

**ROYAL COURT**  
**(Samedi Division)**

102.

18th May, 1994

**Before:** F.C. Hamon, Esq., Commissioner, and  
Jurats Orchard and Herbert.

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**In re the Bankruptcy (Désastre) (Jersey) Law, 1990.**

**In re Blue Horizon Holidays, Ltd., en désastre on the  
application of St. Brelade's Bay Hotel, Ltd.**

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Application by Blue Horizon Holidays, Ltd., under Rule 15 of the Court of Appeal (Civil)(Jersey) Rules, 1964, for a stay of the *Désastre* proceedings, pending determination of the appeal.

Interlocutory Judgment on the Court's Jurisdiction and on the need to apply for leave to appeal.

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**Mr. David Eves of behalf of Blue Horizon Holidays, Ltd.**  
**The Viscount.**  
**Advocate J.G.P Wheeler, Amicus Curiae.**

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**JUDGMENT**

**THE COMMISSIONER:** We would like to start this interlocutory judgment by saying that in a matter which is apparently of such importance to the applicant company, and we do not intend this as a criticism, it is almost beyond belief that it is being represented by a layman, who, despite his knowledge of the matters in hand, and his courtesy to the Court, seems to us to be getting involved in more and more complex procedural and legal matters without apparent legal assistance.

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This is an application by Blue Horizon Holidays Ltd for a stay of execution pending the determination of an appeal. Mr. David Eves, a director of the company, appeared personally on the company's behalf and Advocate J.G.P. Wheeler appears as *amicus curiae* on behalf of H.M. Attorney General.

Blue Horizon Holidays Ltd, which we shall call "Blue Horizon", was declared *en désastre* on 11th February, 1994, on the application of St. Brelade's Bay Hotel Ltd. Claims lodged with the Viscount - and we do not have an accurate figure - would appear to total in excess of £400,000, and the assets of the company amount, apparently, to no more than about £1,500. It would appear to us, on that basis, that the company is hopelessly insolvent.

The debtor, Blue Horizon, has already made four applications to lift or recall the *désastre* under the Law and all of these applications have been refused. At one of those applications, which was to recall the *désastre* on 14th February, 1994, the Court said this:

**"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."**

Let us for a moment look at the company's handwritten summons for the appellant creditor, St. Brelade's Bay Hotel Ltd, to appear before the Royal Court today to show cause why certain matters should not be dealt with. Immediately we have a problem because St. Brelade's Bay Hotel Ltd, it appears, has not been served in time for its appearance today, and does not appear. Other parties were summoned and they were Advocate Michel and Advocate Gollop. Again, neither of those advocates were served in time and Advocate Michel is, we were told, out of the Island. Advocate Gollop appears before this Court voluntarily as an officer of the Court and will give the Court whatever assistance is required.

On that basis we have difficulty at once because we do not have an adversarial position, we merely have the very able assistance of Mr. Wheeler who has given us whatever help he can, but the help that he has given us, has been objective and not adversarial.

The summons goes on to ask the creditors to show cause why the debtor (Blue Horizon) should not be given a stay of execution under Rule 15 of the Court of Appeal (Civil) (Jersey) Rules, 1964, against the *désastre* application of the applicant creditor, as unless the stay is granted the appeal, if successful, would be nugatory.

We need to consider, as a preliminary point, whether this Court has jurisdiction to hear the application for a stay at all. Mr. Wheeler as amicus pointed out to us that the Bankruptcy (Désastre) (Jersey) Law, 1990, makes no mention of a right of appeal in its 51 Articles. There is in the law at Article 6, subsection (1) a definition of insolvency to mean the inability of a debtor to pay his debts as they fall due, and it is felt that the present applicant falls within that definition. But there are protections contained within the law and in particular we refer to Article 6 and Article 7 of the Law. Article 6 of the Law, the Bankruptcy (Désastre) (Jersey) Law, 1990, reads:

"(1) The court, after considering an application and the affidavit required by paragraph (3) of Article 3 to accompany it, may make a declaration.

(2) The court may at any time adjourn the hearing of an application for such time as it thinks fit and may require the applicant to furnish such further information as it requires.

(3) Where, as the result of an application made by a creditor a declaration is made and the person in respect of whose property it is made is, notwithstanding the declaration, at the date of the declaration not insolvent, that person shall have a right of action against the applicant to recover damages for or in respect of any loss sustained by him as a consequence of the declaration, unless the applicant, in making the application, acted reasonably and in good faith".

Then there is a prescription period of twelve months during which that application must be made.

Then Article 7:

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

(2) The debtor shall give to the Viscount not less than 48 hours' notice of his intention to make an application under paragraph (1).

(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.

5 (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;

10 (b) creditors whose claims the Viscount has been advised will be filed within the prescribed time; and,

(c) the debtor.

15 (5) Where the court makes an order under this Article, it may make such order as to costs as it thinks fit.

20 (6) Where the court makes an order under this Article, the property of the debtor which is vested in the Viscount pursuant to Article 8 or Article 9, shall with effect from the date of the order, vest in the debtor."

25 What Mr. Wheeler pointed out to us is that in considering whether it was the intention of the legislature to give a right of appeal the provisions of Article 7 in particular to lift or recall a *désastre* give an indication, perhaps, that it would be logical (if there were no right of appeal) for this remedy to be as appropriate as an appeal. Of course again, under Article 6, there is a right of action against the person at whose instance the *désastre* was declared to recover damages from that person.

30 He goes on to say that the procedure for an application to recall a *désastre* is far simpler than an appeal and that must be of advantage to the debtor.

35 There are clearly some precedents where the Court has considered matters such as this. We can cite the case of Macready -v- Amy (1950) JJ 11, which was an appeal from a decision of the Dwelling Houses (Rent Control) (Jersey) Law, 1946. There was no allegation in the appeal that the tribunal were guilty of any irregularity in the hearing of the case or exceeded their jurisdiction. The Court held at p.15 of its Judgment, and having carefully analysed the statute and the inherent jurisdiction of the Court that it:

45 "... is unable to find that (apart altogether from the effect of the words of the Law here in question) there exists a general and unqualified right of appeal to this Court from the decisions of the said Tribunal".

50 That being said that case may not be in point. We cite it merely to show that the difficulties arising from a statute which

has no appeal provisions in it has been argued before this Court, albeit in an appeal from a tribunal to the Inferior Number.

5           What we are dealing here with is an appeal from a decision of the Inferior Number to the Court of Appeal, which of course is a statutory body created by the Court of Appeal (Jersey) Law, 1961. It is important for us to note that the jurisdiction of the Court of Appeal is set out in Article 12 of the Law and says:

10           **"(1) There shall be vested in the Court of Appeal all jurisdiction and powers hitherto vested in the Superior Number of the Royal Court when exercising appellate jurisdiction in any civil cause or matter".**

15           And then, sub-paragraph (2):

20           **"Subject as otherwise provided in this law and to rules of court, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the (it says Superior but we think it must be Inferior) Inferior Number of the Royal Court when exercising original jurisdiction in any civil cause or matter".**

25           Then we looked this morning at the case In re an Advocate (1978) JJ 193 C.of.A. At p.199 the Court was making a series of points. We need to refer to two of the points there made. They are:

30           **"Secondly the Solicitors (Jersey) Law, 1971, provides by Article 8(3):-**

35           **"If a complaint is made against a solicitor which appears to the Committee to be of such gravity that a reprimand or censure would be inadequate, the Committee shall, after co-opting two other solicitors, investigate the complaint and, if the Committee decides that the matter should be brought to the attention of the Royal Court, it shall make a report to Her Majesty's Attorney General who shall present the case for decision to the Royal Court".**

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45           **There is, here, no indication of any intention to exclude in the case of solicitors, a right of appeal and a specific requirement that the Attorney General should present the 'case' for the decision of the Royal Court. Had it been intended in the case of solicitors to exclude a right of appeal there would in our judgment have been some specific provision to this effect and there is none. It would be an absurdity to suppose that one part of the profession should have a right of appeal and other not, the more so when, by reason of the special position of advocates in Jersey the misconduct charged may be**

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**misconduct in a matter which is also within the province of a solicitor."**

And:

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**"Fourthly, although Article 13 of the Law of 1961 excludes appeals in certain cases it does not do so in a case such as this."**

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We have yet another problem because Article 13 says that leave will not be given:

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**"(d) without the leave of the Court whose decision is sought to be appealed from, or of the Court of Appeal, except -**

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**(i) where the value of the matter in dispute is more than £3,000; or**

**(ii) on a question of law;**

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**(e) without the leave of the Court whose decision is sought to be appealed from, or of the Court of Appeal, from any interlocutory order or interlocutory judgment, except -**

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**(i) where the liberty of the subject or the custody of infants is concerned;**

**(ii) in the case of a decree in a matrimonial cause or a judgment or order in an admiralty action determining liability;**

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**(iii) in such other cases of the nature of final decisions as may be prescribed."**

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We are not, at this point, even certain, without further argument, as to whether what we are deciding is an interlocutory matter or a final matter.

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Of the grounds of appeal that Blue Horizon make, one of them is a ground of appeal from a judgment of the Royal Court of 18th February, 1994. That cannot go ahead because grounds of appeal were refused on 18th February by the learned Bailiff and unless the company had gone already to a Single Judge of the Court of Appeal for further leave, leave has been refused and there is a *chose jugée* and this Court cannot adjudicate on that. We must strike out from the grounds of appeal, in any event, the appeal from the decision of 18th February.

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We feel that it would be quite wrong for us to trammel the Court of Appeal's decision in any way at all. In the light of our

researches and what we have seen of the Law we think that we must show fairness in this particular regard in a difficult matter to the applicant.

5           We started this judgment by saying that it was a pity that  
the company was not legally represented. Had it been legally  
represented we have no doubt that we would have had this morning  
the benefit of an argument against the application which would  
have assisted all of us. As it is Mr. Wheeler as *amicus* has done  
10 what he can with a difficult point.

In the circumstances we are going to allow the matter to proceed, but we must now decide whether or not we are able or are minded to grant the applicant the stay that is requested.

**AUTHORITIES.**

Court of Appeal (Jersey) Law, 1961: Article 13.

Court of Appeal (Civil) (Jersey) Rules, 1964.

Bankruptcy (*Désastre*) (Jersey) Law, 1990.

Macready-v-Amy (1950) JJ 11.

*In re an Advocate* (1978) JJ 193 C.of.A.