

COURT OF APPEAL

2nd June, 1994

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Before: The Bailiff, Single Judge

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**Between:** Hambros Bank (Jersey) Limited **Plaintiff**  
**And:** David Eves **First Defendant**  
**And:** Helga Maria Eves (née Buchel) **Second Defendant**

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Applications by the First Defendant for an Order that:

- (1) the First Defendant be given leave to appeal from the Judgment of the Royal Court (Samedi Division) of 26th May, 1994:
  - (a) dismissing the First Defendant's appeals from the summary Judgments of the Judicial Greffier of 23rd June, 1993, condemning the First and Second Defendants to pay to the Plaintiffs £100,000 by way of capital due, and of 11th January, 1994, condemning the First Defendant to pay to the Plaintiffs £28,121.06. by way of arrears of interest due;
  - (b) refusing the First Defendant's request for a stay of execution of the said Judgments of 23rd June, 1993 and 11th January, 1994, pending determination by the Royal Court of the action brought by the First and Second Defendants against the Tourism Committee of the States of Jersey; and
  - (c) ordering that the costs of the Plaintiffs be paid by the First Defendant
- (2) execution of the said Judgments of 23rd June, 1993 and 11th January, 1994, be stayed pending determination of the appeal; and
- (3) the Plaintiffs pay to the First Defendant the costs of and incidental to today's applications.

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Advocate D.J. Petit for the First Defendant  
Advocate A.P. Roscouet for the Plaintiff.

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JUDGMENT

5 **THE BAILIFF:** It would be wrong for me to say that I know nothing of this case, because I have presided at various sittings in these proceedings, when the question of Mrs. Eves and the Glendale Hotel and the Tourism Committee have come before me, but nevertheless whilst having some sympathy with Mr. and Mrs. Eves and the difficulties in which they find themselves, I have to give a decision in accordance with the law.

10 The Court gave a Judgment last week, dismissing appeals by Mr. Eves from two Judgments of the Judicial Greffier, the first of 23rd June, 1993, against the first and second defendants in respect of capital due of £100,000 and the second of 11th January, 1994, against the first defendant in respect of interest.

15 The first point made today is that notice should have been given to Mr. and Mrs. Eves by the plaintiff about the repayment demand. That is not the position in law. The contract between the parties is quite clear; if there is default, there is an immediate right to claim the money; and furthermore it is also  
20 quite clear from 4 Halsbury 20 para. 195 and MS Fashions & Ors -v- BCCI, SA (in liq) & Ors (No. 2); High Street Services Ltd & Ors -v- BCCI, SA (in liq); and Impex Bond Ltd & Ors -v- BCCI, SA (in liq) [1993] 3 All ER 769 that nothing further need be done except the issue of the summons which was in fact how the Bank proceeded.  
25 Therefore that point has no merit.

I was told about and shown an Order of Justice against the plaintiffs which is still outstanding. In that Order of Justice is a claim suggesting that £7,619.15 was paid into the account of  
30 Glendale Holdings Ltd instead of being credited to the First Defendant's account. That matter was addressed by the learned Judicial Greffier in his Judgment of 14th July, 1993, (See Jersey Unreported Judgment of that date) in which he dealt very fully with that defence to the claim of failure to pay interest. In other words claiming  
35 that it had in fact been paid but wrongly credited by the Bank to a different account of Glendale Holdings. The Greffier dealt with this point again in his 3rd February, 1994, Judgment (See Jersey Unreported Judgment of that date) in which he gave his reasons for his Judgment on 11th January, 1994, giving summary judgment against Mr. Eves  
40 for the interest due. He also gave judgment against Mrs. Eves for a smaller sum with which I am not concerned today.

As regards the question of the £7,619.15 he said this:

45 *"This is a line of defence which was raised in relation to this action at the hearing on the 23rd June, 1993. In the second paragraph on page 4 of my Judgment of 14th July, 1993, I commented that this line of defence was totally unfounded with absolutely no rational or factual basis".*

So that disposes of that argument. As regards the question of there being sufficient security, that is irrelevant to the present hearing. I have to decide whether the Court below misdirected itself in law and I cannot find that it did.

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I understand the difficulties, however, in which Mr. and Mrs. Eves find themselves. I have been asked today to give leave to appeal from the Judgment of the Royal Court, but am not satisfied that a sufficient case has been made by Mr. Eves in particular for granting leave to appeal and I refuse it.

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However, I said earlier in my Judgment that I had some knowledge of the background to this case. There is an action pending against the Tourism Committee which in its original form - I know this because I presided in the Royal Court - contained a number of allegations which should more properly have been brought not by Mr. or Mrs. Eves as the case may be, but by Glendale Holdings Ltd; however - and the Court takes judicial notice of it - that company had been struck off for failure to keep up the necessary payments and taxes. That company, or Mr. and Mrs. Eves, were given an opportunity, either late last year or early this year, to apply for the reinstatement. They were given time within which to pay the amount and they were unable to do so. They applied for further time which I believe expired on 31st May. I have no knowledge whether a further application is pending or not, but it seems to me that the time has come for the Court of Appeal itself to look at these matters, if it wishes to do so, and therefore although I refuse leave to appeal, I am granting a stay of execution until 11th July, 1994, which is the first time on which the Court of Appeal will sit after today's decision. It is entirely a matter for Mr. and Mrs. Eves if they want to try to persuade the full Court of Appeal that they should have leave to appeal against the decision of the 26th May.

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With regard to the costs of this application, these will be paid by the defendants.

Authorities

4 Halsbury 20: para 195.

MS Fashions & Ors -v- BCCI SA (in liq) & Ors (No. 2);  
High Street Services Ltd & Ors -v- BCCI SA (in liq); and  
Impex Bond Ltd & Ors -v- BCCI SA (in liq) [1993] 3 All ER 769.

Hambros -v- Eves (14th July, 1993) Jersey Unreported.

Hambros -v- Eves (3rd February, 1994) Jersey Unreported.