

In the Royal Court

Before the Deputy Bailiff

Jurat Perrée

Jurat Orchard

6th November, 1987.

BETWEEN	Jobas Limited	PLAINTIFF
AND	Anglo Coins Limited	DEFENDANT
AND	Charterhouse Japhet (Jersey) Limited	SECOND DEFENDANT
AND	R.H. Takari	THIRD DEFENDANT
AND	R. Salzman	FOURTH DEFENDANT
AND	A. Joseph	FIFTH DEFENDANT
AND	F.D. Dubois	SIXTH DEFENDANT
AND	L. Burford	SEVENTH DEFENDANT
AND	G. Kaneko	EIGHTH DEFENDANT
AND	J.F. Browning	NINTH DEFENDANT
AND	J. Faga	TENTH DEFENDANT
AND	W. Abbott	ELEVENTH DEFENDANT
AND	S. Dickey	TWELFTH DEFENDANT
AND	C.H. Huntoon	THIRTEENTH DEFENDANT
AND	M.C. Brown	FOURTEENTH DEFENDANT
AND	I.D. Tibbits	FIFTEENTH DEFENDANT
AND	Henry Joseph Agutter and Basil Bayliss	THIRD PARTIES

Decision on costs of applications by the Plaintiff and by the Viscount, Administrator in Bankruptcy of the first defendant.

Advocate J.G White for the plaintiff and the third parties.
The Viscount, Administrator in Bankruptcy of the First Defendant, on his own behalf.

Judgment

The Deputy Bailiff:

The Court is going to announce its decision now, and will give its reasons in writing later. It will do so because of the importance of the matter, and of the possibility of an appeal on a question, which, so far as I am aware, has not been discussed before.

The decision of the Court is that costs will be in the cause.

Because the reasons will be given in writing, nothing I say now must be regarded as conclusive.

As a general proposition, the Court accepts the principles enunciated by Mr. White from the White Book and the English cases; however, the parties agreed that the Court has a general discretion. A general discretion is general. In other words, it is unfettered, provided it is exercised judicially and not arbitrarily nor capriciously. Therefore the Court can depart from general principles in exceptional cases.

The Court is persuaded that the désastre situation is exceptional; that the Viscount has a special role; that the role is, in part, investigative; and that he has responsibilities to the public interest as well as to the creditors. The Court is concerned at the apparent inter-connection between the plaintiff and the principals of the plaintiff on the one hand and the first defendant and its holding company, on the other. The Court puts it no stronger than that at this stage. The Court is merely saying that there are matters to be explored at the trial stage.

If the plaintiff is successful, then it will have lost little by costs being in the cause at this stage. The Court has noted that at every interlocutory stage so far in this action, where costs have been determined, they have been costs in the cause. The Viscount has demonstrated that he would have been entitled to seek an adjournment even at the trial stage, because it is clear that there are American investors, who have not appeared, who have not been traced and who may well have no knowledge of these proceedings at all; and it is not in the public interest, nor in the interests of justice, that their interests in this matter should go by default.

Having considered all the circumstances, the Court feels that, whilst the conduct of the matter by the Viscount is not beyond criticism - he could have applied by summons for the proceedings to be stayed, or for the date to be vacated - nevertheless he has not been guilty of inordinate delay, particularly bearing in mind that a large portion of the period, since the 3rd April, had elapsed before discovery was made. The Court believes that even if the Viscount had filed amended pleadings earlier, an adjournment would probably have ensued in the light of the reports from his accountants.

For all those reasons, which will be fully amplified, we order that costs will be in the cause.

Cases cited.

G.L. Baker, Ltd -v- Medway Building and Supplies Ltd: (1958) 3 AER 540
Associated Leisure, Ltd & Ors -v- Associated Newspapers Ltd: (1970) 2 AER 754
E.M. Bowden's Patents Syndicate, Ltd -v- Herbert Smith & Company: (1904) 2 Ch.D. 86
Ascherberg, Hopwood & Crew, Ltd -v- Casa Musical Sonzogno di Piero Ostali, Societa in Nome Colletivo & Ors: (1971) 3 AER 38.
Viscount -v- Jersey Services Company (1954) Ltd: 1966 JJ 651.

In re Dégrèvement & Remise des Biens of James Barker: Unreported Jersey
Judgment of 19th February, 1987.

Statutes and Regulations cited.

Rules of the Supreme Court (1988): O.62 r.3/10.
O.20 r.8.