

JONES LANG WOOTTON LTD v THE SUN PLASTIC SUPPLIES LTD,

28 March 1994,

High Court

HC

unrep., HCA No A10878 of 1993

unrep., HCA 10878/1993

Citations: [1994] HKLY 864

Presiding Judges: Kaplan J.

Phrases: PRACTICE AND PROCEDURE

Construction and Arbitration List - Practice Direction - whether court has power to transfer action pending elsewhere in the High Court to the Construction and Arbitration List - whether consent of parties required - conflict between Practice Direction and R.S.C., O.72 r.5

Facts: [R.S.C. (Cap.4, Sub.Leg.), O.72 r.5]

P, a firm of surveyors, issued a writ in the ordinary list claiming professional fees of just under \$500,000. D filed a defence denying the agreement sued upon but pleaded alternatively that the drawings prepared by P were unsatisfactory in three pleaded respects. P, appreciating that this was no longer a simple debt collecting matter, issued a summons for an order under R.S.C., O.72 r.5 that the action be transferred to the Construction and Arbitration List. D submitted that the case was simple and was not one within the category of cases assigned to the Construction and Arbitration List by the Practice Direction for that List (para. 4(2) of the Practice Direction).

Held, granting the order, that (1) although para.4(2) of the Practice Direction provided that it was only with the consent of the parties that an action pending elsewhere in the High Court could be placed in the Construction and Arbitration List, O.72 r.5 of the Rules of Supreme Court clearly provided power to the court to transfer an action from an ordinary list into a specialist list provided that an application was made by a party to an action; (2) where there was a conflict between the two, the Rules of the Supreme Court had to prevail over the terms of the Practice Direction.

Per curiam: it would be helpful if the Practice Direction were amended so as to bring it in line with the terms of O.72 r.5.