

ROYAL COURT
(Samedi Division)

14th July, 1997

135

Before: Sir Philip Bailhache, Bailiff, and
Jurats Potter and Quérée.

In the matter of the Désastre of the property of Mr.
Michael Cushion.

Representation of the Viscount under Article 40(1) of
the Bankruptcy (Désastre) (Jersey) Law 1990.

Advocate F.J. Benest for the Viscount.
Advocate B.E. Troy for Victor Gonsalves, a Creditor.
Mr. Michael Cushion, the Debtor, on his own behalf.

JUDGMENT

THE BAILIFF: This representation is brought, pursuant to Article 40 of the
Bankruptcy (Désastre) (Jersey) Law 1990, which provides:

5 "(1) Subject to paragraph (2), at the expiration of four years
from the date of the declaration the Viscount shall apply to
the court for an order discharging the debtor.

10 (2) The Viscount, the debtor or a creditor of the debtor may
apply to the court for an order that the period referred to in
paragraph (1) be reduced or extended."

15 Mr. Victor Gonsalves, a creditor of Mr. Cushion, has intervened in
order to submit that Mr. Cushion should not be discharged from his
désastre.

 We have heard argument from counsel for Mr. Gonsalves as to why it
is thought, in the circumstances of this case, that the discharge should
be deferred.

20 We observe in passing that, in accordance with the administrative
practice followed by the Viscount, all of the creditors of Mr. Cushion
were notified of the Viscount's intention to apply for a discharge from
désastre.

25 Mr. Gonsalves informed the Viscount of his opposition to the
discharge and was naturally notified of the date of this hearing.
During the hearing the Court received a breakdown of the monthly income

and expenditure of the debtor's accountancy practice, which had been prepared by the Viscount's Department.

5 Unfortunately, the debtor did not accept the mode of presentation of the figures, which he thought to be misleading, and gave evidence, on oath, of the gross profit of his accountancy practice.

10 We think that it would be desirable for the Viscount to give some consideration to convening the debtor and any disaffected creditor who had given notice of his opposition to a proposed discharge, before making his representation to the Court. This would give the opportunity for any differences on factual matters to be disclosed and resolved, so far as possible, prior to the hearing.

15 We consider, nonetheless, that we have gleaned, as a result of the evidence which has been given, a reasonably clear picture of what has happened since the debtor was declared *en désastre*. The Court is given a discretion by the Bankruptcy (Désastre) (Jersey) Law 1990 and has to balance the interests of the debtor and the creditors.

20 In the matter of the Désastre of Delaney (1996) JLR 96, the Court acceded to the submission of the Viscount that the discharge should be deferred for a period of two years. However, that was a very different case. Delaney had been declared *en désastre* following the collapse of his businesses to which he had contributed by fraud. He had engaged in a number of unsuccessful business ventures and had defrauded and stolen from creditors in order to pay other, more pressing, debts. After his *déclaration en désastre* he was convicted of theft, obtaining by false pretences, fraudulent conversion and forgery and sentenced to a total of
25 six years' imprisonment.

30 In this case there is no evidence of fraud or other dishonest behaviour. During the course of the *désastre* the debtor has co-operated with the Viscount's Department and has contributed, over the past four
35 years, some £20,000 of after acquired assets to the pool of money available for creditors. He has agreed, subject to certain conditions, to furnish another £8,000 in round figures from future earnings.

40 We are satisfied that the debtor has been under close scrutiny by the Officers of the Viscount's Department and that the figures with which we have been provided are as accurate as may be. We, naturally, have some sympathy for Mr. Gonsalves in the financial loss which he has incurred.

45 Balancing, as best we can, the interests of the debtor and the creditors we have reached the conclusion that there is no reason to extend the period as set out in the Bankruptcy (Désastre) (Jersey) Law 1990 and that the application of the Viscount should be granted. Mr. Cushion is accordingly discharged from his *désastre*.

Authorities.

Bankruptcy (Désastre) (Jersey) Law 1990: Article 40.

In the matter of the Désastre of Delaney (1996) JLR 96.