

ROYAL COURT - 29th October, 1985.

Application of James Barker for a "remise de biens".

DEPUTY BAILIFF: "The Court is sitting this morning to receive the report of Jurats Coutanche and Le Boutillier concerning the application by Mr. James Barker that the Court should grant him a "remise de biens" in accordance with the Loi (1839) sur les remises de biens. In that report the learned Jurats reached the conclusion, and I quote from the last paragraph: "That there is sufficient margin between the estimated value of Mr. Barker's assets and his liabilities to justify his application being granted and accordingly we recommend that it be granted". In passing let me say there is nowhere in that report any suggestion that the valuations which the Jurats obtained in respect of Mr. Barker's property presupposed that they would be valuations in respect of a forced sale. They obtained a valuation from Messrs. Gothard & Trevor, Chartered Surveyors, and the valuations are set down on page 1. Now, normally speaking, the Court grants an application of this nature unless there are reasons which the Court considers cogent and sufficient to refuse it. But the Court's discretion is totally unfettered and I now read from paragraph 2 of Article 2 of the 1839 Law: "La Cour, après la présentation dudit rapport et avoir entendu ceux qui opposeront ladite remise, accordera ou refusera ladite permission.

Cette décision sera finale et sans appel". Therefore it is quite clear to us that the Court has a totally unfettered discretion whether it should or should not grant the application. In this case, we have had an unusual proposal, or set of proposals, put to us by the Ann Street Brewery for whom Mr. Falle has appeared. Without wishing to be facetious, it appears to us that, like all sinners come to repentance, the Company has recognised the harshness of the strict common law doctrine which the Royal Court and the Court of Appeal, in upholding the Royal Court's judgment, felt should not deprive Mr. Barker of the right to make this present application, and accordingly (the harshness being, of course, that if a dégrèvement were to proceed and nothing more, Mr. Barker would lose any equity which he might have between his debts and the realisation of his assets) the Brewery have made a number of proposals to us. The position appears to be this - that if the dégrèvement proceedings continue, a date will of course have to be fixed for the hearing when the creditors will prove or renounce, as the case may be, before the Greffier. We are informed by the Greffier, that of the unsecured debts, there is a total already filed of £103,984 to the nearest pound and the amount of those debts which have not been assigned to the Ann Street Brewery total £17,188 - that is to say approximately one sixth. It therefore follows that

if matters proceeded to a *dégrévement*, that not only would the Ann Street Brewery make itself "tenant" but that it would be open to those unsecured creditors of one sixth of the unassigned debts, also to make themselves joint "tenants". That would not be an unsurmountable difficulty, if we were to accept the undertakings of the Ann Street Brewery, because if there are any difficulties about realising the properties they could of course come back to the Court or alternatively seek a "licitation" but these are minor matters compared with the main principle which we are being asked to deal with this morning. We are asked, in effect, to accept certain undertakings from the Brewery to the extent - the important one which I now mention - to the extent that if they conducted the *dégrévement* and made themselves "tenants", they would hold any balance after realising in certain ways, which I will come to in a moment, Mr. Barker's properties to the order of Mr. Barker. It was suggested in Mr. Falle's opening remarks that they would hold it as a bare trustee but that was cleared up in the course of the morning so that is understood, to put it in ordinary parlance, that any balance would be held for Mr. Barker's benefit absolutely. The question is whether the Court should accept what is no more than an undertaking, or a number of undertakings, from the Ann Street Brewery which are unenforceable by the Court should those undertakings be breached. But on the other hand, whilst it is perfectly true, as Mr. Bertram has pointed out for Mr. Barker, the Ann Street Brewery are creditors with a particular view of Mr. Barker's business, nevertheless we have to take note of the undisputed fact that they are a substantial, reputable, Jersey company and have made these undertakings through their counsel to the Court and it is inconceivable to us that those undertakings would be broken. It is perfectly true, of course, as Mr. Bertram has pointed out, that Mr. Barker would feel happier if the Jurats of this Court - if two Jurats of this Court - were to conduct a "remise de biens", but there is no doubt in our mind that there is a misconception in Mr. Barker's mind as to what they should do. Mr. Bertram attempted to allay that misconception by saying that Mr. Barker agreed and accepted that in the case of a "remise" he would have no control over the Jurats, but nevertheless, part of Mr. Bertram's submission to us seems to suggest to us that Mr. Barker looked to the Jurats to sell everything except the Wine Bar and somehow allow him to keep his Wine Bar, which I think includes his dwelling accommodation, so that by further financing, which we were told would be forthcoming from a helpful friend, he would be able to continue in business and remain living on the premises where, of course, he has lived and traded for a large number of years. Now, we sympathise and understand his wish to do that, but the principal matter before this Court is for us to

decide how best should the creditors be paid, and Mr. Barker cannot expect either the Jurats, or if a *dégrévement* continues, Ann Street Brewery, to arrange matters so that he should remain on the premises, because if that were so and if the value of those premises was not brought into account, then so far as the "remise" is concerned, there would be first of all a payment on account to the creditors and they would have to wait again whilst the balance of their money was forthcoming pending the sale or transfer to Mr. Barker, if he could find the money, of St. Aubin's Wine Bar. That, we think, would be an intolerable situation and cause further delay to those creditors who have been kept out of their money for a very long time and in the history of this application we cannot overlook the number of times that this Court has accorded to Mr. Barker the opportunity to put his house in order. He has responded to that opportunity by placing values on his real property which are quite beyond the ordinary market price and which have resulted, to a large extent, in the present position in which he unhappily finds himself. We are going to accept the undertakings of the Ann Street Brewery and we are therefore not going to order a "remise de biens". In spite of the fact, of course, that the learned Jurats recommended in their report, of course, it must be said that they did not have before them any such proposition put forward by the Ann Street Brewery and it is impossible for us to look into their minds to see whether they would have recommended it had such proposals been before them. Therefore we have to apply our minds to the matter 'de novo'. Now we note the undertaking from the Ann Street Brewery and we are going to confirm or allow a date to be fixed for the *dégrévement* by the Greffier in due course who will have to take all the appropriate steps necessary in procedural matters as our law requires and the undertakings are as follows - we note them and Mr. Falle, we note your undertaking that they will be observed -

1) The Ann Street Brewery will pay all the unassigned, unsecured creditors, whether or not they have filed in the *dégrévement* proceedings - this is what we will require you to give Mr. Falle, you have not actually given them yet.

2) To obtain the best market price for all the properties but in any case, not less than that shown in the Jurats' report, and in the event of any dispute about the price (and to this extent, Mr. Barker, through his advocate, will be entitled to liaise with you, Mr. Falle), the Judicial Greffier will have the matters referred to him and if necessary they can be referred back to this Court.

3) The Ann Street Brewery will have the option of retaining the Wine Bar upon their paying £350,000 for it. Or if, I suppose, Mr. Barker can come to some arrangement to finance it at that price - we do not express any opinion

on that matter - but £350,000 will have to be made available for the creditors in respect of those premises.

4) The Company will hold any balance at the conclusion of the dégrèvement, for the benefit and to the order of Mr. Barker and we order also that accounts in respect of the dégrèvement - we cannot order this, but we would ask the Ann Street Brewery also to lodge with the Greffier accounts in respect of the dealings in the dégrèvement. And I think, lastly, the question of costs arises - we order that the costs of the dégrèvement will not include the costs of the litigation. I think that would be right, Mr. Falle, but the Ann Street Brewery may have the costs of and incidental to today's hearing out of the general proceeds. Mr. Falle, have you got a note of that?

MR. FALLE: Yes Sir. Do I understand Sir, of course, not in litigation - does that mean all the litigation because there is, of course, no order for costs in the application before the Bailiff?

DEPUTY BAILIFF: Well, I don't know, but what I am saying is that the litigation which gave rise to the judgment of the Royal Court and the Court of Appeal is not a matter which we ought to order costs to be paid for out of the dégrèvement at this stage.

MR. FALLE: Sir, would it come out of the proceeds of sale of the.....

DEPUTY BAILIFF: Well, I am not sure what order - no orders were made in those cases at all, were they?

MR. FALLE: There was an order for costs in respect of the appeal purely, Sir, and the stay, before you, Sir. There was no order of costs before the learned Bailiff.

DEPUTY BAILIFF: You mean the first judgment?

MR. FALLE: Yes Sir. I took the view that just as in this case the creditors were opposing an application under the learned Bailiff, making no order of costs because they were clearly entitled to make that opposition.....

DEPUTY BAILIFF: Well, that seems to be right, if each party bears its own costs in the Royal Court and the Appeal Court costs have been disposed of.

What I have said about costs in that litigation is redundant, is it not? I think that is right. So in fact the costs of the dégrèvement will cover the costs of today's proceedings, which you may have out of the general sale. Is that quite clear Mr. Falle? Have I made it clear?

MR. FALLE: Yes Sir, just one little point, Sir, perhaps.

DEPUTY BAILIFF: Yes, please, I may have read a little too fast.

MR. FALLE: The question of - we are dealing of course, at the moment with two proceedings - the dégrèvement proceedings and the "réalisation" and the application here is in respect of the dégrèvement only. The valuation

based on the Wine Bar includes, of course, £100,000.....

DEPUTY BAILIFF: Oh, yes. As far as we are concerned - so far as we are concerned yes, that will have to be negotiated in some way or another but it includes the total figure. Then we will expect Mr. Barker to get not less than £350,000 for the whole lot.

MR. FALLE: Indeed Sir, but the question in my mind Sir, is whether the £100,000 gets tipped immediately over into the "réalisation". If the creditors are to be paid out of the dégrèvement, Sir, that will leave, untouched, in Mr. Barker's hands, one significant piece of real estate where there have been claimants who are already interested.

DEPUTY BAILIFF: What significant piece of real estate?

MR. FALLE: The property in St. Aubin's, St. Julian's Hall.

DEPUTY BAILIFF: Does it matter if he has a bit left in his hands? I don't want - we cannot get involved in that Mr. Falle. You have to - you have said that you are proposing to be the "tenants" after dégrèvement and you have given certain undertakings and you will abide by them. How you actually work it out really - I do not think we can start directing you on that, can we?

MR. FALLE: It is simply the £100,000..... the payment of the whole valuation.....

DEPUTY BAILIFF: Well, you are going to act as bankers, are you not, in effect, to the winding up - putting it in loose terms - of the dégrèvement and the assets. At the end of the day you hold the money to hand over to Mr. Bertram.

MR. BERTRAM: Sir, the Ann Street Brewery will have to take over the role of the attornies in connection with the "réalisation" because the property on St. Aubin's Hill is not freehold property, Mr. Barker owns the shares in that property.

DEPUTY BAILIFF: Yes, well, very well they will have to conduct "réalisation" as well, I presume - or is the Greffier going to do it? The attournés, well the attournés will have to do the "réalisation". I cannot imagine any procedural difficulties, are there, in this, they are going to do the "réalisation"? If there are, you can come back to the Court but we cannot ex-hypothesi pronounce on them this morning. Have you got all those points down Mr. Falle and in respect of those undertakings which I have enumerated and to which I have added one or two to those you have mentioned, you give them?

MR. FALLE: Yes, Sir.

DEPUTY BAILIFF: I think that concludes the matter this morning.

MR. BERTRAM: Yes Sir, the matter of my firm's costs, we will obviously

stand in the position of unsecured creditors as well.....

DEPUTY BAILIFF: For this morning you mean?

MR. BERTRAM: Well, generally, we obviously have done a lot of work for Mr. Barker in connection with this matter besides the appeal. We have worked for Mr. Barker and provided services of different sorts

DEPUTY BAILIFF: Quite. But, the costs of the Court of Appeal, you are going to get from Ann Street, are you not? In the earlier case, each side pays their own costs so you would be an unsecured creditor. Today, you will get out of the general fund and you are then asking us whether we should order that you should have out of the general fund, your costs for the original Royal Court hearing.

MR. BERTRAM: The original Royal Court hearing - is that the original application made on the 5th July?

DEPUTY BAILIFF: Yes.

MR. BERTRAM: We provided legal services as have other firms employed

DEPUTY BAILIFF: Well, it will probably be better Mr. Falle, is it not, if this were so because it will dispose of all Mr. Barker's debts at one fell swoop. I mean it is far better doing it this way than if you handed him a balance and then Mr. Bertram had to say to Mr. Barker, "Please pay me".

MR. FALLE: That assumes, of course, there is apaid out of the balance.

DEPUTY BAILIFF: Paid out of the balance. Well, we will order that. Just a minute. That is - I make quite clear - that is for the Royal Court proceedings. We have got to give a name of some sort - Royal Court Proceedings, First Action, is it?

MR. BERTRAM: That is the work leading up to the actual application itself.

DEPUTY BAILIFF: And to the application, yes. Is that alright? Have you got that clear Greffier? The application for the remise. Yes, yes. Well it's of and incidental to this morning. That would cover the remise.

MR. YATES: I wonder if I could trouble the Court on a procedural point?

DEPUTY BAILIFF: Have you thought of something nasty to trip us up with?

MR. YATES: The Attornies will now have to conduct another dégrèvement, the procedure of something various parties to the dégrèvement.....

DEPUTY BAILIFF: You will deal with the Greffier - the Greffier is going to do that - he is going to fix a date and he is going to

MR. FALLE: Are we going to comply strictly with the periods in the law again?

DEPUTY BAILIFF: It has been adjourned so the Greffier will fix dates in consultation with you and the principal creditors. The "codement" is all ready.

MR. FALLE: Yes, it's all ready, it's really notifying all the creditors to attend.....

DEPUTY BAILIFF: Well, we do not have to stick to the pre-arrangement time-table, the Greffier will fix a time in consultation with all the parties. Is that alright. Well, gentlemen, thank you. We have made some progress and done the best we can with it. Thank you very much.