

COURT OF APPEAL

4th July, 1989

Before: Sir Patrick Neill, Q.C., (President)
D.C. Calcutt, Esq., Q.C., and
A.C. Hamilton, Esq., Q.C.

Ex parte application by James Barker.

The Applicant on his own behalf.

JUDGMENT

THE PRESIDENT: This is an application by Mr. Barker in substance to re-open some proceedings which took place on 10th August, 1984. I will elaborate in a little more detail the nature of what it is that he seeks.

On that day, 10th August, 1984, Barclays Bank plc came before the Royal Court and applied for an Order that Mr. Barker be declared 'en désastre'. A document handed up to us this morning records the fact that the application was made in front of the Deputy Bailiff assisted by Jurats Perrée and Blampied. That document bears the Court stamp 10th August, 1984, and is manifestly a contemporary Court record. I interpose at this point to say that Mr. Barker tells us that shortly after the Order was made on 10th August, 1984, possibly that day or the next, Mr. Wilkins, the Officer of the Viscount, came and visited him and in answer to a question: 'Who was present in Court?' said that four persons only were present in Court, they being the Judge, the Greffier, the Viscount and the Advocate, Mr. Bailhache. However, we now have in front of us, as I have said, a contemporary Court record showing who was present.

On 17th August, 1984, Mr. Barker moved to rescind the Order obtained by Barclays Bank plc believing that it had been wrongly obtained. His application was adjourned first to 24th August, then again to 6th December; and then finally on 13th December, the Royal Court made an Order rescinding the Order which had placed Mr. Barker 'en désastre' in August. There is some issue arising on a newspaper report shown to us this morning as to whether or not Mr. Barker himself participated in an agreement which led to consent being given to the raising of the désastre. That involved discussions between another creditor, Lazard Brothers and Company (Jersey) Ltd and Barclays Bank plc. Suffice it to say that whether or not he participated in that particular agreement, Mr. Barker was the applicant seeking rescision of the Order of 'désastre' and he duly obtained that Order.

A long period of time elapsed and in October, 1988, we are told that Mr. Barker obtained various documents relevant to his complaints. On the basis of that he made an application to the Court of Appeal which was heard by a differently constituted Court on the 5th April of this year. They delivered a judgment which we have read in which they say that they considered that they had no jurisdiction to declare the Order of the 10th August, 1984 a nullity. I should say that at the time of the April application, the nature of the relief sought appears to have been an Order declaring the earlier Order a nullity.

The Court of Appeal in April said that the making of such an Order was not part of the appellate jurisdiction of the Court of Appeal. But they went on to say that if they were wrong about that and if they had a discretion to extend time and to, as it were, reach back to the Order of 10th August, 1984, they did not propose to exercise those discretionary powers because they had had no explanation of the delay which had ensued between 1984 and October of 1988.

The Court was not satisfied on the points which were being sought to be made to attack the August, 1984, Order. There were two points: one was that the affidavit put before the Court in August of 1984 was not duly attested. As to that Mr. Bailhache gave an explanation to the Court in April. Mr. Barker points out that there is a Bill of Costs which has a different implication to the evidence given by Mr. Bailhache orally in April.

But as that document was present in Court and available to be commented on, we do not think that anything arises on that which leads to any further enquiry.

As regards his second point, the absence of Jurats, in our view that point is now conclusively disposed of by the document which we have seen, although the earlier Court of Appeal did not have it but simply said they were not satisfied that there was anything in the point. It may be relevant to point out that in a separate judgment in the April decision, Mr. Kentridge drew attention to the gravity of making an allegation that a Court was not properly constituted. In his view the allegation ought never to have been made. As it now transpires he was entirely right; the evidence is conclusive to the contrary.

Mr. Barker complains that a number of difficulties have been put in his way about getting documents and that he has encountered general obstruction. But he has come here this morning on the basis of a letter which the Learned Bailiff wrote to him. Mr. Barker had written asking the Bailiff for advice as to what he should do next and he got this answer: "I am not sure from its contents ..." (that is the contents of his letter) "... whether you are criticising your advocate. But in any case there are no grounds for setting aside a Court of Appeal judgment. If you wish to re-open the matter you must apply to the same Court, or as you well know, the next step may be to the Privy Council".

What we have to ask ourselves accordingly, I think is this: what is there that has been put before us this morning which is an advance on information in front of the Court in April of this year? In our judgment nothing new has been put forward. One document was produced which showed that Mr. Blampied, one of the Jurats sitting in August, 1984, was chairman of Barclays Bank Finance Company (Jersey) Limited. Plainly that was a fact that was a matter of public record and could have been discovered at an earlier date, but it does not seem to us to have the slightest relevance to the proceedings. Mr. Blampied was not a director, or not shown to be a director of the relevant party, namely Barclays Bank plc, and insofar as anything is sought to be made of that chairmanship, this Court thinks there is nothing in the point.

In addition, Mr. Barker has summoned a whole list of witnesses to appear and to assist his case today. They include Jurat Blampied, the Viscount, Mr. Wilkins, the Deputy Viscount, Mr. Ferbrache, the Assistant Judicial Greffier, Mr. P.D. Harris, and Advocate W.J. Bailhache. However, the curious feature of this application to call witnesses is that Mr. Barker candidly admits that he does not know what is the evidence which these witnesses will in fact give to the Court and whether they will support his case or destroy it. That is a wholly unusual and unprecedented application to call additional evidence. It is a prerequisite in any such case that the party seeking to call the evidence knows what the witness is going to say and that the evidence, if not conclusive, will be at least very materially assist the party putting forward the new evidence.

The real truth is that Mr. Barker now, five years after the event, wants a general enquiry or investigation into what took place in Court on 10th August, 1984. That is why his latest document asks this Court to order a re-opening of the hearing of 10th August, 1984.

It seems to us that there are a number of reasons why that is impossible. First, the Courts are not there to conduct enquiries or investigations at large. They decide particular disputes between particular contestants. Secondly, we have no power to order a re-opening of a regular judgment given in 1984. Our powers would be to set it aside if we thought it was wrong, or conceivably we might order a new hearing. Thirdly, any such discretionary power that we may have, for example to order a new hearing, we would not exercise because we are not satisfied that any impropriety has taken place in the past.

Mr. Barker finally appealed to us to give him some advice as to what he ought to do next. At the risk of appearing unhelpful, we think it is our duty to say that it is not the function of the Court to give advice to one side in a dispute, even if that side has no legal assistance. Such advice may affect the legal position and rights of other persons not before the Court. Obviously Barclays Bank plc is such another person in this particular case and they could be affected by the advice which we may have been invited to give. It would clearly be wrong on a one sided basis for us to be offering advice.

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Our conclusion has to be, having listened carefully to everything that Mr. Barker has said, that we must refuse his application and we must set aside all the witness summonses which he has issued for today's purposes.

Authorities:

No authorities.

MR. BARKER: Thank you, Sir. Could I have permission to appeal to the Privy Council, Sir?

PRESIDENT: Well, Mr. Barker, we are doubtful whether we have power, but if we do have power, we have considered the matter and we refuse leave.

MR. BARKER: Thank you, Sir.