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COURT OF APPEAL

82.

1st May, 1995.

Before The Bailiff, Single Judge.

<u>Between:</u>	David Eves	<u>First Appellant</u>
<u>And:</u>	Helga Maria Eves (née Buchel)	<u>Second Appellant</u>
<u>And:</u>	Hambros Bank (Jersey) Limited	<u>First Respondent</u>
<u>And:</u>	The Attorneys in the Dégrèvement.	<u>Second Respondents</u>

Applications by the First Appellant:

- (1) for leave to appeal against the Order of the Royal Court of 31st March, 1995, ordering a *dégrèvement*; and
- (2) for a stay of execution of the said Order of 31st March, 1995, pending determination of the appeal.

The First Appellant on his own behalf.
 Advocate A.P. Roscouet for the First Respondent.
 Advocate J. Speck for the Second Respondents.

JUDGMENT

THE BAILIFF: This application by Mr. David Eves is before me sitting as a single judge of the Court of Appeal. Mr. Eves is seeking leave to appeal against an order of the Royal Court of 31st March, 1995, pronouncing the adjudication of the renunciation of his property and the appointment of attorneys to conduct the *dégrèvement*.

The first point which I have to consider is whether there is a right of appeal against the order of the Royal Court of 31st March, 1995. Mr. Speck for the Second Respondent submits that there is not. He argues that the adjudication of the renunciation of a debtor's property is a purely ministerial act in

which the Court has no discretion in deciding what order to make. As a matter of law, therefore, no appeal can generally lie from that decision. Mr. Speck qualified that proposition in two respects. First, he conceded that if the underlying debt were
5 flawed in some way then an appeal would lie to set aside the adjudication. Secondly, he conceded that if there were some procedural irregularity leading up to the application for an adjudication of the renunciation of the debtor's property then an appeal would again lie. He cited article 3 of the Loi (1832) sur
10 les décrets which, he submitted, introduced the procedure of Vicomte chargé d'écrire. Article 3 provides:

15 " *Le créancier qui aura obtenu un acte de prison vers une personne absente de cette Ile, ayant un administrateur ou autre fondé de pouvoir qui refuserait d'obtempérer audit acte, pourra, en s'adressant à la Cour Royale tant en vacance qu'en terme, faire autoriser le Vicomte à écrire ou signifier à son débiteur, qu'il ait à satisfaire son*
20 *créancier ou ses créanciers dans deux mois de ladite signification, sous peine que tous ses biens-meubles et héritages soient adjugés renoncés.*"

25 Mr. Speck emphasised the last clause of that article which provides that the penalty for failing to satisfy a judgment debt is that the moveable and immoveable property of a debtor may be adjudged renounced.

30 In my judgment Mr. Speck's submission is well-founded. The procedure of dégrèvement is a process whereby a judgment creditor obtains execution of his judgment. There are various stages in the procedure which require the intervention of the Court, of which examples are the Acte Vicomte chargé d'écrire and the act of
35 the adjudication of the renunciation of the property of the debtor. But these orders are obtained ex parte without prior notice being required to be given to the judgment debtor. There are, no doubt, exceptional circumstances which would entitle the Court to intervene where, for example, there had been a procedural
40 irregularity. If, however, the underlying debt is not flawed in some way, a creditor is entitled to take the various procedural steps to proceed to execution without having each step challenged along the way. In this case, the summary judgment in respect of the underlying debt has been the subject of appeal to the Royal
45 Court, to this Court and to the Judicial Committee of the Privy Council, in each case without success.

50 Mr. Eves has no right of appeal in respect of the order pronouncing the adjudication of the renunciation of his property and accordingly his application for leave to appeal must fail.

In case I am wrong on that point I would add that none of the points raised by Mr. Eves this morning appears to me to lay the necessary foundation for an appeal to the Court of Appeal. Mr.

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Eves' principal argument was that it would be unjust to allow Hambros to proceed to execution when he had claims outstanding against the Tourism Committee, the legal firm of Bois Labesse and St. Brelade's Bay Hotel Limited. An affidavit was placed before me by which Mr. Eves swore that the amount of the judgment debt would be met from the anticipated proceeds of these different actions. Suffice it to say that I was not persuaded by the evidence before me that the facts justified that conclusion. But, in any event these are separate actions which have no direct connection with the judgment obtained by Hambros in respect of monies advanced upon the security of Mr. Eves' property.

Mr. Eves placed before me a letter from Hambros showing that £40,000 was advanced to assist in the purchase of the Glendale Hotel. That may well be the case but that does not create, in my judgment, a sufficiently close connection between the process of execution of this judgment debt and the actions against other parties to justify treating these different matters as all of one piece.

In summary, therefore, even if there does exist a right of appeal I am not satisfied in the exercise of my discretion that there are sufficiently weighty matters to be argued to justify granting leave to appeal.

Mr. Eves next asked me to consider ordering a stay of execution of the executory process. He drew my attention to an extract from the Rules of the Supreme Court; Order 59/13/1, which provided:

"Nowadays the court may be prepared (provided that the appeal has sufficient merit) to grant a stay, even where that test is not satisfied, if enforcement of the money judgment under appeal would result in the appellant's house being sold or his business closed down."

It is clearly a very serious matter that Mr. Eves stands to lose his property if the process of execution proceeds to its conclusion. Nevertheless, I have, according to the extract which Mr. Eves placed before me, to consider whether the appeal has sufficient merit. I have already reached the conclusion that the appeal has no such merit.

Mr. Eves also placed before me the judgment of Crill J.A., in the matter of the Dégrévement and Remise de Biens of Barker a decision of this Court reported at 1985/86 JLR 1. In the head note of that case it is stated:

"In the exercise of its unfettered discretion whether or not to grant a stay of proceedings pending appeal, under the Court of Appeal (Civil) (Jersey) Rules, 1964, r. 15.



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the Court of Appeal must be satisfied that (a) the applicant has an unfettered right to appeal; (b) there are special circumstances justifying the stay; (c) if no stay were granted, the appeal would, if successful, be rendered nugatory; and (d) the issue on appeal is central to the arguments raised in the lower court."

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It seems to me that Mr. Eves' application falls at the first two hurdles. In my judgment he has no unfettered right to appeal and there are no special circumstances justifying the stay. The application for a stay is therefore dismissed. I make however no order for costs.

RESTRICTED

Authorities.

Taylor & Anor-v-Caldwell & Anor (1863)2 B & S 309.

Krell-v-Henry [1903] 2 KB 740 C.A.

Banking Business (Jersey) Law 1991: Article 41.

Tournier-v-National Provincial and Union Bank [1924] 1 KB 461 C.A.

Re *Dégrévement* Barker (1985-86) JLR 186.

Court of Appeal (Jersey) Law 1961, as amended.

Loi (1832) sur les décrets.

Glendale Hotel Holdings Limited & Eves D. & Eves H. -v- Tourism Committee of the States of Jersey (11th October, 1990) Jersey Unreported.

In the matter of the *Dégrévement* and *Remise de Biens* of Barker (1987-8) JLR 1.

Sloan (née Amy) -v- Sloan (1987-8) JLR 651.

R.S.C. Order 59, rule 13 and Order 59, rule 14.