

ROYAL COURT

108.

9th June, 1995.

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
and Jurats Le Ruez and Potter.

<u>Between:</u>	David Eves	<u>First Plaintiff</u>
<u>And:</u>	Helga Maria Eves (née Buchel)	<u>Second Plaintiff</u>
<u>And:</u>	Hambros Bank (Jersey) Limited	<u>First Defendant</u>
<u>And:</u>	The Attorneys in the Dégrèvement.	<u>Second Defendants</u>

Application by the First Defendant to set aside an injunction, staying the *Dégrèvement* proceedings, obtained by the First Plaintiff in support of an Order of Justice, signed by the Deputy Bailiff on 8th June, 1995.

The First Plaintiff on his own behalf.
Advocate Mrs. M.E. Whittaker for the Second Plaintiff
Advocate A.P. Roscouet for the First Defendant.
The Second Defendants were not represented and did not appear.

JUDGMENT

THE LIEUTENANT BAILIFF: This is an application to set aside an injunction obtained by Mr. Eves in support of an Order of Justice seeking damages against Hambros Bank (Jersey) Ltd and the Attorneys of Mr. D. Eves.

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Mrs. Eves was a co-Plaintiff, but it appeared that she had no *locus standi*. She was represented by counsel and agreed that her interest in the present action was identical to that of her husband; and left herself to the wisdom of the Court. In those
10 circumstances the Court ordered that she should withdraw, with no order for costs against her.

The Order of Justice makes a series of claims:

5 First, that the Defendant Bank divulged details of the financial commitments of the Plaintiff to the Tourism Committee without authorisation on 16th June, 1990. There is also an allegation that the Tourism Committee - which is not a party to the present action - requested the Bank to call in their loans.

Secondly, (paragraph 4) certain undertakings were given by Mr. Eves to the Bank under duress.

10 Thirdly, that the Bank has misled the Court by claiming that the action which has led to the *dégrévement* proceedings is simply for the recall of a loan on the house ("The Rest") whereas it is inextricably linked with the proceedings relating to Glendale Holdings in respect of which Mr. Eves gave a guarantee secured on
15 "The Rest".

Fourthly, that in accepting a new mandate for Glendale Holdings, the Bank gave no due care to Mr. Eves' guarantee.

20 Fifthly, that the Bank has fraudulently debited the Plaintiff's account by £4,000 and the sum guaranteed by the Plaintiff for Glendale Holdings by £22,000.

25 In view of this the Bank is in breach of the law and furthermore does not come with clean hands.

For the Bank, Advocate Roscouet puts the case in this way:

30 The judgment on which the Bank relies in proceeding to the *dégrévement* is one for £100,000 which was secured on "The Rest" and for which Mr. Eves received the money. It was effected by simple conventional *hypothèque*.

35 There is a further judgment against Mr. Eves in respect of a guarantee given, we understand, with regard to Glendale Hotels, £35,000 of which was secured on "The Rest". This judgment has been stayed. Any problems which the Bank may meet on the discurberment with this will be dealt with by the Bank then. It is, as she put it, their problem. The Bank does not rely on this
40 second judgment to effect the discurberment.

45 So far as the judgment on which the Bank relies is concerned, for the *dégrévement*, the first judgment was obtained on 23rd June, 1993, and the second on 11th January, 1994. Both these were summary judgments and the Royal Court, we were told, heard the appeal on the 26th May, 1994, and dismissed it. The Court of Appeal, on 30th September, 1994, rejected an application for leave to appeal following which an unsuccessful application was made to that Court on 11th January, 1995, for leave to appeal to the Queen
50 in Council. Mr. Eves subsequently made an application for special leave to the Privy Council itself, which was dismissed on 13th February, 1995.

In the meantime, the application for an "Acte Vicomte chargé d'écrire" had been made; and this was followed by the adjudication of a "renonciation des biens" on 31st March, 1995.

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There followed applications to the Court of Appeal, judgment on which was given on 1st May, 1995. These applications were:

- 10 "(1) for leave to appeal against the Order of the Royal Court of 31st March, 1995, ordering a dégrèvement; and
- (2) for a stay of execution of the said Order of 31st March, 1995, pending determination of the appeal."

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The proposition put to the Court on 1st May by Mr. Speck, for the Attorneys in the dégrèvement, was set out in the learned Bailiff's judgment at p.2:

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"As a matter of law, therefore, no appeal can generally lie from that decision. Mr. Speck qualified that proposition in two respects. First, he conceded that if the underlying debt were flawed in some way then an appeal would lie to set aside the adjudication. Secondly, he

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conceded that if there were some procedural irregularity leading up to the application for an adjudication of the renunciation of the debtor's property then an appeal would again lie."

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The learned Bailiff went on to say:

"In my judgment Mr. Speck's submission is well-founded."

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Furthermore, Miss Roscouet set before us this passage from that judgment on p.3:

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"Mr. Eves' principal argument was that it would be unjust to allow Hambros to proceed to execution when he had claims outstanding against the Tourism Committee, the legal firm of Bois Labesse and St. Brelade's Bay Hotel Limited. An affidavit was placed before me by which Mr. Eves swore that the amount of the judgment debt would be met from the anticipated proceeds of these different actions. Suffice it to say that I was not persuaded by

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the evidence before me that the facts justified that conclusion. But, in any event these are separate actions which have no direct connection with the judgment obtained by Hambros in respect of monies advanced upon the security of Mr. Eves' property.

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Mr. Eves placed before me a letter from Hambros showing that £40,000 was advanced to assist in the purchase of the

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Glendale Hotel. That may well be the case but that does not create, in my judgment, a sufficiently close connection between the process of execution of this judgment debt and the actions against other parties to justify treating these different matters as all of one piece.

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In summary, therefore, even if there does exist a right of appeal I am not satisfied in the exercise of my discretion that there are sufficiently weighty matters to be argued to justify granting leave to appeal."

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Miss Roscouet's submission continued thus: although the bank has other claims against the Plaintiff - there is a judgment for £102,000 which is stayed, £35,000 of which plus interest was secured on "The Rest" by way of guarantee - and, although the actions are of course linked, nonetheless the Bank is entitled to proceed under the judgment which it has obtained which is good and with which the Court cannot and ought not to interfere.

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The main point made by Mr. Eves is that the negotiations regarding the loan have all been made in conjunction with the commitments by Glendale Holdings; that the judgements are for only £100,000 plus interest (£28,000) - about which Mr. Eves has some dispute - and if the discumbrment proceeds the Bank will get not only this but the whole or part at least of the sum for which judgment is stayed.

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The Order of Justice makes serious allegations against the Tourism Committee, but the nub of the allegations against the Bank is that on 16th July, 1990, they gave information to the Committee. However, on 23rd July, 1990, the Bank was given authority to do so on account, it was claimed by Mr. Eves, of duress due to conditions imposed by the Tourism Committee.

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Further, it was not the Bank's duty to liaise with the Committee when it was their duty to protect the interest of their client. He conceded, however, that the Bank was the unwitting agent of the Tourism Committee.

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In our view the Bank is entitled to pursue its own interests. Mr. Eves knew or should have known the position when he took out the *hypothèque* on "The Rest".

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We have to say that we can find no grounds on which the Court can properly interfere with the conduct of the *dégrévement*.

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First, and as a matter of law, the Court is not, even on the allegations now made, able to interfere with the previous acts of the Royal Court and set aside or delay the effect of the various judgments which it regards as "*choses jugées*".

Second, even if the Court is wrong in this, it can find no proper or valid reason to interfere with the conduct of the discumberment which the Bank seeks. Even if the Bank will gain a collateral advantage from proceeding with the discumberment it is one which it is entitled to pursue under the law.

The injunction is therefore raised.

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No Authorities.