

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

136

1st July, 1994

**Before: The Deputy Bailiff, and**  
**Jurats Vint and Gruchy**

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**Representation of Royal Bree's Hotel Ltd**

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Application to the Court by the Representor to sanction the compromise arrangements with the Representor's creditors in accordance with the provisions of Article 125 of the Companies (Jersey) Law, 1991.

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**Advocate N.M.C. Santos Costa for the Representor.**

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**JUDGMENT**

**THE DEPUTY BAILIFF:** This is an application by Royal Bree's Hotel Ltd, under Article 125 of the Companies (Jersey) Law, 1991, seeking the sanction of the Court to a compromise with its creditors.

5           The company is the owner of a hotel known as the Royal Hotel.  
The company fell into financial difficulties and the directors  
formed the view that the company was unable to pay its debts as  
they fell due. The company accordingly convened meetings of its  
creditors in order to lay before them a proposed compromise  
10           whereby the debts of the company were abated in ways set out in  
the proposed compromise. The compromise appears to have enjoyed  
the unanimous approval of the secured creditors and the approval  
of a majority of the unsecured creditors, that majority being over  
15           90% of the unsecured creditors in monetary terms.

The provisions of Article 125 of the Law are in these terms:

20           "**(1) Where a compromise or arrangement is proposed between  
a company and its creditors or a class of them, or  
between a company and its members, or a class of  
them, the Court may, on the application of the  
company, or a creditor, or member of it, or, in the  
case of a company being wound up, of the liquidator,  
order a meeting of the creditors or a class of**

*creditors, or of the members of a company, or a class of members, as the case may be, to be called in a manner as the court directs.*

5           (2) *If a majority and number representing threequarters*  
              *in value of the creditors or a class of creditors or*  
              *members or a class of members present and voting*  
10            *either in person or by proxy at the meeting agree to*  
              *a compromise or arrangement, the compromise or*  
              *arrangement, if sanctioned by the court, is binding*  
              *on all creditors, or a class of creditors, or on the*  
              *members or a class of members and also on the company*  
15            *or in the case of a company in the course of being*  
              *wound up on the liquidator and contributories of the*  
              *company."*

Clearly, if all the creditors of a company agree to a proposed compromise whereby their debts are to be abated, the company has no need to make any application to the Court.

20           The purpose of coming to the Court and obtaining the Court's sanction under Article 125 is to enable the Company to impose the compromise on the minority of creditors who have not consented to it. That being so it is important, in the judgment of this Court,  
25           that the statutory procedures which are designed to protect the interests of minority creditors should be strictly observed.

30           The protection afforded to creditors by this Article appears to the Court to be two-fold. First, before a meeting of creditors is convened, the company should make an application to the Court so that the Court has the opportunity of directing the manner in which the meeting should be held. Secondly, once the proposed compromise has been approved by the requisite majorities of the creditors, as set out in paragraph (2) of Article 125, the Court  
35           has a discretion as to whether or not to sanction the compromise, having regard to what took place at the meeting.

40           Counsel has submitted to us that paragraph (1) of Article 125 is discretionary in the sense that it is open to the company to convene the meeting of its own volition rather than making an application to the Court so that the Court may convene the meeting.

45           The Court does not consider that that is the true construction of paragraph (1). Paragraph (1) certainly confers a discretion upon the Court, but it is a discretion to order that a meeting should take place or not to order that a meeting should take place, having regard to the nature of the proposed compromise.

50           In this case the company did not make its application to the Court until after the meeting with the creditors had taken place.

The result is that the Court has not had the opportunity to consider the appropriate arrangements for the meeting which has now occurred.

5           Counsel invited us - if we were to find that the statutory  
procedure had not been observed - to make a retrospective order so  
that the meeting which has already taken place could be regarded  
as the statutory meeting provided for in paragraph (1). We do not  
10           feel able to make such an order nor do we feel able to accede to  
the alternative request which was that the matter should be  
adjourned for one week so that service of the representation and  
affidavit in support could be made upon the unsecured creditors  
15           who had not agreed with the compromise. The reason for that is  
that it appears to the Court that that would not adequately  
protect the unsecured creditors who have not given their consent  
to the proposed compromise.

          It was put to us that this was the first application to be  
made to the Court under Article 125 but we have ascertained that  
20           there was in fact an earlier application which was made by TSB  
Bank Channel Islands Limited on 4th June, 1992. In that case the  
statutory procedure was followed and an application was made to  
the Court praying that the Court might order that a meeting might  
take place. The application laid down a number of procedures  
25           which it was proposed should be followed at the meeting.

          One of the important proposals that was made and was indeed  
accepted by the Court was that a particular person should be  
appointed as Chairman of the meeting and that that person should  
30           be directed to report the results of the meeting to the Court.

          This appears to us to be an important provision because if a  
compromise is not unanimously agreed, it is important that the  
Court should be informed and should be satisfied as to the reasons  
35           why the minority of creditors have not given their consent.  
Without that information it is difficult for the Court to exercise  
satisfactorily the discretion which it has to decide whether or  
not to sanction the compromise in the aftermath of the meeting.

40           We are not by any means indicating, and we would wish to  
emphasise this, that the proposed compromise is not in the  
interests of the creditors taken as a whole. It may very well be  
that the compromise is in the interests of the creditors but we do  
not feel able to sanction it at this stage in the light of the  
45           failure of the company to observe the statutory procedure. We  
therefore reject the application of Royal Bree's Hotel Limited.