5 pages.

ROYAL COURT
(Samedi Division) 137.

6th July, 1994

Before the Judicial Greffier

BETWEEN.	**B.D.K. Design Associates Limited**	**PLAINTIFF**
AND	**Quasar Leisure Limited**	**DEFENDANT**
	(by original action)	

AND

BETWEEN	**Quasar Leisure Limited**	**PLAINTIFF**
AND	**B.D.K. Design Associates Limited**	**DEFENDANT**
	(by counterclaim)	

Application by the Plaintiff in the original action for a Judgment on an admission pursuant to Rule 6/17(4) of the Royal Court Rules, 1992, as amended.

Advocate R.J.F. Pirie for the Plaintiff in the original action (hereinafter referred to as "the Plaintiff").

Advocate D.E. Le Cornu for the Defendant in the original action (hereinafter referred to as "the Defendant").

JUDGMENT

JUDICIAL GREFFIER: The Plaintiff provided architects for the Quasar Centre project at Fort Regent which was being developed by the Defendant. The Plaintiff, as at 28th September, 1993, claimed to be due the sum of £12,237.53. During October, 1993, there was correspondence between the parties in which the Defendant indicated that it was dissatisfied with the work performed by the Plaintiff. However, on 25th November, 1993, a facsimile was sent on behalf of the Defendant to the Plaintiff which included the following sentence;-

> *"further to our recent telephone discussions this will confirm that we will pay B.D.K. £6,000.00 on the 3rd of December with a further payment of £6,000.00 3 weeks later, giving a total payment of £12,000.00."*

The Plaintiff claims that this constitutes an admission of liability for the sum of £12,000.00 and that, as only £6,000.00 of

this has been paid, the Plaintiff is entitled to a Judgment on admissions for the balance of £6,000.00.

Rule 6/17(4) of the Royal Court Rules 1992, as amended, reads as follows:-

> ***"(4) Where admissions of fact are made by a party to the proceedings either by his pleadings or otherwise, any other party to the proceedings may apply to the Court for such judgment or order as on those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment or make such order, on the application as it thinks just."***

This Rule is very similar, although not identical, to Order 27 Rule 3 of the R.S.C. (1993 Ed'n) which reads as follows:-

> ***"3. Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may give such judgment or make such order, on the application as it thinks just.***
>
> ***An application for an order under this rule may be made by motion or summons."***

Accordingly, I am satisfied that the commentary contained in the White Book is, in general, although subject to the difference in wording, a persuasive authority in Jersey and, in the absence of other authority I propose to follow the same.

Section 27/3/2 of the R.S.C. (1993 Ed'n) includes the following sentence:-

> ***"An admission may be made in a letter before or since action brought;".***

The case of Ellis v. Allen [1914] 1 Ch. 904, is mentioned in the same section and contains some very helpful paragraphs. I now quote a section beginning with the last line on page 908 of the Judgment, as follows:-

> ***"The object of the rule was to enable a party to obtain speedy judgment where the other party has made a plain admission entitling the former to succeed. I do not think r. 6 should be confined as suggested. In my judgment it applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed."***

The Defendant, whilst admitting that an admission was made by virtue of the facsimile, submitted that the Defendant had not thereby excluded the right to bring their counterclaim. The counterclaim brought by the Defendant is for a sum well in excess of £6,000.00.

Both counsel brought my attention to the case of the Mersey Steamship Company -v- Shuttleworth & Co. [1883] 11 QBD 531. In that case the Defendant admitted that the sums claimed in the writ were due to the Plaintiffs subject to a set-off and counterclaim. On page 532 in the Judgment of Cotton, L.J. there is included the following sentences:-

> ***"I by no means say that a counter-claim will in every case prevent an order for payment into court being made under Order XL., rule 11: if the counter-claim is frivolous and unsubstantial, an order of that kind may be made. When this case was before the Queen's Bench Division reference was made to Order XIX., rule 3: I think that full effect must be given to that rule. The contention for the present plaintiffs is that whenever the claim of a plaintiff is admitted, he is entitled to have the money paid into court. I cannot agree to that argument; a plaintiff is not entitled to have the money paid into court, unless the counter-claim is frivolous and unsubstantial."***

Although the rules referred to in that case are not identical with the present rule, it appears to me that I am able to draw from this case the general principle that where a Defendant admits the claim, subject to a set-off and counterclaim which is not frivolous and unsubstantial, then, generally, a Judgment on admissions would not be made.

Section 27/3/4 of the R.S.C. (1993 Ed'n) contains the following sentence:-

> ***"Where the defendant admits a claim but pleads a counterclaim the plaintiff may obtain leave to sign judgment on the terms that the money is to be paid into Court, or that there is a stay of execution pending the trial, or it may be refused according to circumstances (see Showell v. Bouron (1883) 52 L.J.Q.B. 284; Mersey, etc., Co. v. Shuttleworth (1883) 11 Q.B.D. 531)."***

The Plaintiff alleges that the admission was made by the Defendant in the full knowledge of the fact that it had a potential counterclaim and that therefore the counterclaim gives no defence to the application for a judgment on admissions. The Defendant on the other hand states in its pleading that it only agreed to make the payments because it needed the continued assistance of the Plaintiff at that time because of difficulties with the main contractor.

I have to ask myself whether there is in this case a clear admission of facts in the face of which it is impossible for the Defendant to succeed in opposing this application.

I have considered carefully whether, in fact, there was an agreement between the parties to settle disputes between them in relation to the work done upon the basis of the making of the payments set out in the facsimile. However, the Plaintiff has not pleaded this and, indeed, the terms of paragraph 5 of the Particulars of Claim do not allege this but instead claim the sum of £6,237.53.

I am satisfied that the counterclaim is not frivolous and unsubstantial. Indeed, I have no doubt that an application to strike it out would not succeed. It does not seem to me that the facsimile letter waived the right to bring the counterclaim. Accordingly, at the very most, the facsimile letter is an admission that £12,000 was due on the claim, but without waiving the counterclaim, and a promise to pay £12,000. The application under Rule 6/17 is not based upon a promise to pay and, indeed, the claim is not framed upon that basis.

Accordingly, it appears to me that the situation in this case is the type of situation envisaged in the Mersey Steamship Company case in which I should exercise my discretion so as to refuse the application for a Judgment on admissions and I am so doing.

I will need to be addressed in relation to the costs of and incidental to the application.

AUTHORITIES

Royal Court Rules 1992, as amended: Rule 6/17 (4).

R.S.C. (1993 Ed'n): O.27 r.3.

Ellis -v- Allen [1914] 1 Ch. 904.

Mersey Steamship Co. -v- Shuttleworth [1883] 11 Q.B.D. 531.

Mellor -v- Sidebottom [1877] 5 Ch. 342. C.A.

Lancashire Welders, Ltd. -v- Harland and Wolff, Ltd. (1950) 2 ALL ER 1096.