

ROYAL COURT

175.

17th May, 1994

Before: F.C. Hamon, Esq., Commissioner,
assisted by Jurats Gruchy and Le Ruez

In the matter of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960.

And in the matter of the Judgment of the High Court of Justice of England and Wales, Chancery Division, Manchester District Registry, obtained in the action between Geoff Bell Holdings Limited, Plaintiff, and Ian Geoffrey Bell, Defendant, and dated the 15th day of February, 1993.

Defendant's application for a stay of the further enforcement of the Plaintiff's English Judgment dated the 15th February, 1993, and registered in Jersey pursuant to the Judgments (Reciprocal Enforcement) (Jersey) Law, 1960, as appears by Act of Court of the 25th August, 1993, notwithstanding that such application is brought outside time period fixed by the Judgments (Reciprocal Enforcement) (Jersey) Rules, 1961.

Advocate P.S. Landick for the Defendant applicant.
Advocate A.P. Begg for the Plaintiff.

JUDGMENT

THE COMMISSIONER: This is an application by Ian Geoffrey Bell ("the Defendant") to show cause why any further enforcement of the Plaintiff's Judgment registered pursuant to an Act of Court dated the 25th August, 1993, should not be stayed and the shares in Barakot Limited and Roselea Limited arrested by the Viscount in execution of the said Judgment should not be retained by the Viscount until fourteen days after the determination of the appeal by Ian Geoffrey Bell against the said Judgment. Because this application has to a certain extent been compromised by an agreement drawn up between counsel it is necessary to go into some detail of the background to this application. It is important to us to note at this stage that the application is in fact brought in two parts and the first part of the application is a request

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that the Court should entertain it despite its being brought outside this time limit specified by Rules of Court.

5 On the 15th February, 1993, Summary Judgment under Order 14
of the Rules of the Supreme Court but *inter partes* was obtained in
Manchester against the defendant. By an Act of the Royal Court
which was dated the 25th August, 1993, the Deputy Judicial
Greffier granted the application of the Plaintiff to register the
10 Manchester Judgment against the Defendant. This was registered
under the provisions of the Judgments (Reciprocal Enforcement)
(Jersey) Law, 1960. It was ordered by the Deputy Judicial
Greffier that the Defendant would be at liberty to apply to set
15 aside the registration of the Judgment within twenty-eight days
after service upon him of notice of the registration and
provisions were made as to where in England registration could be
affected. This was of course pursuant to Rule 9 of the Judgments
(Reciprocal Enforcement) (Jersey) Rules 1961. The Judgment was
not to be enforced until after the expiration of that period of
20 twenty-eight days or any extension of the period granted by that
Court or if an application was made to set aside the registration
until such application had been disposed of. The notice of
registration in accordance with the Rules was duly served on the
Defendant's solicitors, Messrs. Grainger, King and Hynes. The
25 solicitors acknowledge receipt of the notice of registration and
advised that there was an appeal pending against the Manchester
Judgment.

We have ascertained that the Order 14 Judgment obtained
30 against the Defendant was heard *inter partes* but the appeal will
be heard before a Judge in chambers and will be a complete re-
hearing of the original matter. That hearing has been set down
for three days in England from the 27th July.

We then ran into a series of complex applications and counter
35 applications which revolve around the question of whether a stay
has been requested or whether an application was being made to set
aside a judgment. The chronology of events is complex and it may
be that there is an argument that an application could be made by
Mr. Begg under the Judgments (Reciprocal Enforcement) (Jersey)
40 Rules, 1961, Rule 7(5). That rule reads "*the Court or the Bailiff*
may on an application made at any time while it remains competent
for any party to apply to have the registration set aside grant an
extension of the period either as originally fixed or subsequently
extended during which an application to have the judgment set
45 *aside may be made".* The complexity arises out of a hearing on the
22nd December, 1993, of a summons before this Court (in
conjunction with a representation alleging contempt of the
Defendant and Barakot Limited by acting in breach of the terms of
the injunctions). By consent the parties had agreed to have the
50 application dismissed with costs. Mr. Begg's argument is that if
the application was dismissed (albeit by consent) it is too late
now to recommence any proceedings because those proceedings have

been adjudicated upon. It was after the application had been dismissed that the Defendant, on the 18th April, 1994, issued a further summons seeking a stay of enforcement proceedings and fixing a date for the hearing which is the hearing before us. That is the matter in essence although it is infinitely more complex than we have explained today. We merely set it out in its barest form because in the light of what has happened by way of consent between the parties Mr. Begg has specifically reserved the right to return to this argument should he require to do so once the hearing in England has been determined.

Quite recently Mr. Bell swore an affidavit (we were told before the Consul in Malaga). It was put in the post. It has not yet arrived in England. We were presented with a draft affidavit sent by fax which Mr. Bell had initialled on each page and we were told that the completed affidavit was in exactly the same form as this draft affidavit. We were prepared, very reluctantly, to accept this form of affidavit, on the basis that we had to have in our hands an affidavit sworn by the defendant being either the affidavit which we were told had been put in the post in Spain or a similar affidavit bearing no variation whatsoever from the document we were considering and this had to be in hands of the Court by Wednesday at 5.00 p.m. On that basis we were prepared to receive the draft affidavit. The affidavit shows that the Defendant is the sole beneficial owner of the whole of the issued share capital of the two companies, Barakot Limited and Roselea Limited, and these companies own assets as follows:-

(a) Roselea Limited owns a flat at 65 Montague Court, Gosforth, Newcastle-upon-Tyne, this property was purchased by the Defendant in 1993 and its estimated value is £185,000. The property is not on the market at the present time.

(i) Barakot Limited owns a property at Fort Myers, Florida, and that property is subject to Court proceedings in Florida brought against the company by the Plaintiff to this present application.

(ii) the company owns a 50% shareholding in a further company known as Cumbria Developments Limited, that company itself owns land in Florida and the value of the Defendants share in that land is approximately one hundred thousand pounds.

(iii) the company has a right of action against Epiette Limited from which the defendant hopes to recover in excess of three million pounds.

The Defendant is the sole director of the three companies mentioned above. He has certain personal assets in a UK quoted company estimated at three thousand pounds but as he says in the affidavit "neither I, Barakot Limited, nor Roselea Limited have

any assets whatsoever". We were somewhat disturbed to discover in yet another unsworn affidavit presented to us this morning but this time by Mr. Begg (his undertaking is to let us have the sworn affidavit very shortly) of Michael James Bland, that on the 15th March, 1993, the Plaintiff obtained a Judgment against Barakot Limited, the terms of which condemned that company to pay to the Plaintiff the sum of the £3,340,403.37 plus interest and costs. Also on the 15th March, 1993, the Plaintiff obtained confirmation of injunctions restraining Barakot Limited from dealing with any of its assets. Following the Barakot Judgment the Plaintiff apparently appointed lawyers in Florida to register the Judgment in Florida and seek an injunction against the property that Barakot Limited owned at Fort Myers. This action was of course "lis pendens" because of the action in England. In the action it was claimed by the Plaintiff that Barakot Limited had acquired the property at Fort Myers using monies arising from the sale of the leasehold land and that these monies rightfully belonged to the Plaintiff.

An Order of Justice had been obtained on the 10th March, 1993, which imposed immediate interim injunctions on the Defendant and Barakot Limited preventing them from dealing with any of their property. In breach of the injunctions, Barakot Limited sold the Fort Myers property to a Mr. and Mrs. Collier and the sale provided for the payment of approximately US\$35,000 at closing, with the balance of the consideration, approximately US\$150,000, to be paid on or about the 12th August, 1994. Although the action was registered against the Fort Myers property prior to its sale to Mr. and Mrs. Collier, apparently their lawyer did not carry out a final search against the property prior to the closing. As a result, Mr. and Mrs. Collier not only acquired the property but they also acquired the Mortgage Deed. After the sale, Mr. and Mrs. Collier paid for improvements to the Fort Myers property and, under Florida law, were entitled to apply to the Plaintiff to lodge the value of these improvements by way of security for costs with the Court. The funds have not been lodged and as a result the *lis pendens* action has lapsed. The Plaintiff cannot now recover against the property and has to proceed against the Mortgage Note, but it is of interest that the Mortgage Note is payable to the Defendant and not to Barakot Limited. We have a further affidavit from an American lawyer, Mr. Robert E. Tarif, junior, which states in its penultimate and ultimate paragraphs as follows:

"(5) as part of the total purchase price of the property which was US\$182,500 the Colliers executed and delivered the Mortgage Deed and mortgage lent to I. G. Bell for the principal sum of US\$155,155.

(6) the legal effect of the Mortgage Deed is to grant I.G. Bell a security interest in the real property conveyed, to secure re-payment of the Mortgage Note. The Mortgage Deed and

Mortgage Note are recorded in official records from pages 2384 (1951-1953) of the public records of Lee County, Florida, in the United States of America".

5 We find it very surprising that in an affidavit as important as the affidavit that the Defendant has told us he swore in Malaga, he seemed quite unable to distinguish between his own assets and those of the company which he beneficially owned and for him to say that he has "no assets whatsoever" when he has the benefit of the mortgage in his own name is not as far as we are concerned "a full and frank statement". We were concerned about the Defendant's affidavit and the Defendant's constant repetition of the fact that he really did not understand Court proceedings. By way of example at paragraph 31 of his affidavit he says "I can confirm that last year I entered into a contract for the sale of the house at Fort Myers, Florida. The sale was entered into by me without any real understanding of the nature and effects of the injunction obtained in Jersey. I was not aware that the terms of the injunction related to a property in the United States of America" and "I have had no benefit from that sale" and "as can be seen the bulk of the purchase price has been left outstanding on mortgage and I have received no personal benefit".

25 At the end of the first day of the hearing, counsel for both parties indicated to the Court that they might be able to achieve a compromise and that when the Court convened it might only need to sit for a brief time to note the terms of the compromise. The Court was able during the course of this morning's hearing (and after hearing further argument) to indicate its preliminary views of the matter without, in any way, making a final decision. This enabled counsel to adjourn at their request and reach a temporary compromise position. We can now set this out in the following form:

- 35 (1) The Defendant is to assign to Barakot Limited the Mortgage Note granted in his own name following the sale of the "Florida Property" to Mr. and Mrs. Collier by Barakot Limited and to lodge the original Mortgage Note and assignment thereof with the Viscount;
- 40 (2) the shares in Barakot Limited and Roselea Limited are to remain registered in the name of the Viscount until further order of the Court;
- 45 (3) the Defendant is to resign as director of Barakot Limited, Roselea Limited, and Cumbria Developments Limited ("the said companies") and Mr. J.D. Whitehead of Messrs. Grainger, King and Hynes is to be appointed director of the said companies in the place of the Defendant, the whole by 5.00 p.m. on
- 50 Friday 20th May, 1994;

(4) Mr. J.D. Whitehead to have liberty to apply to the Court to be released from his duties as director of the said companies and to apply for costs in relation thereto;

5 (5) Mr. J.D. Whitehead's undertaking not to dispose of any assets of the said companies pending further order of the Court is noted; and

10 (6) the Defendant to give to the Plaintiff full details of the equitable mortgage created in relation to the property in Newcastle-upon-Tyne.

(7) The following matters were adjourned until another day:

15 (a) the matter of the costs of the present application;

(b) the matter of the Plaintiff's application that the Defendant cause the shares in Cumbria Developments Limited to be registered in the name of the Viscount or
20 be held by the Viscount.

(8) The Court noted the parties' reciprocal undertakings to re-appear upon forty-eight hours' notice.

25 And the Court also noted that the above consent Order is made without prejudice to the Plaintiff's right to require the matter of the Defendant's said application to be argued fully on the merits following the determination of the said appeal against the
30 said Judgment of the High Court of Justice of England and Wales, Chancery Division, Manchester District Registry.

(The matter therefore remains adjourned until further order of the Court. The question of costs is left over and Mr. Begg retains his right to argue that the application is in any event
35 brought out of time.

No Authorities.