

ROYAL COURT
(Samedi Division)

18th February, 1994

38.

Before: The Bailiff, and
Jurats Coutanche and Herbert

In re the Bankruptcy (Désastre) (Jersey) Law, 1990.

In re Blue Horizon Holidays, Ltd., en désastre on the
application of St. Brelade's Bay Hotel, Ltd.

Application by Blue Horizon Holidays, Ltd., under Article 7 of the above
Law to recall the *déclaration en désastre* effected on 11th February,
1994.

Mr. David Eves of behalf of Blue Horizon Holidays, Ltd.
Advocate R.J. Michel for St. Brelade's Bay Hotel, Ltd.

JUDGMENT

THE BAILIFF: The application for a *déclaration en désastre* was made on 11th February, 1994. A later application to recall the *désastre* was made by the Company on 14th February, 1994.

The Bankruptcy (Désastre) (Jersey) Law, 1990 is quite clear in its provisions. Article 6 deals with an application for a declaration and the affidavit which must accompany it and further gives to the Court discretion, after considering the application, to make or not make the declaration. The Court also has power under that Article to adjourn the hearing of the application. It did not do so on 11th February. It made an Order.

If the affidavit was, as the Company says, seriously flawed - and indeed there have been serious allegations of perjury, or at least an assertion by Mr. Eves on behalf of the Company of perjury - then paragraph (3) of Article 6 could be applied which says:

"Where as the result of an application made by a creditor a declaration is made" (which it was in this case) "and the person in respect of whose property it is made is, notwithstanding the declaration, at the date of the declaration not insolvent, that person shall have a right of action against the applicant to recover damages for or in respect of any loss sustained by him as a consequence of the

declaration unless the applicant in making the application acted reasonably and in good faith".

There is the remedy for the Company. If they feel that the Plaintiff Company did not act in good faith, as has been suggested, that is the way in which they can obtain redress.

So far as seeking, again, a recall of the *désastre*, Article 7(3) provides that: **"The Court shall refuse an application made under paragraph (1) when it is not satisfied the property of the debtor vested in the Viscount pursuant to Article 8 or 9 is at the time of such application sufficient to pay in full claims filed with the Viscount or claims that the Viscount has been advised will be filed within the prescribed time".**

The Court was not so satisfied at the recent hearing on 14th February, 1994, and this Court cannot interfere with that finding. The only Court that could interfere with the Judgment of the Royal Court - if leave were given - might well be the Court of Appeal. But as the Court understands the position, leave to appeal has not yet been sought.

Looking at the Act of Court of 14th February, 1994, there is no mention of the Court's giving a decision on an application for leave to appeal; the Court merely noted that Blue Horizon Holidays, Ltd wished to appeal. However, that is a technical detail which can be overcome in due course. It is not for the Court to deal with this afternoon.

There is one more thing the Court wants to say and it is this: all the property of Blue Horizon Holidays, Ltd is vested in the Viscount. Should the Viscount wish, at the request of - it would be impossible to say all - but the majority of creditors, both as to number and in substance, to make a Representation to this Court regarding the administration of the bankrupt Company, or regarding the possibility of its continued trading, the Court will, of course, listen to any such application, but it will have to be with the consent of the majority, I repeat, either in number or in substance, of the creditors. The application is dismissed.

No authorities.