

6 pages.

ROYAL COURT  
(Samedi Division)

23rd May, 1996

95.

Before: The Deputy Bailiff and  
Jurat Mrs. B. Myles and Jurat E.W.Herbert

---

In the matter of Atlantic Income Limited (in liquidation)

---

Advocate A. D. Robinson for the Liquidator  
Advocate G.R.Boxall for American Endeavour Fund Limited

---

JUDGMENT

5 THE DEPUTY BAILIFF: On 29th March, 1996, William Perchard, the liquidator  
of Atlantic Income Limited applied to this Court for directions as to  
the conduct of a summary winding up. The liquidator asked the Court to  
direct that the company be empowered to sell illiquid investments and  
also to compromise any potential cause of action against a company  
called London Pacific International Limited and related companies and  
natural persons all in accordance with a proposed compromise. We heard  
the matter *in camera* and for that purpose we relied heavily on matters  
10 that we considered in the matter of the Esteem Settlement and in the  
matter of No.52 Trust (14th September, 1995) Jersey Unreported. We  
also considered R. v. Chief Registrar Ex p. New Cross Society (1984) 1  
QB. 227. We decided to extend protection to the liquidator because we  
were satisfied that the Court had the power to hear the application in  
its inherent jurisdiction despite the fact that the Companies (Jersey)  
15 Law 1991 only refers to the reference of questions of powers to the  
Court in a creditors' winding up and under Article 174 (1) and (2). The  
liquidator persuaded us that information had to be supplied which would  
be prejudicial to the interests of the Atlantic shareholders if  
available to the London Pacific parties. The Court also saw a letter  
20 from London Pacific's lawyers in Jersey saying that because of the  
litigation pending in other jurisdictions they could be severely  
prejudiced if "*their activities adumbrated before the Court in their*  
*enforced absence from the Court became publicly available*".

25 When judgment was delivered on 29th March, the only parties  
present in Court were the liquidator and Advocate Bailhache for  
American Endeavour Fund Limited. Two applications were made. The first  
led to an order for costs and the second, made at the request of the  
parties, led to a direction that the matter should remain *in camera*  
30 until the form of compromise (which the Court of its own motion had  
ordered to be filed when settled) was filed.

Mr. Perchard explained the matter in this way in his affidavit:

5           *"At the conclusion of its judgment on 29 March the Royal  
Court provided: "that the form of compromise if it is  
settled is to be filed with the Court". After the delivery  
of its written judgment the Court retired briefly to enable  
discussion to take place with counsel for Endeavour. This  
10       was in part on the request of Endeavour that the in camera  
Order be lifted upon execution and filing of the agreement  
of compromise. For my part, I at that point saw no  
difficulty with Endeavour's request and so when the Court  
returned, I obtained a variation to the in camera Order in  
those terms."*

15           Late on Friday afternoon, after the normal sitting of the Samedi  
Court, we heard lengthy argument between the liquidator and American  
Endeavour concerning the question of the release of information once  
the form of compromise had been filed.

20           The hearing on Friday afternoon took place at such short notice  
because later on that day, in Canada, a board meeting of London Pacific  
had been convened to approve the new terms of compromise. These new  
terms had been settled by the liquidator and had apparently involved  
25       difficult, lengthy and complex negotiations having regard to the number  
of parties to the agreement, the number of advisers, certain foreign  
law complexities and the question of dealing with London Pacific and  
the framing of certain provisions dealing with the release of claims  
against them.

30           Mr. Boxall made no original application. He argued strongly that  
the matter was entirely satisfactory and that the order of 29th March  
should stand.

35           Mr. Robinson felt equally strongly that while the liquidator could  
speak for the shareholders of Atlantic he could not speak for London  
Pacific who had apparently balked at the suggestion that *in camera*  
proceedings would be opened upon the filing of the compromise  
agreement.

40           In a letter to the liquidator of 14th May, American Endeavour made  
their position clear:

45           *"There is still insufficient in the way of a premium to  
compensate for Atlantic Income stopping all claims against  
London Pacific. Moreover, Endeavour Fund's directors will  
not allow themselves to be gagged and prevented in the  
future from making reference to London Pacific's actions in  
50       relation to Atlantic Income".*

We remain convinced that the liquidator's course of action in arranging the compromise is the correct one.

5 When judgment had been delivered the liquidator had no real concern that the *in camera* edict should be lifted once the compromise had been filed. A problem has now arisen, not foreseen by the liquidator. A confidentiality clause is to form part of the agreement if it is to be signed.

10 A letter of 24th April from London Pacific, in part, said this:

15 *"I have to say I consider that our clients are in an invidious position. The original Liquidator's hearing was heard "in camera" and we were advised of this by the Court without being advised that this was on a qualified basis. Our clients are therefore not aware of any of the statements or allegations that may have been made in relation to them by either the Liquidator or the American Endeavour Fund Limited, which we understand to have been the only other person before the Court during that Application. We do not see why our clients should be placed in a position where, after signature of an Agreement which they and the other parties to it wish to remain confidential (a) that Agreement should be filed with the Court as a publicly available document, (b) a Judgment that will reflect allegations that may have been made about our clients will be made public and (c) all other submissions made at the hearing, which were recorded, will also be made public, such submissions being made in circumstances where our clients were excluded from the Court and given no opportunity to be heard."*

20

25

30

On that basis, Mr. Robinson now felt that the restriction on publicity should continue until an application is made to lift it whereupon the Court could make a considered judgment.

35

Mr. Robinson could see no difficulty in law in the *in camera* order continuing. He referred us to the provisions of section 112 of the Insolvency Act 1986 where an application can be made in chambers for directions. On the basis that the English Companies Court allows for applications in chambers he cited to us Vernazza v. Barburrisa & Co. Ltd. (1937) 4 All ER 364 which held that an application for a transcript of shorthand notes taken of discussions with a judge in his private rooms was contrary to the established practice with regard to proceedings in chambers and was not one that could be allowed.

40

45

Mr. Robinson also cited to us the case of the Esteem Settlement (14th September, 1995) when the Court said (on an application under Articles 47 and 49 of the Trusts (Jersey) Law 1984 (as amended):

50 *"It is trite law that civil and indeed criminal cases must be heard in open Court. Unless exceptional circumstances such as public safety exist or where, for instance, there is*

to be evidence given by children or young persons in a case of an offence against morality or decency. But these are general rules and in my view have no application where the Court is sitting in an administrative capacity."

5

and again:

"I am satisfied that in exercising its administrative function the Court is entirely able to have its hearings in camera and thereafter to suppress the disclosure of any information given to it in the course of the confidential hearing and which, if it fell into the hands of the Plaintiffs, might do great harm."

10

15

There are distinctions to be drawn. We do not have in our law provisions analogous to the English Statute on Insolvency. The Esteem Settlement case dealt both in the facts put before the Court by a Trustee, and in the judgment of the Court on those facts with matters which were very clearly of a most sensitive nature.

20

It is obvious that the liquidator is concerned that sensitive material might be made available to American Endeavour which it could then use in its action against London Pacific. This is particularly difficult for the liquidator when London Pacific at his request was shut out from the original hearing.

25

Mr. Boxall was adamant that his objection was not brought on because his clients wished to use information for a collateral purpose. He felt that London Pacific were trying to use the procedure for their own collateral purpose. That is clear, he says, from the letter of the 24th April.

30

There is no practice or procedure to assist the liquidation in Jersey Law. The Court exercised its discretion. We feel secure in our view that, although unusual, the application for the *in camera* hearing was correct. Indeed, Mr. Boxall had no difficulty with that point. He said as much. It was in the interests of justice. But now, he felt, matters had turned to questions of the convenience of the parties. Mr. Boxall was very candid. He drew a distinction between the agreement being made public and the judgment being made public. He is not concerned with the transcript, with the disclosure of Counsel's opinion, nor with the agreement itself. His clients only want the judgment to be disclosed. It may well embarrass London Pacific for it to be known that certain actions had been compromised. One could express doubt in his view that it was necessary for the liquidator to come to Court at all.

35

40

45

Certainly in England the action of the liquidator would have been authorised by statute and would have been held in chambers. Is this case so truly exceptional that we can exclude the judgment? There are numerous persons whom we can envisage may well be interested in the fact that this matter came before this Court. We cannot see anything

50

5 that is unduly sensitive to warrant exclusion. Indeed London Pacific  
were invited by the liquidator to be present at this hearing and  
declined. We have considered our judgment carefully but we can see  
nothing that could fall within a situation envisaged by the court in Re  
10 a Solicitor (1987) Ch.D. 131. It appears that, reading between the  
lines, London Pacific does not wish it to be known that as part of its  
settlement it compromised certain actions. The litigation in other  
jurisdictions is both serious and valuable. It is however important to  
note that the liquidator made the original application and London  
15 Pacific were excluded from the proceedings. We have recognised in  
Jersey that certain categories of case deserve an *in camera* hearing.  
There may be a distinction to be drawn between this unusual application  
by a liquidator based only on the inherent jurisdiction of the Court  
and an application under say, Article 47 of the Trusts (Jersey) Law  
20 1984 where a Trustee is under a duty to make the fullest disclosure to  
the Court because he is asking the court, in effect, to exercise its  
own discretion in his favour.

25 Mr. Robinson says that unless we vary the order so that our  
judgment remains embargoed until a successful application is made to  
raise it, this will effectively stymie any future similar applications.  
We cannot agree. It is in the public interest that justice should not  
be dealt with behind closed doors unless there are real reasons to  
exclude the information.

30 We do not now require the agreement to be filed with the Court. It  
is only necessary for its completion to be noted by the Judicial  
Greffier. The transcript, and all the material laid before the Court,  
shall remain *in camera* until further order. Apart from that, we decline  
to vary our order of the 29th March. The judgment shall only remain *in*  
camera until notification of the settling of the form of compromise is  
received by the Greffier. It is incumbent upon the liquidator to inform  
the Greffier within seven days of the agreements being finalised.

Authorities

In the matter of the Esteem Settlement and in the matter of No. 52 Trust  
(14th September, 1995) Jersey Unreported.

R. -v- Chief Registrar, ex p. New Cross Society (1984) 1 QB. 227.

Companies (Jersey) Law, 1991: Article 174(1), (2).

The Insolvency Act 1986: s.112.

Vernazza -v- Barburrriza & Co., Ltd. [1937] 4 All ER 364.

In re a Solicitor (1987) Ch. D. 131.