

ROYAL COURT  
(Samedi Division)

217.  
28th October, 1994

Before: The Deputy Bailiff, and  
Jurats Bonn and Gruchy.

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Between: Hambros Bank (Jersey) Ltd Plaintiff  
And: David Eves First Defendant  
And: Helga Maria Eves (née Buchel) Second Defendant

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Representation of the First Defendant, seeking, *inter alia*, a stay of execution of the Act of Court of 30th September, 1994, (*Acte Vicomte chargé d'écrire*).

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The First Defendant on his own behalf.  
Advocate A.P. Roscouet for the Plaintiff.

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JUDGMENT

THE DEPUTY BAILIFF: This is a representation brought by Mr. David Eves, the First Defendant in proceedings instituted against him by Hambros Bank (Jersey) Ltd ("Hambros") for repayment of a loan of £100,000 secured against the property "The Rest" in Green Street.  
5 We shall refer to the Representor as "Mr. Eves".

The brief history of this matter is that Hambros obtained summary judgment before the Judicial Greffier in respect of both the capital amount of the loan of £100,000 and certain arrears of interest. Mr. Eves appealed to this Court against those summary judgments and those appeals were dismissed. Mr. Eves subsequently appealed to the Court of Appeal and on the morning of 30th September, the Court of Appeal delivered its Judgment in respect of that appeal.  
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The Court of Appeal refused the application of Mr. Eves for leave to appeal against the Judgment of the Royal Court and dismissed the application for a stay of execution of the summary judgments. Mr. Eves thereupon made an application for leave to appeal to the Judicial Committee of the Privy Council. That application was not determined by the Court of Appeal which decided that there were important matters of jurisdiction to be  
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considered and that it required to hear further argument. The Court of Appeal accordingly adjourned until a later date the hearing of the application for leave to appeal to the Judicial Committee.

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On the afternoon of 30th September, Hambros applied for an *Acte Vicomte chargé d'écrire* against Mr. Eves and (I think) Mrs. Eves. Although the application was made *ex parte* Mr. Eves was present in Court and was permitted to be heard in relation to that application.

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Miss Roscouet for Hambros tells us that the Court was informed that there was an application pending before the Court of Appeal for leave to appeal to the Privy Council. Mr. Eves cannot recall whether and to what extent that matter was drawn to the attention of the Court.

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We have endeavoured to ascertain whether this Court gave any reasons when it made the Order *Vicomte chargé d'écrire* but it appears that no reasons were given.

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What troubles the Court in relation to this representation of Mr. Eves which seeks either the setting aside of the *Acte Vicomte chargé d'écrire* or a stay in relation to that order can be shortly expressed. There is pending before the Court of Appeal an application for leave to appeal to the Privy Council. Miss Roscouet invites us to find that that application is, in effect, hopeless.

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We are reluctant to accept that submission. It does appear to us that there is a possibility - even if, as Miss Roscouet submits, that possibility is remote - that leave might be granted to appeal to the Judicial Committee and that the Judicial Committee might subsequently set aside the judgments of the Judicial Greffier, this Court and the Court of Appeal. If that were to happen, and in the meantime the procedural train had been rolling with the result that Mr. and Mrs. Eves had been divested of their property under *dégrévement* proceedings, there would, in our judgment, be an injustice. It is that risk - even if it be a remote risk - of injustice being done which, as we have said, causes us concern.

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We do not think, from the submissions which have been made to us, that any grave prejudice to Hambros, other than a continuation of the delay in obtaining reimbursement of its loan, would be caused if there were to be a stay. Hambros has a first charge against the property and it appears that their charge is well covered.

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In making the order which we are about to make, we wish to make it clear that we are assuming that Mr. Eves' application will

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be heard before the January, 1995, sitting of the Court of Appeal, if not before.

5 We have no jurisdiction to set aside the order of this Court ordering an *Acte Vicomte chargé d'écrire* but we do have jurisdiction, in our judgment, and we order that the Act of the Court of 30th September, 1994, be stayed unless and until the Court of Appeal has dismissed Mr. Eves' application for leave to appeal to the Privy Council or until further order of this Court.

10 The Court will make it a condition of the stay of the *Acte Vicomte chargé d'écrire* that interest on the capital sum of £100,000 and interest on the arrears to the extent that the Judicial Greffier has given summary judgment shall be paid in due time. That means, Mr. Eves, that the Court is making no condition in relation to the disputed amount of interest, but it is a condition that interest on the arrears of interest, in respect of which the Judicial Greffier has given judgment against you, should be paid in due time.

15 No authorities.