

ROYAL COURT

27th October, 1993

142.

Before: The Bailiff, and
Jurats Blampied and Rumfitt

BETWEEN Hambros Bank (Jersey) Limited **PLAINTIFF**
AND Glendale Hotel Holdings Limited **FIRST DEFENDANT**
AND Blue Horizon Holidays Limited **SECOND DEFENDANT**
AND David Eves **THIRD DEFENDANT**
AND Helga Maria Eves née Buchel **FOURTH DEFENDANT**

(by original action)

AND

BETWEEN David Eves **PLAINTIFF**
AND Hambros Bank (Jersey) Limited **DEFENDANT**

(by counterclaim)

Appeal under Rule 15/2 of the Royal Court Rules 1992, by the Fourth Defendant in the original action from the summary Judgment made under Part VII of the said Rules by the Judicial Greffier on 15th December, 1992, [see (23rd April, 1993) Jersey Unreported Judgment].

(The Appeals of the First, Second, and Third Defendants are adjourned pending the hearing of their action against the States of Jersey Tourism Committee).

Advocate R.J. Renouf for the Fourth Defendant.
Advocate A.P. Roscouet for the Plaintiff.
The Third Defendant in the original action as a Director
and on behalf of the First and Second Defendants and
on his own behalf.

JUDGMENT

THE BAILIFF: This is an appeal by the Fourth Defendant against the summary Judgment of the Judicial Greffier in favour of the Plaintiff of 15th December, 1992. The Plaintiff, Hambros Bank (Jersey) Limited, to which we shall refer as "the Bank", hold joint and several guarantees signed by the Third and Fourth Defendants.

It is not necessary to detail the history of these proceedings; suffice it to say that the guarantees were given in respect of lendings by the Bank to the First Defendant, for the purchase of the "Glendale Hotel". During 1989 the Hotel was in difficulties, which the Third and Fourth Defendants attribute largely to the actions and involvement of the Tourism Committee. They have commenced an action against the Tourism Committee, about which we make no comment, but we note that much of the Order of Justice in that action has been recently struck out.

The Fourth Defendant feels that she has a triable defence against the enforcement of the Bank's guarantees. Mr. Renouf very correctly informed us that he needed only to show that the Fourth Defendant could raise issues that would necessitate pleading or trial, for the appeal against the summary Judgment to succeed. To this end he outlined three limbs of the Fourth Defendant's appeal: First, the full import of the guarantees were not explained to

her; secondly she had been ill at the material time. We dismiss both of these limbs as being without merit; and, thirdly, the Bank entered into an arrangement to pay off the unsecured creditors of the Defendants, to the prejudice of the Fourth Defendant.

During 1989, the company was in great difficulties; the Tourism Department had required a number of changes to be implemented to the Hotel, and in 1990 they cancelled the Hotel's registration. The creditors of the Defendants were closing in and a *désastre* looked imminent.

However, a Mr. and Mrs. Irwin were interested in purchasing the Hotel, and a price in the region of £780,000, leaving a net figure of approximately £760,000 was agreed. To avoid the contract's being set aside by the unsecured creditors, they were paid off - a sum of approximately £93,000. It is clear from correspondence that was shown to us by Miss Roscouet that Mr. Eves agreed to this arrangement.

In a letter dated 27th November, 1990, he states: "*There is no need for me to emphasise how disastrous this*" (the collapse of the deal) "*would be for my wife and myself*". We take this to mean that a forced sale by means of *désastre* or *dégrévement* would realize far less than the arrangement outlined.

This is the thrust of the third limb of Mr. Renouf's appeal. He argues that there is no evidence to suggest that a *désastre* or *dégrévement* would realize less and had this occurred the Bank could then have applied the monies received to expunge the guarantees of Mrs. Eves, rather than paying off the unsecured creditors as they did, as the unsecured creditors had no claim against realty in a *désastre*, only against movables. He also argued that there is no evidence to show that the Bank formally explained the import of the arrangement to Mrs. Eves, who it is

alleged, did not, in any event, have the necessary capacity to consent as she had been admitted to the Adult Psychiatric Unit at the material time.

We feel, however, that this is placing too onerous a duty on the Bank; if it goes to a further trial, Mrs. Eves can only argue that the Bank did not exercise its duty of care correctly. If she was not properly consulted, as she alleges, it does not affect the Bank's duty of care. We are satisfied that they took all the necessary steps and fully discussed the matter with the principle director of the First Defendant. We cannot see that there is any argument in Law except in respect of the Bank's duty of care. The parties were all represented at the hearing before the Judicial Greffier, when the allegation about Mrs. Eves' mental well-being at the time of this arrangement with the Bank was not raised. We are quite satisfied that there is not a triable issue and we dismiss the appeal.

We also order that the enforcement of the Judgment will be stayed until the completion of the Defendants' action against the Tourism Committee.

The Fourth Defendant will pay the taxed costs of this application.

No authorities.