

ROYAL COURT
(Samedi Division)

7th October, 1993

129A.

Before: The Bailiff, and
Jurats Orchard and Herbert

Between: James Barker **Plaintiff**

And: Ann Street Brewery Company, Limited **Defendant**

And: Jurats John Harold Vint and
Barbara Myles, in their capacity
as *Autorisés de Justice* appointed
for the conduct of the *Remise de Biens*
of the said James Barker **Parties Convened**

Preliminary point: whether parts of the amended Order of Justice are an attempt to re-litigate a *chase jugée*.

Advocate R.G.S. Fielding for the Plaintiff.
Advocate R.J. Michel for the Defendant.
Advocate Miss S.C. Nicolle for the Parties Convened.

JUDGMENT

THE BAILIFF: This case arises from the *Remise de Biens* accorded to the Plaintiff by the Royal Court on 21st March, 1986.

The *Autorisés*, Jurat Vint and Jurat Mrs. Myles, were appointed by the Court to conduct the *Remise*.

The Plaintiff, through his advocate, and personally, made it clear to the *Autorisés* on a number of occasions that he challenged their discretion, both as to the sale of particular properties,

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and as to the payment of some of the claims, in particular those of the Defendant, Ann Street Brewery Company, Limited. Eventually, on 4th November, 1986, and prompted no doubt by the intransigence of the Plaintiff, the Autorisés were obliged to make a representation to the Royal Court.

The Jurats asked the Court, in their conclusions, first to approve the proposed sale of the properties to which I have referred for £725,000; and secondly to give directions as to the application of the proceeds of sale and the procedure to be adopted for the settlement of the disputed claims.

Attached to the Autorisés Representation was a letter from the Plaintiff's then advocate, dated 24th October, 1986. In that letter there is a paragraph concerning the Ann Street Brewery Company, Limited's claim as follows:

"Ann Street Brewery Co Ltd - £418,706.14

As I believe you will be already aware, this claim is disputed primarily on the ground that the contractual relationship was between Ann Street Brewery Co Ltd and St Aubin's Wine Bar Ltd: not Mr Barker personally. Additionally, Mr Barker will be disputing the legality and propriety of purchasing debts at a premium".

In the course of the hearing on 4th December, 1986, the first part of the Representation was withdrawn but the Court considered the extent of the Autorisés discretion in a Remise. Furthermore, the Autorisés told the Court, through their advocate, *inter alia*, that they did not intend to dispute the Ann Street Brewery's claim, which included a sum due to Lazards and which had been assigned by Lazards to the Brewery. That sum itself included capital and interest. The Court gave a short Judgment which it repeated in its reserve Judgment when it gave its full reasons for its decision. On p.5 of that Judgment, which was delivered on 15th January, 1987, the Court said this:

"The Court, after deliberation, announced the following decision:

- 1) The Court rejected the submission that the Autorisés did not have a discretion to sell the properties in the manner which they proposed;**
- 2) Mr. Bagg had come nowhere near to persuading the Court that the Autorisés had made any wrongful exercise of their discretion;**
- 3) The Court was satisfied that the Autorisés did have the same powers in relation to the settlement of claims as they had with regard to the sale of properties.**

On those three matters the Court would give its reasons in writing in due course; it might be helpful for the future.

4) The Court noted all the acts intended to be carried out by the Autorisés; the Court did no more than note them because it held them to be the responsibility of the Autorisés".

In the opinion of this Court, paragraph 2 of that extract refers to the discretion to sell certain properties and not to the question of which claims should have been admitted or would be admitted in due course. This view is strengthened by paragraph 4.

The Remise was completed by the Autorisés; the creditors were paid off; and the balance paid to the Plaintiff in March, 1987.

On 25th July, 1991, the Plaintiff took out an amended Order of Justice in effect challenging the payment by the Autorisés of Ann Street Brewery's claims. He also alleged a separate breach of contract by Ann Street Brewery which is not germane to the present decision, or to the submissions made to us by counsel in the course of this hearing.

During the case, the Court, after hearing evidence, and after reading certain documents, ruled on 4th October, 1993, that Mr. Barker had withdrawn his objection to Ann Street Brewery's secured claims during the 4th December, 1986, hearing, (See Jersey Unreported Judgment of 4th October, 1993). The Plaintiff intends to appeal from that decision.

The Judicial Greffier, on the application of the Defendant, has certified that there was a preliminary issue to be tried, namely whether parts of the amended Order of Justice were an attempt to re-litigate a *chose jugée*. All counsel are agreed that the question of the discretion of the Autorisés, both as regards the sale of properties and the payment of particular claims, cannot be reopened.

Mr. Fielding for the Plaintiff submitted, however, that the Order of Justice was a request for a Judicial Review to set aside the decision of the Autorisés to pay some of Ann Street Brewery's claims.

Earlier, Mr. Michel for the Ann Street Brewery, supported by Miss Nicolle for the Autorisés, had submitted that the proper way to proceed should have been by Representation, rather than by Order of Justice. Only when the Court had decided whether the proved facts amounted to exceptions to the principle of the unassailability of the exercise of the Autorisés' discretion, should the claims against Ann Street Brewery be proceeded with.

The Judgments of both the Royal Court and the Court of Appeal have made it clear that, save in exceptional circumstances, the exercise of the Autorisés' discretion in a Remise is unassailable.

I quote now from a passage in the Judgment of the Royal Court of 15th January, 1987, [(1987-88) JLR 4]:

"In our opinion there are circumstances in which the Court has the power to interfere with a decision of the Autorisés in a Remise but these are limited to cases where the Autorisés exceed their authority, are wrong in law, deny the parties justice or reach a conclusion devoid of reason. In all such cases the Court has an inherent jurisdiction to have put right that which is wrong. What the Court cannot do is to interfere with a decision which has been regularly made. A power of discretion properly exercised by a person or a body having the legal authority to exercise it is generally unassailable.

That the Autorisés have the legal authority to exercise a very wide power of discretion under the 1839 Law is incontrovertible. They have a discretionary power to sell or otherwise dispose of the entire assets of the debtor, to deny him the right to act on his own behalf, and to settle his debts".

That passage was approved of by the Court of Appeal in their Judgment at the time of the plaintiff's appeal, (1987-88) JLR 23.

That passage also contains - in perhaps less particular terms, but nevertheless sufficiently set out - the heads under which a Judicial Review of an administrative decision, such as that of the Autorisés in the Remise, may be set aside. Those heads are set out for convenience in Supperstone and Goudie on Judicial Review at p.p. 25 and 26. It is a very short passage and reads as follows:

"The duty of the court is to confine itself to the question of legality. Its concern is with whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers.

In Council of Civil Service Unions v Minister for the Civil Service, Lord Roskill observed that the use of the phrase 'principles of natural justice' is no doubt hallowed by time and much judicial repetition, but it is a phrase often widely misunderstood and therefore as often misused".

Paragraph 52 of the Order of Justice itself reads as follows:

"That insofar as the Autorisés accepted the validity of the Defendant's purchase of several debts as hereinbefore referred to they were wrong in law. Insofar as the Autorisés allowed the Defendant's other claims referred to at paragraph 37 (a) - (h) hereof they proceeded in good faith upon the fraudulent and or negligent misrepresentation of the Defendant its servants or agents that the same were properly due and/or upon a mistake as to Law and/or fact concerning the Plaintiff's liability for such indebtedness. Further or in the alternative the Autorisés decision to pay the Defendant's claim was plainly wrong and unjust".

In the opinion of this Court those allegations do not set out with sufficient precision those grounds on which the Plaintiff might seek to set aside the Autorisés' decision to settle some of Ann Street Brewery's claims.

The Court is also not satisfied that the procedure adopted by the Plaintiff is the correct one, but it has nevertheless had regard to Rules 8/6 and 8/7(1) of the Royal Court Rules 1992. Moreover, at this stage, the Court is not prepared to rule on the preliminary point because it considers that until the right to seek Judicial Review has been accorded to the Plaintiff it would be premature to do so.

Accordingly the Court orders as follows:

- 1) There will be a stay of the present proceedings (a) until the Court has ruled on the issues between the Plaintiff and the Autorisés by way of Judicial Review - if and when the Plaintiff is allowed to proceed in this way; and (b) until the appeal by the Plaintiff from our finding that he waived his objections to the settlement of the secured claims has been dealt with.
- 2) The Plaintiff should present a Representation to the Court, setting out with precision the grounds upon which he believes he has a right to ask for Judicial Review; and
- 3) If such a Representation is presented, the Court will have to be satisfied, by cogent reasoning, that the Plaintiff is not prevented from asking for Judicial Review by reason of his own delay in seeking such relief.

Costs will be in the cause.

Authorities

- Henderson -v- Henderson [1843-60] All ER Rep. 378.
- Cooper -v- Resch (1987-88) JLR 428.
- Arnold -v- National Westminster Bank (1991) 2 WLR 1177.
- Hunter -v- Chief Constable of West Midlands (1981) 3 All ER 727.
- Talbot -v- Berkshire County Council (1993) 4 All ER 9.
- Thoday -v- Thoday (1964) 1 All ER 341.
- Channel Islands & International Law Trust Company Limited -v-
Pike & Ors. (1990) JLR 27.
- Ernest Farley & Sons Ltd -v- Takilla Ltd (25th February, 1992)
Jersey Unreported.
- Re Koenigsberg (1949) 1 All ER 804.
- Langmead -v- Maple 18 C.B. (N.S.) 256.
- R. -v- Secretary of State for the Environment ex p. Hackney
& Anor. (1984) 1 All ER 956.
- Spens -v- Inland Revenue (1970) 3 All ER 295.
- Royal Court Rules 1992: 8/6; 8/7(1).
- Court of Appeal (Civil) (Jersey) Rules, 1964: Rule 2.
- 4 Halsbury 16: paras. 964-1017.