No. 287

In the Court of Appeal of Guernsey

(Civil Division)

The 27th day of September, 2000 before Jonathan Philip Chadwick Sumption, Esquire, Q.C., presiding; Peter David Smith, Esquire, Q.C. and David Arthur John Vaughan, Esquire, Q.C.

BETWEEN:	ROBERT ARCHIBALD GILCHRIST SINCLAIR JAMES EDWARD GARDNER IAN CHARLES DOMAILLE ROSEMARIE TONI BLANCHE HANCOCK	Defendants/ Appellants
	and	
	CLIVE ANTHONY HOLME NICHOLSON KEITH ANDREW WESTON DAVID SAXTON WATSON	Plaintiffs/ Respondents

In the appeal by the above Appellants from the decision of the Royal Court given on the 3rd day of August, 2000 on an application by the Appellants for the Respondents to be ordered to file further and better particulars;

THE COURT, having heard Advocates P.T.R. Ferbrache and J.P. Greenfield for the Appellants and Respondents respectively, thereon, GAVE JUDGMENT in the terms attached hereto, DISMISSED the Appeal and AWARDED COSTS to the Respondents;

AND THE COURT DIRECTED that defences in the action before the Royal Court be filed by close of business on the 4th day of October, 2000.

Registrar of the Court of Appeal.

IN THE COURT OF APPEAL OF GUERNSEY

(CIVIL DIVISION)

The 27th day of September 2000, before Jonathan Philip Chadwick SUMPTION Q.C., Peter Smith Q.C. and David Arthur John VAUGHAN Q.C.

On appeal from the Royal Court

BETWEEN:

Robert Archibald Gilchrist SINCLAIR and others Appellants

and

Clive Anthony Holme NICHOLSON and others Respondent

JUDGMENT

SUMPTION J.A.: This appeal arises out of a bitterly fought dispute between the mainland and the Guersey-based partners of the accountancy firm known as the Saffery Champness Guernsey Partnership. The origins of the dispute need not be described, except to say that the Guernsey-based partners have given notice of retirement from the firm as from 31 March 2001 and are alleged to be engaged in a concerted attempt to take the goodwill of the firm with them. On 26 May 2000 the mainland partners filed an application for a number of negative and mandatory injunctions against the Guernsey based partners, designed to protect the business of the firm.

There was at one stage a procedural dispute arising from the fact that the mainland partners had not issued proceedings at the time of that application. But they did issue proceedings by filing a summons on 31 May 2000 to which a substantial pleading was attached. Since their application had not then been heard that dispute no longer has any relevance.

The application for an injunction was tabled on 7 July 2000 and fixed for hearing on 21 August 2000. A considerable volume of affidavit evidence has been exchanged. However, before the date of hearing arrived, on 14 July 2000, the Defendants wrote asking for Further and Better Particulars of three paragraphs of the Summons within seven days, on the footing that answers were required before the injunction application was heard. The Requests can be summarised as follows:

(1) Paragraph 64(c) of the Summons was part of a long background narrative of the way in which the partnership dispute had arisen. It alleged that in

an e-mail of 11 April 2000 the Second Plaintiff had said that he was aware from a 'number of sources' that news of the departure of the Guernsey based partners was known within the professional community in Guernsey, and that the exact circumstances of the departuire were 'at best, less than well understood'. The Defendants asked to be told (a) who the 'sources' were and what they disclosed, and (b) what was meant by saying that the circumstances were less than well understood.

(2) Paragraph 91 of the Summons alleged that the mainland partners had made numerous requests to inspect and take copies of 'books, papers, records and other documents' relating to the partnership, but had been refused. The Defendants asked for the dates and other particulars of these requests.

(3) Paragraph 97(c) of the Summons alleged that the Guernsey-based partners had made disparaging remarks about the mainland partners to clients and employees. The Defendants asked that each client and employee in question should be identified, together with particulars of the remarks and the occasions on which they were made.

The Plaintiffs having failed to supply the Particulars, on 26 July 2000 the Defendants applied to the Court for an order. They also asked, on the footing that they did not get the Particulars, that the relevant paragraphs of the pleading should be struck out for want of particularity. On 2 August 2000 the Lieutenant Bailiff rejected these applications so far as they concerned paragraphs 64(c) and 97(c). In relation to paragraph 91, since the Defendants' alleged refusal to allow access to documents was the basis of an application for an injunction requiring such access, the Lieutenant Bailiff ordered that the Plaintiffs should state what classes of documents they needed to see. But no other Particulars were ordered to be served under paragraph 91 and no striking out order was made. The Defendants on this appeal say that the Lieutenant Bailiff should have acceded to their application in its entirety, but in my judgment his decision was entirely correct.

Rule 37(2) of the Royal Court Civil Rules 1989 provides that an order for Particulars shall not be made before the tabling of the defences 'unless in the opinion of the Court the order is necessary or desirable to enable the Defendant to plead or for some other special reason'. The Rule exists because orders for Particulars before defence are liable to delay the progress of pleading and the identification of the real issues, because applications before Defence are necessarily made at a stage when the significance of the allegations to be particularised cannot be fully assessed, and because they tend to multiply applications for Particulars which would otherwise be made and dealt with at one and the same time. Normally, therefore, particulars will not be ordered before defence unless the inadequacy of the unparticularised pleading leaves the Plaintiff in genuine doubt about the nature the case made against him so as to hamper him in responding to it. However, as the Rule provides, there may be other

circumstances making it necessary or desirable for particulars to be served early, for example because some interlocutory step other than the service of a defence depends on it. In the present case, I would have regarded it as a 'special reason' for ordering the service of particulars before defence if it the absence of the particulars would have impeded the presentation of the Defendants's case on the injunction application, or the work of the Court in determining it.

There is no reason whatever for making such an order in this case. None of the Particulars sought are necessary to enable the Defendants to plead. The nature of the case under all three paragraphs is clear although those paragraphs do not descend to detail. All of them deal with matters which are as much or more within the knowledge of the Defendants as the Plaintiffs. They are in a position to say in their pleading whether they agree with the allegation, and what if any positive case they propose to make on it.

It is equally clear that the particulars are not necessary for the proper conduct of the Defendants' case on the injunction application. The Lieutenant Bailiff's order in relation to paragraph 91 has enable the Defendants to know precisely what classes of document are sought on that application. There is no reason why they should not file evidence saying whether they have such documents, whether they have delivered them already, whether they object to deliver them and if so why. As to the other two paragraphs, for the reasons I have given the Defendants no more need to have the particulars sought in order to state their case on affidavit than they do to state in by way of pleading. An application for an interlocutory injunction must be founded on a legal right, and if it is made at a stage when the applicant's case has been pleaded, that right must be sufficiently disclosed in the pleading or it may be in a further pleading which the applicant proposes to serve. But subject to that requirement (which is plainly satisfied in this case) an application for an interlocutory injunction is decided on evidence. It is up to the Plaintiffs how much detail they can or do supply in their evidence, always bearing in mind (i) that the more detail they supply, the more convincing their case may be, and (ii) that a failure on the Plaintiff's part to supply relevant material of a kind which they could be expected to put before the Court may lead to inferences being drawn against them.

Turning to the striking out application, if a summons is fit to plead to without particulars, it will rarely if ever be possible to regard it as so defective that it must be struck out. The basis on which it is sought to have the relevant paragraphs struck out in this case is that they are part of a pleading of bad faith between partners, which is tantamount to dishonesty. Dishonesty, it is said, must be fully and clearly particularised. I have no desire to cast doubt on that principle, but it has nothing to do with this case. The relevant paragraphs are part of a pleading of breach of the partnership agreements which, although arguably involving a want of that utmost good faith that the law requires among partners, is not an allegation of dishonesty or tantamount to one. An allegation of dishonesty is not legally required to make out these Plaintiff's cause of action, and if the Plaintiffs chose nevertheless to make one, they would have to do so in terms. I

would add that even in that case, the absence of particulars which could properly be ordered by the Court will not normally justify striking out the allegation unless it is pleaded in terms so vague as to be embarrassing to plead to, or lacks some legally essential element.

I would dismiss the appeal.

I add that it appears that it was because of the Defendants' intention to bring this appeal that the injunction hearing fixed for 21 August 2000 was vacated. The hearing is now expected to occur in November. In my view it is unfortunate that it was vacated, and it should be restored for hearing at the earliest possible date. The Royal Court should be wary of appeals which have the effect and maybe the object of delaying a trial or a significant interlocutory order. There is no reason why it should feel obliged to vacate a hearing date on account of a pending appeal unless it considers not only that the outcome of the appeal may significantly affect the course of the hearing but that it has some substantial prospect of success. If these conditions are not satisfied, the right course where a pending appeal is liable to interfere with a significant interlocutory hearing is to refuse leave. An urgent application can always if necessary be made on paper to a single judge of this court. I do not, however, wish to encourage such applications. Any member of this court dealing with them is likely to attach considerable weight to the Royal Court's own judgment as to what the efficient conduct of urgent interlocutory business requires.

P.D. SMITH QC: I agree and I have nothing to add.

D.A.J. VAUGHAN QC: I agree and I have nothing to add