Judgment 33/2003 **Gillihan v NRG Benelux BV – Royal Court (Civil action file 570) – 8th May, 2003**

Application for postponement of civil hearing – factors to be considered

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

8th day of May, 2003 before Alan Robin Winston Hancox, Esquire, E.G.H., C.B.E., Lieutenant Bailiff; sitting alone.

IN THE MATTER OF

WILLIAM GILLIHAM

Plaintiff/
Applicant

-v-

NRG BENELUX BV
(trading as "NRG DISTRIBUTION")

Defendant/
Respondent

Whereas on the 1st day of May 2003, the Lieutenant Bailiff considered an oral application for an adjournment by the Defendant and heard thereon Advocates St.J.A. Robilliard and M.G. Ferbrache, Counsel for the Plaintiff and Defendant respectively;

The Lieutenant Bailiff this day gave judgment in the terms attached hereto and refused the application

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

IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION

Between: **WILLIAM GILLIHAM……...…Plaintiff**

and

NRG BENELUX BV ……..…….…....Defendant
(trading as "NRG DISTRIBUTION)

Judgment.

1. There was an interval of sixteen months between the two interlocutory Rulings I have given in this case, the original Cause having been filed on 13th July, 2001, and the Cause Reformee on 3rd August of that year. According to the note on the Court File the hearing with Jurats was set for 2nd June, 2003, on 20th December last year, that is to say nearly five and a half months hence. On the case being listed for a pre-trial Review on 1st May, Advocate Mark Ferbrache applied for this case to be taken out of the hearing list for 2nd June on the ground that he is personally engaged in another trial with Jurats, albeit on *quantum* only, on the 27th May, and confirmed by Day L.B. on 6th May. If it goes on that case, Thompson & Le Noury v. Masterton & Bourne, will occupy at least three weeks, and will therefore clash with the hearing date set for the instant case and the ensuing week for which it is estimated to last.

2. In the Thompson & Le Noury case there are approximately sixteen experts, with their reports, who will have to come from England. Mr. Ferbrache needs time, he says, to go through these reports and arrange the attendance of the experts so as to cause the least expense possible. In this case he has been dealing with particular officers of the Defendant, who have reposed great confidence in him, for the purpose of securing instructions to defend the claim and pursue the counterclaim, which involve many and complicated issues. It will therefore be highly inconvenient to have to pass this matter to another partner in Collas Day, although Mr. Ferbrache accepts, as Advocate Robilliard representing the Plaintiff has pointed out, that Mr. Paul Richardson, who is a qualified barrister employed by that firm, and appears on their letterhead, has been handling the case and preparing it for trial throughout.

3. Perhaps unsurprisingly, Mr. Robilliard vigorously opposed the Application. He said that by the time the case comes on almost two years will have elapsed since the tabling of the Cause Reformee. His client has still not secured employment, largely because of this matter which is hanging over him. I observe that if he had to produce a reference from a past employer he would be unlikely to get it from NRG. Moreover there were other Advocates, skilled in Court work in Guernsey, who could take the case, and while that might involve more cost and expense, that would be comparatively minor compared with the cost and expense to his client, who has made arrangements to come to Guernsey for the trial, not to mention the injustice that would also be occasioned to him by any further delay.

4. There are several authorities on the issue of whether an adjournment should be granted and the factors on each side which have to be weighed and balanced by the Court addressing the issue. They are, in my view, best summarised by Sir Jocelyn Simon P. in Walker v. Walker [1967] W.L.R 330, when he stated the effect of the earlier Court of Appeal decision in Maxwell v. Maxwell & Keun [1928] 1 K.B 645 :

> "Where the refusal of an adjournment results in serious injustice to the party requesting [it], the adjournment should only be refused if that is the only way that justice can be done to the other party. And secondly, although the granting or refusal of an adjournment is a matter of discretion, if an Appellate Court is satisfied that a discretion has been exercised in such a way that results in an injustice to one of the parties, such Appellate Court has both power and duty to review the exercise of this discretion."

5. Other examples are to be found in Robinson v. Continental Insurance Co of Mannheim [1915] 1K.B 155, Nunim v. Benz [1941] Indian Law Reorts (Bombay Series) 648, Rose v. Humbles (Inspector of Taxes) [1972] 1 A.E.R 314, and R v. Ealing Justices [1999] Crim. L.R 840, cited by Day D.B. in Augustino de Sousa v. R Guernsey Criminal Appeal 19th November, 1999. In Maxwell v. Keun (*supra)*

6. It was said that counsel's convenience is not sufficient unless he can show he is in the House of Lords or Privy Council, or there are other exceptional circumstances. Some cynics would say that the greater the personal difficulties of counsel the more ingenious will be the application!

7. The instant case does not involve counsel's convenience. The reason advanced is perfectly genuine and legitimate. But having also paid regard the the seven principles set out in the Commentary to the Ealing Justices case, which are attached as an Annexure to this Ruling, I have no doubt that the injustice and potential loss caused to Mr. Gilliham would far transcend any caused to NRG by the fact of another Advocate in the same firm having to take over the conduct of this case, well over three weeks in advance of the hearing. For these reasons I refuse the Application.

A.R.W.Hancox
Lieutenant Bailiff
8th May 2003.