Judgment 15/2013

Sandwith v Falla
Royal Court
5th June, 2013

Application for summary judgment.

Approved Text
05.06.2013

IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

Between: **RICHARD JOHN SANDWITH** **Plaintiff**

-v-

JAMIE FALLA **Defendant**

Hearing date: 12th April 2013
Judgment handed down: 5th June 2013
Before: Richard James McMahon, Esq., Deputy Bailiff

Advocate for the Plaintiff: Advocate P T R Ferbrache

The Defendant represented himself

Cases, legislation and materials referred to:

The Royal Court Civil Rules, 2007
The Civil Procedure Rules, Part 24
Easyair Limited (t/a Openair) v Opal Telecom Limited [2009] EWHC 339 (Ch)
Article 35 of the *Loi relative aux Preuves* (1865)
The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009
Brownstone Insurance (Guernsey) Limited (unreported, 6 October 2004)
Sheppard v C.I. Fire & Security (Guernsey) Limited (unreported, 29 July 2009)
Hougue Fouque Property Company Limited v National Westminster Bank Finance (C.I.) Limited (unreported, 24 June 1972)
The Judgments (Interest) (Bailiwick of Guernsey) Law, 1985

Introduction

1. On 12 April 2013, I heard the Plaintiff's application for summary judgment in this matter, which was resisted in part by the Defendant. At the conclusion of that hearing, I outlined my

reasons for granting the application in part, awarding judgment against the Defendant in the sum of £202,682.76, together with interest at 3.5% from the date of demand, namely 7 January 2013, being in respect of the full amount to be repaid until the date of a partial repayment and then on the balance until the date of the hearing. Advocate Peter Ferbrache, who represented the Plaintiff, undertook to provide a calculation of the interest so awarded and I am grateful for his assistance. However, I did not give summary judgment in respect of the further amount claimed by the Plaintiff (£2,465.50), indicating however that *Les Defences* needed to be lodged and served promptly. I then gave leave to the Plaintiff to withdraw his claim in respect of that amount, thereby terminating the proceedings between the parties and awarded the Plaintiff his costs on the standard recoverable basis. Because the Defendant had represented himself, I indicated that I would set out my reasons more fully in writing, which I now proceed to do.

Facts

2. The dispute between the parties arose out of their business dealings. The Plaintiff and the Defendant are architects. They ran their respective practices through distinct companies. The Plaintiff's practice was operated through BAS Limited and the Defendant's through Mooarc Limited. They held discussions in 2008 about merging their businesses. The Defendant explained that the Plaintiff was nearing retirement and wished to ensure some legacy for his practice and the continued employment of his staff. Those discussions resulted in the formation of a new company, Atelier BAS Mooarc Limited, on 1 February 2009. In the meantime, the Plaintiff made a personal loan to the Defendant of £10,000. It was also proposed that the Plaintiff purchase the premises owned by the Defendant's company known as "Arsenal Studios" for £600,000, with completion envisaged for 16 October 2008. The Defendant requested the Plaintiff to pay the 10% deposit to ease his financial position, so the Plaintiff issued a personal cheque in the sum of £60,000 to the Defendant. In the event, because of an apparent misunderstanding over the purchase price, the sale of "Arsenal Studios" did not proceed, but the deposit was not returned, making the Defendant indebted to the Plaintiff at that stage in the sum of £70,000.

3. In June 2009, the Plaintiff agreed to purchase a half share in "Arsenal Studios" for £315,000. This was the mid-price between the parties' previous valuations of the property and was designed to enable the team employed by the Plaintiff to move into the building. The means of achieving this purchase was by forming another company to hold the property, with both parties having a 50% interest in that company. However, the Defendant was not able to proceed in the manner envisaged because he could not raise sufficient money to repay HSBC Bank plc to reduce the indebtedness Mooarc Limited had to the bank to a level that was at or below the value of the half-share he would have under the new ownership arrangement. The Plaintiff therefore agreed to pay to the Defendant the equivalent of £315,000 on or about 2 and 3 July 2009, discounting the £70,000 already owed to him and monies owed by the Defendant to the new company, Atelier BAS Mooarc Limited, resulting in a cheque in the sum of £128,923.93 being made payable, at the Defendant's request, to his development company. That money was not used by the Defendant to take steps to effect the transfer of "Arsenal Studios" into the proposed new company, and no other form of security for his indebtedness to the Plaintiff was forthcoming.

4. Thereafter, Mooarc Limited made payments of £2,500 to Kenton Holdings Limited, a company associated with the Plaintiff, on a monthly basis for a period of three years, the first payment being on 18 August 2009 and the final payment on 2 July 2012. Accordingly, those payments totalled £90,000. The payments appear to have reflected a draft lease that was in circulation but never executed, under which the annual rent proposed to be paid in respect of "Arsenal Studios" was £60,000. That rental for occupation of the premises was effectively being split two ways between the parties, on the basis that their jointly-owned company was paying to the owner of the premises £5,000 each month. Because the Defendant's company, Mooarc Limited, remained the owner of the premises, the Defendant was advised by his accountants to treat those payments as being repayments of the indebtedness the Defendant had to the Plaintiff.

5. Those aspects of the case form the background to the agreement on which the Plaintiff then sued. This agreement was prepared by Advocate Howitt and was countersigned by the Defendant on 4 July 2011. The agreement is in the form of a letter from Advocate Howitt to the Defendant. It recites the background and then sets out in eight numbered paragraphs the terms proposed on behalf of the Plaintiff. Although it is likely that something has gone awry with the numbering, the Defendant's signature follows these words: "*I agree to the proposals set out in paragraphs 1 to 7 of the letter set out above*". The eight numbered paragraphs are as follows:

> "*1. You acknowledge that you received £315,000 from Richard in 2009, in consideration of your procuring that Richard became the effective owner of one half of Arsenal Studios.*
> *2. That you will use your best endeavours to procure that the indebtedness of Mooarc which will need to be "transferred" to R & J Holdings is reduced to £315,000 or less, so as to enable the proposed transaction [to transfer the Arsenal Studios] to proceed.*
> *3. However, if you are unable to procure the state of affairs referred to in the preceding paragraph within 1 year of the date of this letter, the sum of £315,000 will be payable by you to Richard immediately upon a demand for payment being made. However, if the money to pay Richard is made available as a result of a sale of Arsenal Studios, the amount which will be payable to Richard will be whichever is greater of (i) £315,000 and (ii) one half of the net proceeds of sale of Arsenal Studios (being the total amount for which it is sold less any estate agents' and legal charges reasonably incurred in connection with its sale, but without further deductions).*
> *4. In addition, you will pay interest on any sum due which becomes due under paragraph 3 above or paragraph 5 below, from the date on which that sum of money comes due, at a rate of 3% above the base lending rate of Lloyds TSB Bank for the time being and from time to time.*
> *5. The sum referred to in paragraph 3 above would also become payable immediately (and whether before or after the expiry of the period of one year referred to above) (i) if you should fail to procure that Mooarc grants the guarantee, and consents to the bond, referred to in paragraph 6 below by 30th June, 2011 (ii) upon the death of either you or Richard (iii) if you allow judgment to be taken against either you or Mooarc Limited which remains unsatisfied for a period of 14 days after the taking of the judgment (iv) if a Preliminary Vesting Order is obtained in respect of the real property of you or Mooarc (v) if a commissioner is appointed by the Royal Court for the purpose of your affairs being declared "en desastre" or (vi) if Arsenal Studios is sold or otherwise disposed of.*
> *6. In the event of the sum referred to in paragraph 3 above becoming payable, any obligation on you to procure that Richard becomes the effective owner of one half of Arsenal Studios will (subject to any contrary agreement which you and Richard might reach) cease.*
> *7. By way of security for any indebtedness which you may have to Richard, whether under the terms of this letter or otherwise, you will procure that Mooarc enters into a guarantee in favour of Richard in the form attached to this letter and that the guarantee is secured by a bond (again, in the form attached to this letter) in the sum of £315,000 to be consented to by Mooarc Limited in favour of Richard which will rank as a second charge over Arsenal Studios. You will procure that Mooarc Limited enters into the these [sic] arrangements on or before 30th June, 2011.*
> *8. The costs associated with the bond referred to in paragraph 6 above are £2,465.50. You will not be expected to pay this sum as this time. However, if the sum of money referred to in paragraph 3 becomes payable you will, in addition, be obliged to pay this sum to Richard.*"

There is nothing in the terms of that agreement referring to the monthly payments being made by Mooarc Limited to Kenton Holdings Limited. The Defendant has stated that he would not have counter-signed the letter if he thought it would end up in court.

6. The Defendant accepted that he was unable to reduce the borrowing secured on "Arsenal Studios" below the level of £315,000 and that he and the Plaintiff discussed alternative ways of moving forwards but nothing to the satisfaction of the Plaintiff could be agreed. Formal demand for payment of the sum of £315,000 in accordance with paragraph 3 was made on behalf of the Plaintiff by a letter sent by Advocate Peter Ferbrache to the Defendant dated 7 January 2013. The letter also referred to interest being claimed pursuant to paragraph 4 and for payment of the amount referred to in paragraph 8. In a document headed "Financial Schedule 19/02/2013", the Defendant's position includes a reference to the Plaintiff as him being a business creditor in the sum of £315,000. Mooarc Limited then sold "Arsenal Studios" and, out of the proceeds of sale, a payment on behalf of the Defendant was made to the Plaintiff of £112,317.24 on 14 March 2013, in respect of which the Plaintiff gives credit and reduced his claim in the summary judgment proceedings by the same amount.

Procedural steps

7. The Plaintiff's Cause was first tabled on 18 January 2013, with the Defendant represented at that time by Carey Olsen. Following two adjournments, the action was inscribed on the Role des Causes à Plaider on 15 February 2013. No Defences had been lodged by the Defendant, as required, by 15 March 2013. By that time, he was representing himself and may not have understood the need to lodge written Defences. The application for summary judgment was made in the Interlocutory Court on 15 March 2013. Because the Defendant indicated that he wished to defend the Plaintiff's claim, I set directions for him to show cause why summary judgment should not be entered and adjourned the matter to the hearing that took place on 12 April 2013. The Defendant did not file any Defences to the Plaintiff's Cause and the basis of his partial defence was set out in an Affidavit sworn by him on 28 March 2013. The Plaintiff swore two Affidavits in support of his application and submitted two Skeleton Arguments.

The law

8. Summary judgment is dealt with in Part IV of the Royal Court Civil Rules, 2007. By Rule 19(2)(b):

> "*The grounds of the application for summary judgment shall be that- …*
>
> *(b) the defendant has no real prospect of successfully defending the claim or issue,*
>
> *and there is no other compelling reason why the claim or issue should be disposed of at a trial.*"

This wording differs from what had been set out in the predecessor 1989 Rules, meaning that the cases decided prior to 2008 are not directly in point. The wording in rule 19(2) is substantially the same as the wording of r. 24.2 of the Civil Procedure Rules in England and Wales. I have, therefore, found it of considerable assistance to consider the commentary to r. 24.2 of the CPR in deciding how to approach rule 19(2) of the 2007 Rules. In doing so, I have noted that sub-paragraph (b) sets out the ground for granting an application for summary judgment and the words following sub-paragraphs (a) and (b) provide a ground for refusing such an application. Both elements have to be satisfied.

9. Paragraph 24.2.3 of the commentary to Part 24 in the CPR sets out that:

> "*In order to defeat the application for summary judgment it is sufficient for the respondent to show some "prospect", i.e. some chance of success. That prospect must be "real", i.e. the court will disregard prospects which are false, fanciful or imaginary. The inclusion of the word "real" means that the respondent has to have a case which is better than merely arguable (International Finance Corp v Utexafrica Sprl [2001] C.L.C. 1361 and ED&F Man Liquid Products Ltd v Patel [2003] EWCA Civ 472). The respondent is not required to show that their case will probably*

succeed at trial. A case may be held to have a "real prospect" of success even if it is improbable. However, in such a case the court is likely to make a conditional order … "The criterion which the judge has to apply under CPR Pt 24 is not one of probability; it is absence of reality." (Lord Hobhouse of Woodborough in Three Rivers DC v Bank of England (No.3) [2001] 2 All E.R. 513). … The court should not allow a case to go forward to trial simply because there is a possibility of some further evidence arising (ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725) … an application for summary judgment is not appropriate to resolve a complex question of law and fact, the determination of which necessitates a trial of the issue having regard to all of the evidence (Apvodedo NV v Collins [2008] EWHC 775 (Ch)).".

10. In his helpful Skeleton Argument, Advocate Ferbrache also drew attention to the summary of the principles to apply given by Lewison J (as he then was) in *Easyair Limited (t/a Openair) v Opal Telecom Limited* [2009] EWHC 339 (Ch) (at para. 15):

> "*The correct approach on applications by defendants is, in my judgment, as follows:*
>
> *i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: Swain v Hillman [2001] 2 All ER 91;*
>
> *ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8]*
>
> *iii) In reaching its conclusion the court must not conduct a "mini-trial": Swain v Hillman*
>
> *iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10]*
>
> *v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550;*
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> *vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63;*
>
> *vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and*

> *decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that it is determined the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725.*".

Noting that these principles are largely set out with a claim by a defendant, rather than a plaintiff (or claimant), in mind, and so need to be read with the parties the other way round for the purposes of the present case, I regard this summary as helpful in relation to the approach the Royal Court should follow when determining an application for summary judgment. I have, therefore, not attempted to conduct a mini-trial, but have concentrated on the affidavit evidence given and, in particular, the explanations given by the Defendant in his submissions. I have considered whether there is a real prospect of the partial defence proposed to be mounted by the Defendant being successful, bearing in mind what other material might be produced should the matter proceed to a trial and reminded myself that the Plaintiff is making his claim pursuant to the agreement between the parties.

Discussion

11. As the Defendant stated in his affidavit, he and the Defendant carried out much of their business on an informal basis as between friends. Indeed, that may be a significant contributory factor in relation to the state of affairs that the Defendant himself now faces, which is summarised in the document setting out his financial position as at 19 February 2013. Designing award-winning buildings is all well and good, but he may now realise that the underlying business does need to be carried out in a manner that enables his acknowledged skill and expertise to be utilised in a financially sound environment. His dealings with the Plaintiff exemplify the importance of recording matters accurately for the benefit of all concerned.

12. It was apparent from his Affidavit showing cause against granting the Plaintiff's application that the Defendant was not opposing judgment being entered in respect of the bulk of the Plaintiff's claim. He did not dispute that the debt was due to the Plaintiff, as set out in their agreement, but his approach to the £90,000 of payments made from Mooarc Limited to Kenton Holdings Limited was that this represented a repayment reducing his personal indebtedness to the Plaintiff. Accordingly, he requested that the Court dismiss the application for summary judgment in respect of that amount. He also opposed the entering of judgment in respect of £2,465.50 on the basis that this claim related to paragraph 8 of the Plaintiff's proposals, to which he had not given his agreement. Finally, he accepted that interest became due under the terms of the parties' agreement, but asked that it be limited to interest running on the amounts found to be due from the date of demand rather than any earlier.

13. When considering the payments made aggregating to £90,000, the first thing I noted was that they began to be made quite some time before the letter from Advocate Howitt on behalf of the Plaintiff, which made no mention of them. If the Plaintiff had regarded the payments made to Kenton Holdings Limited as being instalments repaying the £315,000 he had loaned to the Defendant, I would have expected him to have acknowledged this in the letter written on his behalf by Advocate Howitt. Further, if the Defendant thought at the time of reviewing the proposals contained in Advocate Howitt's letter that there had been an oversight in there being no reference to the monthly payments of £2,500, I would have expected him to have

mentioned it at the time rather than counter-signing the letter indicating his agreement to the full amount becoming due upon certain events occurring. The fact that neither party mentioned the monthly payments provides a clear indication to me that they were regarded as being outside the arrangements being made between them about the Defendant's personal indebtedness to the Plaintiff.

14. When I queried during the hearing whether what the Defendant was contending could be treated as a mutual mistake, thereby affecting the terms of the agreement between the parties, Advocate Ferbrache referred me to the references made in his Supplemental Skeleton Argument to the so-called "parol evidence rule". Article 35 of the *Loi relative aux Preuves*, registered on the Records of the Island on 8 July 1865, as amended by section 22(5) of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, provides that "*Lorsqu'il s'agit d'une convention par écrit il n'est reçu aucune preuve par témoins contre ou outré le contenu de la pièce excepté dans les cas speciaux reconnus par la loi*". This provision (albeit before the final words were added by the 2009 Law) was explained by Lieutenant-Bailiff Newman QC in *Brownstone Insurance (Guernsey) Limited* (unreported, 6 October 2004) as meaning that "*where an agreement has been reduced to, or recorded in writing, the writing generally becomes the exclusive record thereof, and no evidence may be given to prove the terms of the transaction, except the document itself or secondary evidence of its contents*". The parol evidence rule was further explained, by reference to English law principles applying equally in Guernsey, in *Sheppard v C.I. Fire & Security (Guernsey) Limited* (unreported, 29 July 2009) in the directions given by Judge Finch to the Jurats (see para. 6). Certain evidence extrinsic to the terms of the written agreement itself can be admitted (as was demonstrated by the Court of Appeal's decision in *Hougue Fouque Property Company Limited v National Westminster Bank Finance (C.I.) Limited* (unreported, 24 June 1972)), so I also needed to consider whether the assertions by the Defendant that there was a separate strand to the parties' agreement running alongside the written terms recorded in the letter from Advocate Howitt he had counter-signed meant there was a real prospect of that defence succeeding.

15. The difficulty I have with the Defendant's position is that he appears to be confusing the arrangements that he had made in respect of his personal liability with the arrangements that exist between companies. The terms contained in the parties' agreement are terms between two gentlemen. The Defendant accepted that he had been paid money by the Plaintiff, or had the benefit of that money. He has also referred to the pair of them agreeing that the Plaintiff would acquire an interest in "Arsenal Studios". The agreement to which he has referred was for a new, jointly-owned company to become the owner of those premises. In other words, the Plaintiff would not obtain a direct ownership interest. The company representing the merged business, Atelier BAS Mooarc Limited, was paying rent, or perhaps more accurately some occupancy fee, to Mooarc Limited. The arrangements that appear to have operated were that Mooarc Limited would retain half of the money paid by Atelier BAS Mooarc Limited and would pay away the other half to the Plaintiff's company, Kenton Holdings Limited. The interposition of so many companies would, in my view, make it difficult for the Defendant to advance the argument that those arrangements were to run alongside the written agreement between the two individuals and so amounted to terms that represented the oral part of the parties' agreement. The Defendant did not produce any documentation supporting his contention that the arrangements about sharing the rent were, pending completion of the proposed sale of "Arsenal Studios" to the new, jointly-owned company, to be treated by them as payments reducing the Defendant's personal indebtedness to the Plaintiff. That is not particularly surprising, given the Defendant's explanation during his submissions that he regarded the written agreement as a form of protection about the building because the main agreement was, as he put it, between gentlemen and not something dealt with formally. However, when making use of companies, people like the Defendant need to remember the importance of formalising what the company is agreeing to, because the company is a distinct person from the individual or individuals involved. The Defendant did exhibit to his Affidavit an unsigned draft of a minute of Mooarc Limited resolving to sell "Arsenal Studios" in March

2013. The inference I draw from that document is that Mooarc Limited did take steps, when appropriate, to record its decisions in writing and so I would have expected anything relating to the occupancy of the building and how monies received were to be treated to be dealt with in an appropriate minute or some other documentary form.

16. The conclusion I reached, therefore, was that whatever the companies had in their minds about the monthly payments of £2,500 over that period of three years, there was nothing other than the Defendant's evidence as set out in his Affidavit that suggested this was inter-linked to the terms of the written agreement on which the Plaintiff was suing. Without in any way preventing Mooarc Limited from considering what action might be open to it in respect of the £90,000 paid to Kenton Holdings Limited, I did not see how the Defendant could mount a real defence to the claim of the Plaintiff based on the terms of the personal agreement between them, as he suggested they should be supplemented. I took the view that he was asking the Court to read in too many additional matters that should properly be dealt with as between the companies themselves. Whilst a trial on this question would enable a fuller investigation of the facts to be undertaken, I was not satisfied that evidence would reasonably come to light that would assist the Defendant in the way he indicated he hoped it would. I further concluded that his claim to be able to offset the payments made between companies as reducing his personal liability to the Plaintiff would, in the absence of clear documentary evidence, be ruled to be bad in law.

Outcome

17. On the basis that the Defendant did not contest the remainder of the debt, the upshot of having decided that he does not have a real prospect of defending any of the claim based on the demand for £315,000 made on 7 January 2013, save to give credit for the payment already made out of the proceeds of sale of "Arsenal Studios" on 14 March 2013, I decided that I would grasp the nettle and grant the Plaintiff's application for summary judgment on sub-paragraph (i) in the prayer in para. 14 of his Cause. I accordingly gave judgment for £202,682.76.

18. As regards the contractual interest pleaded at para. 14(ii) of the Cause, I decided that the sum owing by the Defendant to the Plaintiff fell due as a result of the demand made by Advocate Ferbrache's letter dated 7 January 2013 in accordance with paragraph 3 of the terms in the agreement and not on any earlier date arising from paragraph 5 of the agreement. At the relevant time, the base rate was 0.5%. Accordingly, the interest payable by the Defendant is to be computed using a rate of 3.5%. The Defendant accepted that interest calculated at that rate was due in respect of whatever amounts the Court decided were owed. Having found that the full amount of £315,000 was due upon demand, there being no real prospect of successfully defending in relation to £90,000 thereof, interest at 3.5% per annum became due from that date until the partial repayment on 14 March 2013. Thereafter, interest at 3.5% per annum was due on £202, 682.76 to the date of the hearing, after which interest under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 will apply to the judgment debt. Advocate Ferbrache kindly undertook to prepare an interest calculation.

Ancillary matters

19. By para. 14(ii) of his Cause, the Plaintiff also sought judgment pursuant to paragraph 8 of the letter from Advocate Howitt counter-signed by the Defendant on 4 July 2011. Although it looks to be the result of a typographic error, shown by the inaccurate cross-reference to paragraph 6 contained in paragraph 8, which should refer to paragraph 7, all of which might have been capable of being dealt with through an appropriate application, such as for rectification, I took the view that, on his summary judgment application, the Plaintiff had to be bound by the terms of what the Defendant indicated by counter-signing the letter that he agreed. His agreement was expressed to be to "*the proposals set out in paragraphs 1 to 7*". Because he had not indicated his agreement to be bound by paragraph 8, I found that I could not grant the Plaintiff judgment for this amount. As a result, I announced that I would dismiss that part of the Plaintiff's application for summary judgment, meaning that the Defendant

would be permitted to defend that small element of the claim, conditional upon lodging his Defences promptly.

20. Advocate Ferbrache then sought leave to withdraw that part of the Plaintiff's claim, a course of action which was not opposed by the Defendant. I therefore granted leave to withdraw that portion of the Plaintiff's claim, with the consequence that the Plaintiff had succeeded on the bulk of his claim and there was nothing left in issue between the parties calling for the Defendant to prepare and lodge his Defences.

21. Although the Defendant questioned whether this was an application which he should oppose, rather than prolonging matters still further to enable him to consider his position and so cause the overall costs the Defendant would be obliged to pay to increase, applying the normal principle that a successful party is entitled to his costs, I acceded to Advocate Ferbrache's application on behalf of Plaintiff for an order that the Plaintiff have his costs on the standard recoverable basis, to be taxed if not agreed.