

COURT OF APPEAL

14

21st January, 1991

Before: Sir Patrick Neill, Q.C. (President)  
Sir Charles Frossard,  
Louis Jacques Blom-Cooper, Esq., Q.C.

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Ex Parte Representation of Douglas John Woolley, praying that the Court set aside the Judgment of the Royal Court of the 19th October, 1990, whereby the Royal Court refused Mr. Woolley's application under Article 38(A) of the Loi (1861) sur les Sociétés à responsabilité limitée, to reinstate International Development Associates, Limited.

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D.J. Woolley on his own behalf.

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**JUDGMENT**

THE PRESIDENT: This is an appeal by Mr. Douglas John Woolley against a decision of the Royal Court given on 19th October, 1990. The issue was this: Mr. Woolley was asking the Royal Court to make an order rescinding the dissolution of a company called International Development Associates, Limited (Company number 3754).

The material before the Royal Court included a letter from the Commercial Relations Department dated 2nd May, 1990, setting out that the files maintained there showed that the company which I have mentioned, International Development Associates, Limited, had been

dissolved as a result of a special resolution passed by the company and a liquidator had been appointed.

The Royal Court took the view that under the Companies' Law of 1861 there was no provision empowering the Court to bring that company back to life. Perhaps before I deal with that issue I could say a little about the background to this case.

Mr. Woolley's underlying case is that back in 1972, late in April of that year, he entered into a contract with three individuals, Mr. Brian Hamilton, Mr. Steve Kingsley and a Mr. Forrest. The nature of the contract was that those individuals would salvage the wreck of the Queen Elizabeth which had sunk in the harbour at Hong Kong and a sum of some £30,000 was to be paid by Mr. Woolley, but the money was not payable until the work had been done. The project had the advantage, so it was believed, that the wreck contained some 40,000 tons of fuel oil which could be disposed of at £1 a ton and that would produce a substantial sum of money.

Very shortly after the contract was made two companies came into existence, one was called Offshore Management Ltd and the other Salvors International, Ltd and it is a part of Mr. Woolley's case that those companies may well have adopted, or become parties to, the contract. So, on the most favourable view for Mr. Woolley, there were five persons liable on the contract which he had made.

It appears to be clear that nothing was done by any of those parties to implement or to perform the contract and Mr. Woolley believes the contract is still in existence and that he has enforceable rights thereunder.

Mr. Woolley brought an action against the two companies I have mentioned, Offshore Management Ltd and Salvors International, Ltd. There is an Act of the Court before us dated 5th July, 1974, referring to an action brought by Mr. Woolley against those two companies. Mr. Woolley tells us that it was a mistake, and that there should have been other parties to that action as defendants. However that may be, the action was so brought; but before anything happened, apart from an

Order requiring Mr. Woolley to give £500 security for costs, those two companies went out of existence. An attempt was made by Mr. Woolley to have them brought back to life under Article 38(A) because they were companies which had been put out of existence for non-trading under the procedures laid down in Article 38(A) of the 1861 Law. That effort to resuscitate those two companies having failed, we are now faced with the current position.

Perhaps one could just say this about Mr. Woolley's claims. If he has contractual claims against the individuals I have named, Mr. Hamilton, Mr. Kingsley and Mr. Forrest, he has not taken any steps to bring a personal action against any of those three individuals. He has not had a finding of liability under the contract resolved in his favour by any Court, nor a decision that those three individuals or one or more of them are bound to him by contract and have committed a breach of contract. If he were to commence proceedings now he would obviously run the risk that one or more of those defendants would raise the limitation defence which has been previously mentioned in other judgments of the Court, whereby an action for breach of contract must be brought within ten years and we are now some eighteen years away from the date of the original contract.

I now return from that excursus to the underlying case of Mr. Woolley in this application to bring International Development Associates, Limited back to life. It is clear from the narrative I have given that that company is not itself a party to the contract and has never been alleged to be a party to the contract. Mr. Woolley told us this morning that the company becomes relevant because it has assets and indirectly those are assets of Mr. Forrest, Mr. Kingsley, or Mr. Hamilton. But it follows from what I said earlier that no judgment of any sort having been obtained against the individuals, the stage has not been reached, and may never be reached, where any question arises of looking for assets to support a liability under a judgment.

I turn next to the question of bringing back to life this particular company which has been put out of existence as a result of a decision of the members of that company. The relevant provision in the law is Article 38 and if I will translate the material part which is to

this effect: "A company established by virtue of this law..." (that is the Loi (1861) sur les Sociétés à responsabilité limitée) "...will be dissolved when at any time the dissolution of that company has been decided upon by a resolution taken in a general meeting and the dissolution dates from the day when the authentic copy of that decision is forwarded to the Greffier at the Royal Court".

Whereas the following Article, Article 38(A), which provides for putting out of existence companies which appear to have ceased trading, has a sub-article (iv) allowing in certain circumstances for the resurrection of a company so extinguished, there is nothing in Article 38 or in any other article of the law which gives the Court power to bring back to life a dead company, that being a company which has died as a result of a resolution passed at a general meeting. Article 39 says that if anyone continues to trade in the name of the company then the liability for such trading falls on the members and those who have undertaken contractual or other obligations, but there is no provision in the 1861 law, and Mr. Woolley has not been able to refer to any other legal provision, enabling this Court to bring back to life International Development Associates, Limited (even if the circumstances made it appropriate to do so).

Accordingly, I hold that the Royal Court's judgment was entirely correct and that we have no jurisdiction to make the order which is sought.

No authorities.