

ROYAL COURT
(Samedi Division)

129.

27th June, 1994

Before: The Deputy Bailiff, and
Jurats Orchard and Herbert

Royco Investment Company Limited (en désastre)
Representation of the Viscount.

Advocate A.J. Dessain for the Viscount.
Advocate A.D. Robinson for the Liquidator.

JUDGMENT

THE DEPUTY BAILIFF: This is a representation by the Viscount in connection with the affairs of Royco Investment Company Limited ("Royco Jersey"), the property of which was declared *en désastre* by this Court on the 1st June, 1989. The application to declare
5 the *désastre* was made by the provisional liquidator of Royco Jersey, the provisional liquidator having been appointed as such by order of Hoffman J in the High Court of Justice of England and Wales on 25th May, 1989. The provisional liquidator was
10 subsequently replaced by Steven James Lister Adamson ("Mr. Adamson") who was appointed liquidator on 8th September, 1989, by the Secretary of State for Trade and Industry of the United Kingdom. Mr. Adamson was on the same date appointed liquidator of seven other companies in the group and on 2nd February, 1990, of a further associated company. All these companies are collectively
15 referred to as "the Nine Companies". Mr. Adamson was served with a copy of the Viscount's representation and was represented by Counsel before this Court. The prayer of the representation, as amended during argument, asked that the Court:

20 "(A) Orders Steven James Lister Adamson be convened before this Court and that it grant leave to serve him out of the jurisdiction. [This was ordered on 11th March, 1994].

(B) Orders the registration of Steven James Lister Adamson as liquidator of Royco Jersey (as a matter of English law).

5 (C) Orders that no other persons need be convened.

(D) Notes the indemnity given by Mr. Adamson to the Viscount.

10 (E) Orders that the Viscount be authorised to transfer to Mr. Adamson the Viscount's interest in the funds held in the account in the joint names of the Viscount and Mr. Adamson with Midland Bank International Centre, St. Helier, PROVIDED THAT:

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(1) Mr. Adamson gives an undertaking in writing to this Court that he will only use or apply the funds jointly held by the Viscount and Mr. Adamson in accordance with the terms of the Order dated 21st September, 1993 of the High Court of England and Wales or such further Order as the High Court may hereafter make.

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(2) Prior to making such transfer the Viscount shall be entitled to deduct from the jointly held funds all the Viscount's costs, expenses and disbursements including all reasonable legal costs, expenses and disbursements.

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(F) (1) Orders that the Viscount be relieved from any duty or need to continue the investigation.

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(2) Orders that the Viscount be relieved from any duty or need to realise or to seek to realise further assets in the name of Royco Jersey.

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(3) Orders that the Viscount, his servants, agents and employees be wholly relieved to the extent that the same would apply from personal liability for any loss howsoever caused to the jointly held fund as a result of actions or omissions in administering or dealing with Royco Jersey or any of the assets recovered to the Nine Companies and that all actions, decisions and conduct of the Viscount and his servants, agents and employees in relation hereto be approved and ratified by the Royal Court.

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(G) [Orders the Viscount] at the conclusion of the distribution of the jointly held funds by Mr. Adamson to terminate the désastre."

On the 19th May, 1994, we heard argument from Counsel representing the Viscount and from Counsel representing Mr. Adamson. At the conclusion of the hearing, we granted the prayer of the representation, (subject to a minor amendment to paragraph B, where we substituted for the words "Orders the registration" the words "Notes the appointment") and indicated that we would give our reasons at a later date. This we now proceed to do.

The facts can be briefly stated. Royco Jersey was incorporated in Jersey on 3rd September, 1985. It was part of a group of companies which have been used to perpetrate a large scale fraud involving the sale of bogus bonds to investors from a number of different countries. It appears that the architects of the fraud, who have now disappeared, have obtained some £25,000,000 from investors. On the 25th May, 1989, the Official Receiver was appointed provisional liquidator of Royco Jersey and of other companies in the group. Steps were taken in various jurisdictions to protect the interests of investors and, as has been stated, Royco Jersey was declared en désastre on 1st June, 1989. Subsequently, the Viscount has acted in cooperation with Mr. Adamson to recover the assets of Royco Jersey principally from the U.S.A. During the period March to July, 1992, funds totalling £1,313,764.41p and U.S.\$ 1,137,256 were transferred to a joint account at a bank in Jersey in the names of the Viscount and Mr. Adamson. No further assets of Royco Jersey have been located. The only claim filed in the désastre was a protective one filed by Mr. Adamson on behalf of the companies (other than Royco Jersey) of which he had been appointed liquidator.

When the provisional liquidator was appointed in May, 1989, it was found that the fraudsters had taken steps to cover their traces. Files, group company documents, and financial records had been secreted or destroyed so that it was no longer possible to ascertain inter-company balances nor indeed to be certain of the identities of all the investors. Thus it was that on 21st September, 1993, a draft compromise was put to the High Court in England by which machinery was laid down for an orderly distribution of the monies which had been recovered to those investors who had made claims. Argument was heard from interested parties and the compromise was sanctioned. Millett J concluded his judgment in these terms:

"I am quite satisfied on the evidence that the destruction of records has led to a situation in which there is no alternative but to pool the assets and liabilities of the companies. It has become impossible to establish inter-company balances.

I am also satisfied that the scheme of distribution which is proposed is the fairest to the creditors and investors

and that it avoids the lengthy delay and high expense of litigation with an uncertain outcome but a high probability that the same result would be achieved.

5 **Accordingly, I propose to sanction the compromise and give the directions requested in the originating summons."**

10 In the light of the judgment and Order of Millett J, the Viscount sought the relief set out in the prayer of the representation.

15 Mr. Dessain for the Viscount submitted that there was precedent for the remission of the net proceeds of the administration of a *désastre* to an English liquidator. In Représentation du Sergent de Justice, stipulant l'office du Vicomte, re Désastre Woodham Builders Limited, (1961) 253 Ex. 190, the Court authorised the acting Viscount to remit the balance in his hands, after deduction of an amount sufficient to pay his costs and the preferential creditors in Jersey, to the company's liquidator in England. The arrangement was that the monies recovered in Jersey and in England would ultimately be pooled and distributed *pari passu* amongst the ordinary creditors both English and Jersey.

25 Mr. Dessain further submitted that there was precedent, in the interests of saving costs, for determining a *désastre* and relieving the Viscount of any duty to continue an investigation into the affairs of the bankrupt company. He referred to In re P.K.T. Consultants (Jersey) Limited (1st August, 1991) Jersey Unreported; (1991) JLR N.5. In that case, the bankrupt company, which had carried on the business of commercial and financial advisers, administrators and consultants, was declared *en désastre* in June, 1987. The principal of the company died in November, 1988, shortly before criminal proceedings against him were due to commence. The Viscount's investigation was hampered by the unwillingness of several creditors to cooperate with the investigation and by the absence of books of account and other records. The Court decided that it was against the interests of the minority of deserving creditors that further costs should be incurred in an investigation which was likely to be futile. The Viscount was accordingly relieved from any duty or need to continue his investigation and to seek to realise further assets of the bankrupt company.

45 We found those authorities very helpful. In any *désastre*, it is the interests of the creditors which must be borne primarily in mind. There is no sense in employing funds which would otherwise be paid to the creditors in pursuing lines of enquiry with only a remote prospect of recovering further assets. That is particularly important, in our judgment, where the affairs of the debtor company are inextricably intermingled with other entities the affairs of which are being administered in another jurisdiction.

5 Furthermore, we have been invited, quite rightly, to have regard to the principles of comity. The High Court in England has reached the conclusion that the compromise put forward was in the interests of the general body of creditors, not only of Royco Jersey, but of the other associated companies. We can see no good reason for reaching a different conclusion. Like Millett J, we were entirely satisfied that the scheme of distribution proposed was the fairest, both to the creditors and to the investors.

15 We were satisfied that no other parties needed to be convened. We noted that an appropriate indemnity had been given to the Viscount by Mr. Adamson. It was desirable that the Viscount be authorised subject to the provisos set out in paragraph E of the prayer to transfer his interest in the monies collected during the course of the administration of the *désastre* to the liquidator in England. Any other method of distribution would have involved additional expense to no obvious purpose and to the detriment of the creditors and investors in many countries. It was also desirable in the interests of those creditors and investors that the administration of the *désastre* be determined and the duties of the Viscount in connection therewith brought to a conclusion. We were told that the High Court in England had granted to Mr. Adamson in relation to the Nine Companies a similar relief from personal liability as was sought by the Viscount in relation to the administration of Royco Jersey. We agreed that the Viscount should be given that relief. For those reasons we granted the prayer of the Viscount's representation.

Authorities

Représentation du Sergent de Justice, stipulant l'Office du
Vicomte re Désastre Woodham Builders Ltd (1961) 253 Ex. 190.

re P.K.T. Consultants (Jersey) Ltd (1st August, 1991) Jersey
Unreported; (1991) JLR N.5.