

**ROYAL COURT**  
(Samedi Division)

31

14th February, 1994

**Before:** The Deputy Bailiff, and  
Jurats Coutanche and Herbert

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In the matter of the Bankruptcy (Désastre) (Jersey)  
Law 1990.

In re the application of St. Brelade's Hotel, Ltd,  
a creditor company of Blue Horizon Holidays, Ltd,  
to declare Blue Horizon Holidays, Ltd, *en désastre*.

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Application by Blue Horizon Holidays, Ltd., under Article 7 of the said Law to recall  
the *déclaration en désastre* declared on 11th February, 1994.

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Mr. David Eves on behalf of Blue Horizon Holidays, Ltd.  
Advocate J.C. Gollop for the creditor company.

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**JUDGMENT**

**THE DEPUTY BAILIFF:** This is an application by Mr. David Eves, a Director of Blue Horizon Holidays Ltd, to which the Court will refer as "Blue Horizon" to recall the *déclaration en désastre* whereby it was declared *en désastre* by this Court on 11th February, 1994. In support of the application Mr. Eves has sworn an affidavit deposing that Blue Horizon is not insolvent and alleging that the *déclaration* was an abuse of Court procedure and unlawful.

Mr. Eves submitted that the assets of the Company were sufficient to meet its liabilities and that the Company's creditors owed the Company more than the total of the Company's debts. He said that Blue Horizon operated 'on revolving credit' and that the amount due to creditors was perfectly normal and in the ordinary course of trade.

Blue Horizon had an annual turnover, he said, of between £800,000 and £900,000. Mr. Eves could not, however, produce accounts to verify that assertion and the Viscount told us that no accounts had been prepared since 1987.

Mr. Eves submitted that one of the assets of the Company was its goodwill. So far as the monetary assets of Blue Horizon were concerned, Mr. Eves told us that there were small trade debts of between £15,000 and £20,000 owing to the Company. He also said that Blue Horizon was owed between £150,000 and £200,000 by an associated company, Glendale Hotel Holdings Ltd, although the status of that company is open to some doubt. It appears to have been struck off, although an application is to be made to reinstate the company. It is said that Glendale Hotel Holdings Ltd, has a claim against the Tourism Committee in the amount of £170,000 but that claim is resisted and we do not think that, at this stage, we can place much weight on this contingent asset.

The Viscount laid before us a statement of claims which had been lodged in the *désastre* which totalled £173,414.05.

Mr. Eves contested some of these claims and it is indeed clear that the claim of Hambros Bank (Jersey) Ltd, in the sum of £115,268 relates to a guarantee. It is also said that the claim of Intra Travel Ltd, in the amount of £8,379.44 is contested and, again, may be open to some doubt.

It does appear, however, that there are uncontested liabilities of the Company, which at present amount to a minimum of £34,000.

On the asset side the Viscount told us that his officers had attended at the offices of Blue Horizon and as a result of enquiries which had been made some cash had been collected. The total assets collected by the Viscount as at today's date amount to £1,434.27.

Mr. Gollop addressed the Court on behalf of the petitioning creditor, St. Brelades Bay Hotel Ltd, and told us that his client company had applied to declare Blue Horizon *en désastre* because it had run out of patience. We understand that and we think that no valid criticism can be made of the petitioning creditor.

An application to recall a *déclaration en désastre* is now covered by Article 7 of the Bankruptcy (Désastre) (Jersey) Law 1990. The relevant provisions are these:

**"(1) The debtor may at any time during the course of the "désastre" apply to the court for an order recalling the declaration.**

....

**(3) The court shall refuse an application made under paragraph (1) where it is not satisfied that property of the debtor vested in the Viscount pursuant to Article 8 or Article 9 is at the time of such application sufficient to**

pay in full claims filed with the Viscount or claims which the Viscount has been advised will be filed within the prescribed time.

(4) In considering an application under paragraph (1) the court shall have regard to the interests of -

- (a) creditors who have filed a statement of claim;
- (b) creditors whose claims the Viscount has been advised will be filed within the prescribed time; and
- (c) the debtor."

What the Court has to do in our judgment is to apply an arithmetical test. It must add up the claims filed with the Viscount and those claims which the Viscount has been advised will be filed within the prescribed time. It must then look at the value of the property of the debtor which has vested in the Viscount following the making of the *déclaration en désastre*. If the total amount of claims exceed the value of the property of the debtor the Court is under a duty to refuse the application to recall the *déclaration*. The Court must be satisfied that the Viscount is or will be in a position to pay the claims in full before it can exercise its discretion to recall the *déclaration*.

The position is different from that which obtains when an application is made to declare the property of a debtor *en désastre*. Then the Court is concerned to establish whether the debtor is insolvent; that is, whether he is unable to pay his debts as they fall due. That is the conclusion to be drawn from the definitions of "debtor" and "insolvency" in Article 1 of the Bankruptcy (Désastre) (Jersey) Law 1990.

Applying an arithmetical test the Court is not satisfied that the property of the debtor vested in the Viscount is at this time sufficient to pay in full claims filed with the Viscount or claims which the Viscount has been advised will be filed within the prescribed time.

The Court has sympathy, of course, with the personal position of Mr. Eves and his family, but the Court has to apply the Law. The application is therefore dismissed.

Authorities

re Barker (6th September, 1984) Jersey Unreported.