11 pages.

ROYAL COURT
(Samedi Division) 237.

Judgment reserved: 29th October, 1996.
Judgment delivered: 11th December, 1996.

Before: Sir Philip Bailhache, Bailiff and
Jurats Rumfitt and Jones.

In the matter of the Representation of Louis Emile Jean.

Between:	Louis Emile Jean	Representor
And:	Colin Douglas Murfitt	First Respondent
And:	Murco Overseas Properties Limited	Second Respondent
And:	The Viscount	Third Respondent

Advocate J. D. Kelleher for the Representor.
The First Respondent in person.

JUDGMENT

THE BAILIFF: This is an application by Louis Emile Jean ("the Representor") seeking an order under Article 155 of the Companies (Jersey) Law 1991 ("the 1991 Law") for a winding up of Murco Overseas Properties Limited ("Murco"). The application was made by the Representor as long ago as 10th December, 1993, since when there have been a number of interlocutory hearings both before this Court and before the Court of Appeal. Before considering the application, there was placed before the Court a summons issued on the 21st October, 1996, by Colin Douglas Murfitt, the first Respondent, to whom we shall refer as "Mr. Murfitt", in the following terms:-

> *"LET the Representor appear before the Royal Court of the Island of Jersey, Samedi Division, on the 28th day of October 1996 at 10.00 in the forenoon to show cause why:*
>
> *1. The Representor's action against the First Respondent should not be struck out on the grounds that the written representation of the Representor does not form a proper basis for his application to have Murco Overseas Properties Limited wound up in that it can be shown that on the basis of the Representation the Representor does not have any proper locus standi to proceed with the matter, alternatively;*
>
> *2. The Representation should not be dismissed or stayed as the Representor, being a fit person, has not attended the*

Court for the purposes of giving evidence in support of his Representation and of being cross-examined, alternatively.

3. *The Representation should not be stayed in order to let all the beneficiaries of the combined wills of the late Mrs. Maud Winifred Jean be able to make representations to the Court relating to this matter, alternatively,*

4. *The Representor should not be ordered to sell, or cause to be sold, 2,494 shares in Murco Overseas Properties Limited that are registered in his name and 6 shares that are registered in the names of nominees to the First Respondent for £125,000 with the costs of the Representor to be taxed on the standard basis if not agreed.*

5. *The Court should not Order the Representor to pay the costs of and incidental to this summons on the standard basis.*

6. *The Court should not make such further Order(s) as it seems fit in all the circumstances of the case."*

The Court heard argument on paragraphs 1 - 3 of the summons, following which those applications were dismissed. Our reasons were as follows.

1. As we understood Mr. Murfitt's argument, it was that the Representation did not expressly state that the Representor was a director or member of Murco. As there is no legal requirement for *locus standi* to be expressly pleaded, we found no force in that argument. Furthermore we are satisfied, for reasons which will appear in due course, that the Representor does have locus standi to bring his Representation.

2. Mr. Murfitt argued that the Representor should be present to testify in support of his representation. Again there is no legal requirement for the Representor to give evidence and we are also satisfied, for reasons which will appear, that he remains unfit to do so.

3. So far as the third paragraph of the summons was concerned, this was in our judgment irrelevant to the issue which we had to determine in the context of the Representation.

We left over consideration of paragraph 4 of Mr. Murfitt's summons on the ground that the question would not arise if we were to decide that it was just and equitable to order the winding up of Murco. Having heard argument on the Representation, the Court decided to make such an order under Article 155 of the 1991 Law. Paragraph 4 of Mr. Murfitt's summons therefore falls away. In announcing our decision on the Representation we stated that we would give our reasons at a later date. This we now proceed to do.

As this appears to be the first occasion upon which an application under Article 155 of the 1991 Law has been made, we think it may be

helpful to set out the legal principles which we have applied. Article 155 of the 1991 Law is in the following terms:-

"ARTICLE 155

POWER FOR COURT TO WIND UP

(1) A company may be wound up by the Court if the Court is of the opinion that it is just and equitable that the company should be wound up."

Mr. Kelleher drew our attention to the provisions of sections 122 (1)(g) of the English Insolvency Act 1986 which is in almost identical terms. Indeed the English courts have long exercised a jurisdiction to wind up a company on the ground that it was just and equitable to do so.

Mr. Kelleher cited Palmer's Company Law (Volume 3) paragraph 15.219 under the heading *"The just and equitable clause".*

"It has sometimes been suggested that there is an exhaustive list of situations that may fall within the scope of the "just and equitable" clause, but it now seems that, although such classification may be convenient for purposes of presentation, the words "just and equitable" require a more flexible interpretation. In the words of Lord Wilberforce: "Illustrations may be used, but general words should remain general and not be reduced."

The learned authors go on to give examples of winding up orders made by the English court which include instances where there was a complete deadlock and where, in the case of a small private company, the company was in substance a partnership and the facts would justify the dissolution of a partnership.

It is convenient here to interpose two preliminary arguments advanced by Mr. Murfitt.

(1) Mr. Murfitt submitted that the Representor had no *locus standi* to make the Representation. Article 155 (2) of the 1991 Law provides that an application to the court under that Article may be made by a director or any member of the company. The Court heard evidence from Mr. John Rea, Managing Director of ANZ Grindlays Bank. Mr. Rea produced copies of the company books of Murco from which it is clear that the Representor is a shareholder of Murco. The Register of Directors of Murco shows equally clearly that the Representor has been a director of the company since the 11th October, 1977. We had no hesitation in rejecting the submission that the Representor had no locus standi to bring the Representation.

(2) Mr. Murfitt submitted that the Representor should have been present to give evidence in support of his representation and to submit to cross-examination. Ordinarily we agree that, in the context of an application for a winding up order on the ground of deadlock between members of the company, we would expect to hear evidence from the shareholders in dispute. Mr. Murfitt contended that it was even more important in this case bearing in mind that the Representor's co-owner of the 50% holding in Murco, namely his wife

Mrs. Maude Winifred Jean, died on 5th July, 1993. The Court heard evidence as to the physical and mental capacity of the Representor from Dr. Duncan Robertson who had been the Representor's general practitioner for a number of years. Dr. Robertson retired in 1995 but still assists his successor in the practice on a part-time basis. Dr. Robertson produced three affidavits and was cross-examined upon them at some length by Mr. Murfitt. We formed the view that Dr. Robertson was an honest and reliable witness. His evidence may be summarised in this way. The Representor is a man of 78 who is on the verge of senile dementia. When tested by Dr Robertson on 3rd October, 1996, under the Mini-Mental State test formulated by the Alzheimer Disease Society, the Representor scored 18, 2 points below his score in March 1996. He suffered from lack of memory and recall. The Representor would not be capable of giving accurate evidence. Furthermore to remove him from his familiar surroundings in a nursing home in Alderney and to expose him to cross-examination would be to risk an extreme emotional reaction and a deterioration of his dementia. The Representor remained capable of giving general directions to his lawyer but could not manage to give detailed instructions.

Mr. Murfitt called no evidence to contradict that of Dr. Robertson. We accepted the conclusion of Dr. Robertson that the Representor was incapable of giving reliable and accurate evidence to the Court. In our judgment it was therefore appropriate in the circumstances of this case that the Representor was not called to give evidence.

Mr. Kelleher submitted that there was no exhaustive list of circumstances in which it could be said that it was "just and equitable" to order the winding up of a company. He argued that the phrase should be given a flexible interpretation. He submitted that the evidence supported three contentions:-

(1) That Murco was in substance a partnership and that on the facts a dissolution of a partnership would be justifiable;

(2) that a state of deadlock existed between the owners of Murco, i.e. between the Jean family and Mr. Murfitt;

(3) that the conduct of Mr. Murfitt demonstrated such a lack of probity that a winding up was justifiable on that ground alone.

We have found it convenient to consider together Mr. Kelleher's first and third contentions, but we shall deal first of all with the second contention.

Deadlock

The evidence of Mr. John Rea was that he had been a director of Murco since 1992 when Advocate Clyde-Smith resigned. He placed in evidence copies of the statutory books and papers of Murco. It was clear from his evidence, which was not contested, that half the shares of Murco are owned by the Jean family and half are owned by Mr. Murfitt. We heard some argument from Mr. Murfitt as to who had inherited the interest of Mrs. Jean in the shares held jointly by her and the Representor. In our judgment none of this was relevant to the issues which we had to determine. It is beyond doubt that Murco is owned as to

50% by Mr. Murfitt and as to 50% by the Jean family. It is in substance an equal partnership. Mr. Rea told the Court that there had been no meeting of the directors or of the shareholders since 30th April, 1992. There was a dispute between the beneficial owners and the company was effectively paralysed. He was aware of the dispute when he became a director. He had agreed to accept appointment in order to assist in the settlement of the dispute. Since becoming a director he had done his best to act even-handedly between the two parties to the dispute.

Mr. Rea had received no information about the company's finances. The taxation position of Murco was in disarray. Murco was subject to Jersey tax but was able to take advantage of the double taxation agreement with Guernsey. However no accounts could be prepared. Proceedings had been instituted in Jersey by the Treasurer of the States in respect of income tax liabilities and those proceedings had been stayed. Legal proceedings had been threatened in Guernsey. Mr. Rea estimated that there was an outstanding liability to tax in the sum of about £12,000. He had however no funds available to settle that liability. Murco had other debts. He thought that the total debts amounted to some £20,000 to £22,000. Nothing could be done about these debts while the paralysis continued.

The Court heard evidence of the Representor's desire to transfer his shareholding to his two sons. This could not however be achieved because no authority could be obtained to register the transfer.

The Court also heard evidence from Advocate Roger Perrot, a Guernsey advocate who advised the Representor and Mrs. Jean. On 6th October, 1993, Advocate Perrot wrote to Mr. Murfitt in the following terms:-

"MURCO ("THE COMPANY")

I write formally to place on record what I told you on the telephone on the 27th September. Thus:-

(a) I asked you at what price you might be prepared to sell your shares to the Jean family. You did not indicate a price or lead me to believe that you would be prepared to sell your shares.

(b) I asked what price you would buy from the Jeans their interest in the Company. You did not indicate a price or lead me to believe that you would be prepared to buy their shares.

(c) I invited you to consider the Company's selling the property to a third party by private treaty. You did not indicate or lead me to believe that you would be prepared to agree to the sale of the property by the Company by private treaty.

The consequence of all of this is that an application will now be made to the Royal Court in Jersey for the winding up of the company and, doubtless, the Jersey advocates whom I will be instructing will be giving you formal notification in due course."

Mr. Murfitt submitted that there had been no deadlock. He asserted that funds were definitely available to enable him to buy out the interests of the Jean family. No satisfactory evidence was placed before the Court in support of that assertion. However, even if we had been satisfied that Mr. Murfitt was in a financial position to acquire the shares of the Representor in Murco at a fair price (and we were not so satisfied) that is still a long way from breaking the deadlock which has clearly existed for several years. In our judgment there was sufficient reason for an order under Article 155 of the 1991 Law on this ground alone.

Breakdown of the relationship between the parties

The letter dated 6th October, 1993, from Advocate Perrot to Mr. Murfitt to which we have referred above continued as follows:-

> *"During our telephone conversation the other morning you asked to speak to Louis Jean Senior. He did not wish to speak to you, and despite your repeated request that he talk to you in order to discuss why he did not wish to speak to you, I confirm that he wants nothing more to do with you and, in particular, wishes to be spared any further harassment by you in connection with the Company. He is of the very firm view that you have taken advantage of him in the past at a time when he was not in a position adequately to deal with business matters himself, and he is extremely concerned to prevent you from arranging for him to sign any further documents which you may try to use to his prejudice. Thus, again for the purposes of record, and with his full approval, I place you on notice that any attempt by you to discuss the Company with Louis Senior other than in the presence of one of Louis Junior, Francois or myself, will be treated with the utmost seriousness, and will inevitably result in an application being sought to obtain an injunction against you."*

That letter made it clear that the relationship between Mr. Murfitt and the Jean family had broken down completely by October 1993. But the evidence of Mr. Louis Emile Jean junior was that matters had deteriorated some time before that. That evidence was supported by Mr. John Welsh, who had been an assistant manager of ANZ responsible for the administration of Murco between 1991 and 1994. Mr. Welsh wrote to Advocate Perrot on the 7th April, 1992, stating:-

> *"I am aware that Mr. & Mrs. Jean are having problems with Colin Murfitt in connection with the Company's property at Braye, Alderney and that matters have deteriorated to the extent that Mr. Murfitt is no longer welcome in the Jeans' home."*

The causes of the breakdown of the relationship appear to have been the difficult personality of Mr. Murfitt and his conduct in relation to his business dealings with the Jean family. We need refer only to three examples of that conduct.

(i) A tenant of Murco was Mr. Rod Laband who rented a large shed on La Braye site in Alderney belonging to the company. On 22nd July, 1993, shortly after the death of Mrs. Jean, Mr. Murfitt wrote to

Mr. Laband on Murco headed notepaper directing him to pay the rent for the shed to another company Channel Islands Granite Limited which was owned by Mr. Murfitt alone. On the same day he wrote a letter on Channel Islands Granite Limited headed notepaper to Mr. Laband giving the same instruction and sending a banker's standing order form. The Jean family was not informed of this instruction. The letter from Channel Islands Granite Limited concluded with the words "Absolute confidentiality is expected".

(ii) In or around October 1993 the Land Registrar of the Court of Alderney received documents for registration purporting to be a lease of Braye Lodge and the Weighbridge site at La Braye by Murco to Mr. Murfitt. The "leases" purported to be granted for 999 years at a peppercorn rent of one penny per year. This transaction had not been approved by Murco and the Jean family had again not been informed. These bogus "leases" were on terms which were obviously very advantageous to Mr. Murfitt.

(iii) The Court referred in its judgment delivered on 17th May, 1995, on a preliminary issue to the alleged *"seperation* (sic) *de Biens"* agreement ("the alleged agreement"). This alleged agreement purported to divide up the estate in Alderney owned by Murco between the Representor and Mr. Murfitt on terms which were not disadvantageous to Mr. Murfitt. The Court set out its conclusion in the following terms.

> ***"Our conclusion is that the signatures of Mr. and Mrs. Jean on the alleged agreement are not genuine and were accordingly forged. The likelihood is, although we make no finding in this respect, that the signatures were forged by Mr. Murfitt. The evidence of the two handwriting experts, Mr. Hughes and Mr. Ansell, would have been sufficient to persuade us of the falsity of the signatures. In addition however we think it is very unlikely that Mrs. Jean, an experienced businesswoman, would have been party to an undated document expressed in obscure and convoluted terms without taking legal advice and without even requiring to retain a copy of it. There is evidence that Mr. Murfitt tried to implement the terms of the alleged agreement in various ways, but no evidence that either Mr. Jean or Mrs. Jean acted at any time as if the alleged agreement were in existence. This is hardly surprising given the fact, as we have found, that they did not sign the alleged agreement."***

At the preliminary hearing Mr. Murfitt did not give evidence. At this trial he did however go into the witness box and asserted that he was present when the Representor and Mrs. Jean signed the alleged agreement. Mr. Murfitt did not choose to comment on the expert evidence given at the trial of the preliminary issue nor to give any explanation as to why the Representor and Mrs. Jean should have signed the alleged agreement without taking legal advice and without seeking to retain a copy of it. We reject the evidence of Mr. Murfitt and we find that the alleged agreement was a fraudulent attempt by Mr. Murfitt to divide up the assets of Murco to his own advantage.

Mr. Murfitt agreed that his relationship with the Jean family had broken down. Our conclusion from the evidence is that the relationship

broke down largely on account of the conduct of Mr. Murfitt. He has not behaved fairly or honestly towards the Representor; indeed his conduct has been devious and dishonourable.

Mr. Kelleher referred us to passages from the judgment of Lord Cozens Hardy M.R. in re Yenidja Tobacco Company Limited [1916] Ch 426, at page 429.

> *"Lord Cozens-Hardy MR: This is an appeal from a decision of Asbury J., who ordered this private company to be compulsorily wound up. I think it right to consider what is the precise position of a private company such as this and in what respects it can be fairly called a partnership in the guise of a private company. ... In those circumstances, supposing it had been a private partnership, an ordinary partnership between two people having equal shares, and there being no other provision to terminate it, what would have been the position? I think it is quite clear under the law of partnership, as has been asserted in this Court for many years and is now laid down by the Partnership Act, that that state of things might be a ground for dissolution of the partnership for the reasons which are stated by Lord Lindley in his book on Partnership at p.657 in the passage which I will read, and which, I think, is quite justified by the authorities to which he refers: "Refusal to meet on matters of business, continued quarrelling, and such a state of animosity as precludes all reasonable hope of reconciliation and friendly co-operation have been held sufficient to justify a dissolution. It is not necessary, in order to induce the Court to interfere, to show personal rudeness on the part of one partner to the other, or even any gross misconduct as a partner. All that is necessary is to satisfy the Court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it."*

In our judgement it is impossible for the Representor to place confidence in Mr. Murfitt. There has been a complete breakdown of the relationship between the parties brought about, on the evidence which we have heard, by the personality and conduct of Mr. Murfitt. It is just and equitable on this ground too that an order be made under Article 155 of the 1991 Law for the winding up of Murco.

We conclude by observing that the words "just and equitable" in Article 155 of the 1991 Law should be given a flexible interpretation. Justice and equity cannot be confined within the four corners of specific instances. Having considered all the evidence we had no doubt that it was just and equitable to order the winding up of Murco.

We are prepared to hear the parties on the question of the appointment of a liquidator.

[submissions on appointment of Liquidator]

THE BAILIFF: The Court is going to exercise its power to appoint Mr. David Waters as Liquidator of Murco and we are going to direct that he should realise the assets of the Company, pay the debts of the Company and distribute the balance to the beneficial owners of Murco.

The Court would like to state that it is entirely satisfied that Mr. Waters is a chartered accountant and insolvency practitioner of great experience and probity and we do not therefore consider that the safeguards which we have been asked by Mr. Murfitt to consider need to be attached to the order. We accordingly confer upon the Liquidator the powers set out in paragraph 2 of the letter of 26th November, 1996, from Mr. Kelleher and we direct that the Judicial Greffier shall settle the Act of the Court having regard to the provisions set out in that paragraph of the letter.

We order - and again the Judicial Greffier will incorporate these points in the Act of the Court - that the Liquidator should have power to refer to the Royal Court for further directions if necessary and we also order that the Liquidator should, in any event, refer to the Royal Court with a report should the fees due to him in the conduct of this liquidation exceed the sum of £12,000.

[Application by the First Respondent for leave to appeal against order appointing a Liquidator, and for a stay of execution of the winding up order, pending determination of the appeal].

JUDGMENT
(on application for leave to appeal and for a stay pending determination of the appeal).

THE BAILIFF: Mr. Murfitt has made two applications to the Court arising from our Order to appoint a Liquidator to Murco and to appoint Mr. David Waters as that Liquidator. The first application for leave to appeal against our decision is refused.

The second application is for a stay pending renewal of the application for leave to appeal to the Court of Appeal.

Mr. Murfitt bases this application for a stay on his desire to acquire the property owned by Murco and to prevent its sale to a third party. Mr. Murfitt has made the point that if the Liquidator is able to sell the immovable property of Murco and his appeal to the Court of Appeal is subsequently successful any remedy which he might have in damages will not adequately compensate him for the loss of the site in part of which he is currently living.

Mr. Kelleher for the Representor has opposed the grant of a stay and has drawn the Court's attention to the judgment of Plowman J in re A & BC Chewing Gum (1975) WLR 592. Plowman J stated:

"As I understand it the position is this: first of all as a matter of jurisdiction it is quite clear that I have jurisdiction to grant a stay because the act says so. It says I

can grant a stay on proof to my satisfaction that the proceedings ought to be stayed. But then there is the question of practice and as a matter of practice a stay is never granted. The only exception that I think is known to the department is where I myself once went wrong in re Westbourne Galleries Ltd (1970) 1 WLR 1378, not having been alerted to the position and not knowing it before I granted a stay with precisely what consequences nobody has ever told me. But there are very good reasons for the practice of never ordering a stay and they are these: as soon as a winding up order has been made the official receiver has to ascertain first of all the assets at the date of the order. Secondly the assets at the date of the presentation of a petition having regard to the possible repercussions of s.227 of the Act of 1948; and thirdly the liabilities of the company at the date of the order so that he can find out who the preferential creditors are and also the unsecured creditors. Supposing there is an appeal and the winding up order is ultimately affirmed by the Court of Appeal and there has been a stay his ability to discover all these things is very seriously hampered. It makes it very difficult for him possibly a year later to ascertain what the position was at different times a year previously".

It is true that the statutory provisions to which Plowman J is referring do not apply in this jurisdiction but the underlying principles appear to the Court to be equally valid. Balancing matters as best we can we are not prepared to grant a stay of the order appointing Mr. Waters as Liquidator of Murco. We are, however, prepared to grant a limited stay to this extent. The limit is that the Liquidator may not sell the whole or any part of the immovable property of Murco without first obtaining the consent of this Court to any such transaction. If any such application is made the Court will at that time be able to consider all the material circumstances including the progress of any appeal to the Court of Appeal. In that connection it is a condition of this limited stay that Mr. Murfitt prosecutes his application for leave to appeal and any subsequent appeal with all due expedition and for that purpose the Representor is to be at liberty to apply to this Court.

[Application by the Representor for an Order for full indemnity costs].

JUDGMENT
(on costs application)

THE BAILIFF: Before making an Order for indemnity costs I need to be satisfied that there are some special or unusual features of the case to justify my exercising my discretion in that way. With some hesitation I have decided that such special circumstances do not exist and I accordingly order that the Representor's taxed costs arising out of these proceedings be paid by Mr. Murfitt.

Authorities

Companies (Jersey) Law, 1991.

Insolvency Act 1986.

Palmers Company Law (Vol.3): 15.201-15.221; 8.1001-8.1009.

In re Yenidja Tobacco Company Limited [1916] Ch.D. 426.

re A & BC Chewing Gum (1975) WLR 592.