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ROYAL COURT

1st June, 1989

Before: The Deputy Bailiff and
Jurats Blampied and Orchard

Ex parte application by the Official
Receiver and Provisional Liquidator
of Royco Investment Company, Limited,
for leave to declare the Company
"en désastre".

Advocate A.J. Dessain for the applicant.

JUDGMENT

DEPUTY BAILIFF: The Court is asked to receive a déclaration 'en désastre' of the moveable property of Royco Investment Company Limited.

Under the common law it was open to any creditor to declare the moveable property of his debtor 'en désastre'. Equally a debtor could declare his own moveable property 'en désastre'. The Court merely recorded the declaration and went on, by its Act, to provide for the orderly conduct of the désastre. The Court also recognized that a 'désastre' could be declared by the attorney of a creditor and by the attorney of the debtor.

Thus, under the common law there was no protection against a frivolous or vexatious declaration. The remedy lay in an action to have the 'désastre' raised and in damages.

Rule 12/3 of the Royal Court Rules, 1982, is intended, as was its predecessor, Rule 12/3 of the Royal Court Rules, 1968, to place a brake or restriction on the ability to declare a "désastre" by empowering the Court to refuse to receive the declaration where, inter alia, the declaration is made by the debtor unless it states that he is insolvent but has reliable assets and that declaration is verified by affidavit. The intention of those who enacted the rule, as we conceive it to be, was to avoid frivolous or vexatious declarations, the harm caused by which would not necessarily be sufficiently remedied by an award of damages.

Therefore, we should attempt to satisfy ourselves on three matters: 1) the 'locus standi' of the declarant; 2) that the debtor is insolvent; and 3) that the debtor has realisable assets; although we accept as Mr. Dessain has said that we have a wide discretion, and could in an appropriate case accept a declaration, even if not fully satisfied as to insolvency and realisable assets.

Having regard to the Order of Mr. Justice Hoffman in the High Court of Justice, Chancery Division, Companies Court, of the 25th May, 1989, and of Mr. Justice Vinelott in the same Court, of the 30th May, 1989, the latter seeking assistance out of the English jurisdiction, and having regard to the need for comity between British Courts, we are satisfied that the Official Receiver as provisional liquidator of Royco Investment Company Limited, which Company albeit registered in Jersey conducted its affairs from 16 Grosvenor Place, London, England, and is wholly controlled outside this jurisdiction, stands, so to speak, in the shoes of Royco Investment Company Limited and has the necessary "locus standi" to make a declaration of 'désastre' on behalf of the Company as debtor.

Further we are satisfied by the Affidavit of Stephen James Lister Adamson appointed by the Order of Mr. Justice Hoffman to be special manager to assist the Official Receiver and by the substantial amount of documentary evidence that has been put before us that on the balance of probabilities, the Company is insolvent but has realisable assets.

Accordingly, the Court consents to receive the declaration 'en désastre' of the moveable property of Royco Investment Company Limited.

Authorities:

Royal Court Rules, 1982: Rule 12/3.