov and others in May and June 1998, leading on 11th June 1998 to the Athens Agreement for the dissolution of the partnership. The terms of this agreement required Mr. Nazarov to settle the partnership liabilities (including the large debt owed by Tad AZ to the partnership) by using the proceeds of the sale of Tad AZ- produced aluminium received by Ansol Switzerland.
- (10) In September 1998 Mr. Nazarov had Ansol Guernsey incorporated as a vehicle, it is alleged, for the conspiracy in place of Ansol Switzerland. In December 1998 Ansol Switzerland assigned to Ansol Guernsey the right to receive US\$ 20 million worth of aluminium from Tad AZ, and Ansol Guernsey entered into a year's exclusive contract for 1999 with Tad AZ to supply all its raw materials in exchange for delivery to it of all aluminium produced by Tad AZ. Ansol Guernsey entered into a similar one year contract with Tad AZ for the year 2000, and a similar exclusive contract on 29th December 2000 with Tad AZ for 5 years from 2001. The effect of these contracts was that from 1999 Ansol Switzerland received no more aluminium from Tad AZ, and so was prevented from discharging the partnership liabilities in accordance with the Athens

Agreement, including Tad AZ's large debt to the partnership, and Mr. Nazarov through Ansol Guernsey received the entire benefit of all aluminium produced by Tad AZ.

- (11) It is not necessary to elaborate further on the allegations against Mr. Nazarov, Ansol Guernsey and Tad AZ in the Main Action. The damages claimed amount to over US\$ 51 million, being Mr. Pavlos's 40% share of the total Tad AZ debt of over US\$ 127 million.
5. On 16th July 2001 Mr. Pavlos applied to the Royal Court for leave to use three contracts in opposition to the application for discharge of the freezing orders. These three contracts were: (1) the 29th December 2000 contract between Ansol Guernsey and Tad AZ for the 5 years from 2001 which has already been described; (2) a contract of 25th December 2000 between Ansol Guernsey and Azi Company LLC; and (3) a contract of 25th December 2000 between Ansol Guernsey and Enothera Limited. I will refer to these contracts as "the Three Contracts".
  6. The English solicitors for Mr. Nazarov and Ansol Guernsey had already been informed by Mr. Pavlos's solicitors by letter of 12th July 2001 that copies of the Three Contracts had come into their possession. The Three Contracts will have to be disclosed by both sides in the Main Action. Much time and money has been spent by Mr. Navarov's lawyers in trying to discover how copies of the Three Contracts reached Mr. Pavlos. It is understandable that Mr. Nazarov wishes to discover whether someone in his employment or of his companies had disclosed the copies of the Three Contracts to his opponent.
  7. On 17th July 2001 Ansol Guernsey applied in the Chancery Division of the English High Court for relief against Mr. Pavlos, his English Solicitors, a Mr. Elgood, Mr. Pavlos's Guernsey Advocates, his English Queen's Counsel and junior Counsel. The relief claimed included delivery up of the Three Contracts, restraint of any further copying or use of them, and disclosure of how they reached Mr. Pavlos's English solicitors. On 17th July 2001 Pumfrey J. made an order that copies of the Three Contracts be returned to the English Solicitors and destroyed, except for four copies for Mr. Pavlos's lawyers' use, and that Mr. Pavlos and Mr. Elgood should swear affidavits stating what use they had made of the Three Contracts. The Order of Pumfrey J. was without prejudice to (inter alia) any application for a stay of these proceedings in England, and the position of the parties in the Main Action in Guernsey.
  8. On 18th July 2001 Ansol Guernsey applied in the Royal Court to strike out the Main Action.
  9. On the same day (18th July 2001) Ansol Guernsey applied in the Royal Court as against Mr. Pavlos for an order similar to the one already applied for in England. I will call this "the Guernsey Disclosure Application". This was heard before Lieutenant Bailiff Catherine Newman QC on 23-25 July 2001. On 25th July, 2001 a consent order (dealing with part of the dispute) was made, with Mr. Pavlos giving certain undertakings in relation to the Three Contracts, and Ansol Guernsey and Mr. Nazarov undertaking to withdraw their application in the English High Court. On 30th July 2001 Mr. Arthur Ashton made an affidavit, one day before the Lieutenant Bailiff handed down her judgment by fax from London, in which Mr. Ashton stated that he was a Barrister and retained by Mr. Pavlos as a legal adviser on the Main Action and other matters, and that he had "in the course of confidential and privileged discussions" with Mr. Pavlos handed to Mr. Pavlos copies of the Three Contracts for the purpose of the Main Action and the ancillary proceedings.
  10. By her judgment of 31st July 2001 the Lieutenant Bailiff dismissed the Guernsey Disclosure Application, save in so far as covered by the consent order. She declined to order disclosure of the source of the Three Contracts either on the ground of confidence or under the Norwich Pharmacal principle. Ansol Guernsey sought leave to appeal, but this was refused by the Lieutenant Bailiff, and the application was not renewed to the Court of Appeal.

11. On 20th November 2001 in a long and careful judgment, the Lieutenant Bailiff dismissed the application for discharge of the Freezing Order and continued the Freezing Order in force.
12. On 15th January 2002 the Vice-Chancellor Sir Andrew Morritt gave Ansol Guernsey permission for its action in England, in which Pumfrey J had made his order on 17th July 2001, to be discontinued, in accordance with the consent order in the Royal Court of 25th July 2001. The delay from 25th July 2001 to 15th January 2002 has not been satisfactorily explained. Counsel for Ansol Guernsey, Advocate Peter Ferbrache, has sought to place reliance on some parts of the transcript of the brief hearing before the Vice-Chancellor, but in my judgment they have no sufficient relevance to the matters which this Court has now to decide.
13. On 8th February 2002 Ansol Guernsey started another action in the Chancery Division of the English High Court against Mr. Ashton seeking "an order requiring Mr. Ashton to disclose the identity of the person who provided him with" the Three Contracts. Why Ansol Guernsey should have delayed from 31st July 2001 to 8th February 2002 before bringing this action was not satisfactorily explained.
14. On 25th February 2002 Mr. Ashton filed an application in the Royal Court for an injunction restraining Ansol Guernsey from continuing the new action in England against Mr. Ashton. Lieutenant Bailiff Hancox granted this injunction ex parte on 27th February 2002 ("the Anti-Suit Injunction"). Mr. Ashton swore a second affidavit in support of this application on 25th February 2002, in which he stated that he was a Barrister of 25 years standing, and since 1st February 2001 had been retained by Mr. Pavlos in relation to (inter alia) the dispute with Mr. Nazarov. On that date he was instructed by Mr. George Proussanides, who was Counsel to Mr. Pavlos. Though he was served in England, he undertook to submit to the jurisdiction of the Guernsey Royal Court for the purpose of any action which Ansol Guernsey might choose to bring, and instructed Mr. Pavlos's Advocates, Carey Langlois, to accept service on his behalf. Mr. Ashton confirmed that the Three Contracts had been provided to him in his capacity as legal adviser to Mr. Pavlos. He denied that he had induced or procured any wrongdoing in connection with his receipt of the Three Contracts. In a third affidavit of 25th March 2002 Mr. Ashton confirmed that he would comply with any order of the Royal Court without Ansol Guernsey having to seek enforcement in England.
15. The question whether the Anti-Suit Injunction should be continued or discharged was argued before Lieutenant Bailiff Hancox on 2nd and 3rd April 2002 and 6th – 9th and 12th August 2002 by the same Advocates who appeared before us, namely Advocate Peter Ferbrache for Ansol Guernsey and Advocate J. P. Greenfield for Mr. Ashton. The Lieutenant Bailiff gave judgment on 16th October 2002 discharging the Anti-Suit Injunction. I will return to his judgment later.
16. Meanwhile a number of issues relating to the Main Action had been decided by Lieutenant Bailiff Newman by her judgments of 24th May 2002. First, she gave leave to serve the cause in the Main Action on Mr. Nazarov out of the jurisdiction as a necessary and proper party. Secondly, she refused to grant to Ansol Guernsey a stay of the Main Action on the ground (which she rejected) that the Guernsey Royal Court was not an appropriate forum for the resolution of the dispute in the Main Action. She rejected the submission that the Main Action should be tried in England. Thirdly, she made an order that Mr. Pavlos fortify his cross-undertaking in damages in respect of the Freezing Order of 4th April 2001 in the sum of US\$ 15 million. None of those orders have been appealed.
17. On 8th November 2002 Mr. Ashton appealed against Lieutenant Bailiff Hancox's judgment and order. On 15th November 2002 the Bailiff sitting as a single judge of the Court of Appeal refused an application for a stay pending appeal of the Lieutenant Bailiff's order.

18. On 4th December 2002 the English High Court dismissed an application by Ansol Guernsey for default judgment against Mr. Ashton. The Court ordered Mr. Ashton to serve his evidence by 20th January 2003 and a hearing of the action before Master Bowman on 30th January 2003.
19. Mr. Ashton's appeal from the judgment and order of Lieutenant Bailiff Hancox was heard by this Court on 8th January 2003. In my judgment, for the reasons I am going to set out, it is clear that the order of the Lieutenant Bailiff should not have been made. The Anti-Suit Injunction should not have been discharged, but rather should have been continued until further order.
20. It is important to start by putting the dispute in relation to the Three Contracts in its proper perspective.
21. First, the Main Action is moving towards trial in the Royal Court in September, 2003. Discovery of documents will take place in February 2003. Both sides will have to disclose the Three Contracts and any documents connected with them, subject always to any justifiable claim of legal privilege.
22. Secondly, the remaining area of dispute in relation to the Three Contracts, in so far as sought to be pursued in the English action against Mr. Ashton, is very small indeed. In particular, I note that in the Consent Order in the Royal Court by Lieutenant Bailiff Newman on 25th July 2001 Mr. Pavlos undertook "whether by himself, his servants, or agents" (1) not to make use of the Three Contracts for any purpose other than proceedings between the parties in Guernsey or London; (2) to deliver up or destroy all copies of the Three Contracts except for four numbered copies for his lawyers and copies made for the purpose of proceedings between the parties in Guernsey or London; (3) not knowingly to have any substantive communication with any individual who at the time is in the employment of Ansol Guernsey, Ashton Investments Limited or Mr. Nazarov. Mr. Ashton is for relevant purposes an "agent" of Mr. Pavlos, and therefore falls within the scope of these undertakings.
23. Thirdly, in her judgment of 31st July 2001 Lieutenant Bailiff Newman dealt fully with the question whether Mr. Pavlos should be required to disclose information which would enable Ansol Guernsey and Mr. Nazarov to discover who was responsible for disclosing the Three Contracts to Mr. Pavlos's lawyers. She refused to require Mr. Pavlos to make such disclosure. It is difficult to see why her reasoning and conclusions (with which I agree) do not equally cover Mr. Ashton as an agent of, and lawyer acting in the litigation for, Mr. Pavlos. At the lowest, a serious question of res judicata and issue estoppel must arise.
24. Fourthly, and perhaps most importantly, the dispute in relation to the Three Contracts is ancillary to the conduct of the Main Action. It is a dispute which ought conveniently to be decided, if any further decision is needed, within the framework and the ordinary course of conduct of the Main Action. To separate it out in the way in which Ansol Guernsey has tried to do is not appropriate.
25. I turn to the principles which govern the grant of anti-suit injunctions, and which for convenience I take from Mr. Ferbrache's skeleton argument. Mr. Ashton as a person seeking such an injunction has to show that-
  - (1) it would be vexatious and oppressive for Ansol Guernsey to pursue this satellite litigation in the English Court;
  - (2) the Guernsey Royal Court is clearly the natural forum for the determination of the dispute;

- (3) the injustice to Mr. Ashton if Ansol Guernsey were allowed to pursue the English proceedings would outweigh the injustice to Ansol Guernsey if not allowed to do this.
26. Once the correct context is appreciated it is plain, in my judgment, that Mr. Ashton satisfies each of these tests. The dispute is ancillary to the Main Action in Guernsey, and therefore Guernsey is the natural forum. To seek to pursue such satellite litigation in another forum is oppressive; it is also wasteful of time and money. There is no injustice to Ansol Guernsey in being required to conduct all its relevant disputes with Mr. Pavlos within the framework of the Main Action in Guernsey, and there would be obvious injustice to Mr. Pavlos and Mr. Ashton in having to conduct an ancillary dispute in another forum.
27. I will not lengthen further this already long judgment with a detailed analysis of the Lieutenant Bailiff's judgment. It suffices to say that in my judgment:-
- (1) He did not place the remaining dispute in its correct context as an ancillary to the Main Action being carried on in Guernsey. By the time when he gave judgment Lieutenant Bailiff Newman had held, on 24th May 2002, that the Main Action was to proceed in the Guernsey Royal Court, and any right to appeal or to seek leave to appeal from that decision had long since lapsed. That was presumably made known to Lieutenant Bailiff Hancox during the hearings on 6th - 9th and 12th August 2002.
  - (2) He did not take adequate account of the judgment of Lieutenant Bailiff Newman of 31st July 2001 refusing to order Mr. Pavlos to disclose the source of the Three Contracts, and the relationship of lawyer and agent which Mr. Ashton had and has to Mr. Pavlos. His conclusion that there was not what he described as "privity of interest" between Mr. Pavlos and Mr. Ashton was not correct.
  - (3) His conclusion that England, and not Guernsey, was the natural forum for the determination of the remaining dispute concerning the Three Contracts was equally incorrect, in my judgment.
  - (4) There were several factual errors in his judgment which materially affected his conclusion. These are correctly set out in Mr. Greenfield's excellent skeleton argument at paragraphs 31 – 41 and I do not therefore set these out again.
  - (5) He also failed adequately to take into account the material factors summarised in paragraphs 42 – 49 of Mr. Greenfield's skeleton which again I need not set out in full.
28. In the light of the foregoing, this Court has to exercise the discretion afresh. In my judgment the Anti-Suit Injunction should be restored and continued until further order. If Ansol Guernsey wishes to pursue the matter, it must do so within the framework of the Main Action.

CLARKE, JA: I agree.

ROKISON, JA: I also agree.

SOUTHWELL, JA: Yes Mr. Greenfield?

ADVOCATE GREENFIELD: Sir in those circumstances I do have certain applications, and they relate to costs, but it is not a straightforward, simple costs application and perhaps in this case that is inevitable. There has been- in asking for costs I want to ensure that these particular points are covered by the Order. So far as the first hearing before Lieutenant Bailiff Hancox on 27th February last year is concerned, he made an order reserving costs, so that is still to be dealt with. In his order of 16th October of last year, discharging his 27th February order, he awarded

costs in favour of Ansol on a recoverable costs basis, and sir, there is- you may have seen it in the bundles before you- there is subsequent to that order, my friend's firm fairly speedily got off the mark to issue a bill of recoverable costs, which we suggested should be not dealt with further until after this week's sitting. That suggestion was declined by my friend's firm, they pursued that, that bill was lodged and is subsequently with the Bailiff awaiting taxation.

Further, as you know sir and you indeed sir you have dealt with that particular application on 2nd of this month, my friend's firm sought an application for my client, Mr. Ashton, to lodge security for costs within this jurisdiction in relation to the appeal that you have now disposed of, and in fact a total of £20,000 has been lodged by Mr. Ashton, in fact on a voluntary basis, not pursuant to a Court Order-

SOUTHWELL, JA: Before that?

ADVOCATE GREENFIELD: Sorry?

SOUTHWELL, JA: That had been lodged before that?

ADVOCATE GREENFIELD: That in fact was lodged I think on 11th- if I remember rightly- on 11th December-

SOUTHWELL, JA: Yes and the application which I dealt with was subsequent to that and I refused any further-

ADVOCATE GREENFIELD: Sir the application itself was I believe signed by my friend, yes- I believe was signed on 11th December and was heard by you on 2nd January, and you dismissed that application, but the end result is that there is £20,000 of Mr. Ashton's money lodged as security in relation to this appeal, which he has just won and there is also the outstanding issue of Mr. Ashton's costs in relation to my friend's application for security for costs. One further complication is that in support of my friend's application for security for costs, he himself personally swore an affidavit before this Court and that was in fact sworn on 18th December of last year, so that was well after the £20,000 had been voluntarily lodged, in which he noted what is perfectly true, that so far as this Island's laws in relation to the Court of Appeal recoverable fees, those were some 12 years out of date and fixed, I think I'm right in saying, at some £40 per hour, whereas even in the Royal Court there was by that time an excess of £160 per hour.

SOUTHWELL, JA: I believe that one Member of this Court was the Member of the Court who pointed out this regrettable state of affairs for the profession in Guernsey.

ADVOCATE GREENFIELD: Indeed sir, I think it was Mr. Clarke's comment upon this in the case of Stuart-Hutcheson v. Spread Trustee Company Limited (14th October 2002) when they found it difficult indeed to contemplate how recoverable fees should have remained frozen for nearly a dozen years with the consequential absurd result which has just been rectified in a new Court of Appeal Costs and Fees Rules of this Island, but of course that only takes effect from 1st January this year. Now-

SOUTHWELL, JA: Well is that right? I- I-

CLARKE, JA: Where does it tell us about it coming into force?

H.M. GREFFIER: At Rule 13 sir.

CLARKE, JA: Thank you.

ADVOCATE GREENFIELD: Yes that's as long as those transitional provisions are- (inaudible) seeking clarification of, what I want to have that the end result is, that my application for a costs order in relation to this appeal, some of the work which will have been done before-

SOUTHWELL, JA: Well let's just look at it. The date of coming into force of this order is 1st January and Rule 13-

ADVOCATE GREENFIELD: Rule 13(a) really that-

SOUTHWELL, JA: "These rules shall have effect in relation to Court fees, Advocates fees and other recoverable costs incurred (whether before, on or after the date of commencement ...) in respect of any appeal set down, but not finally determined or disposed of, before that date..."

CLARKE, JA: Well you're okay, aren't you?

ADVOCATE GREENFIELD: I hope so sir, I just wanted to make it absolutely clear I would be seeking the new rates in relation to the whole of this appeal.

SOUTHWELL, JA: Which absolves us of the necessity of deciding the point that might otherwise have arisen.

ADVOCATE GREENFIELD: The point that you dealt with earlier sir. So my application then is for costs on- and I'm not seeking as Mr. Ferbrache was- indemnity costs, I'm seeking the costs, on a recoverable costs basis and on the new Court of Appeal costs basis, in relation to the hearing before Lieutenant Bailiff Hancox on 27th February last year, the event before him on 16th October last year, the security for costs application that was dealt with by yourself sir on 2nd of this year and of course, as again you mentioned in your judgment, our application for a stay before the Bailiff sitting as a single judge of this Court on 15th November last year, when we sought a stay of Mr. Hancox' order, that was opposed successfully, not by my friend but by one of my friend's colleagues.

SOUTHWELL, JA: Yes, and in retrospect one can see that that was in error.

ADVOCATE GREENFIELD: Well of course sir, that would be my submission. So my application in relation to costs is for costs of all those and of course I will also be seeking, and I imagine my friend will now consent to it I would hope, that the £20,000 lodged as security for costs will be released forthwith back to my client.

SOUTHWELL, JA: Yes.

ADVOCATE GREENFIELD: Those are my applications sir.

ADVOCATE PETER FERBRACHE: I'll be brief in reply sir, I don't oppose an order for recoverable costs; I don't feel I can. I don't oppose the release of the £20,000, I would just factually correct both you and my friend in one regard if I may, the- as regards the lodging of the monies, £6,000 was lodged by Mr. Ashton at the time he applied for the Anti-suit injunction, the other £14,000 bringing the total up to £20,000, was actually only lodged- there's a copy from my friend's colleague to the Greffier, copied to me at the time on 18th December- so not before the application was made, before it was considered true, but not before it was made.

SOUTHWELL, JA: Not before it was made yes, thank you.

ADVOCATE PETER FERBRACHE: But other than that sir I have nothing further to add.

ADVOCATE GREENFIELD: Yes, the promise to lodge, my friend is right, the promise to lodge, it was made on 11th December; the actual lodging was 18th.

(Pause whilst Judges confer)

SOUTHWELL, JA: This Court's decision is that you have the costs on a recoverable basis Mr. Greenfield of the hearing on 27th February 2002, the proceedings before Lieutenant Bailiff Hancox, the judgment of 16th October, the application for security, the application for a stay, and all the costs involved in all this, the hearing of the appeal of course, and also, that you are entitled to repayment of the £20,000.

ADVOCATE GREENFIELD: Thank you sir.

SOUTHWELL, JA: The Court will now adjourn but before it does may I thank both you Mr. Greenfield and you, Mr. Ferbrache for your great help to the Court in this matter, thank you very much.