

8 pages.

COURT OF APPEAL

8th September, 1995.

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Before: Sir Godfray Le Quesne, Q.C., President,
Sir Graham Dorey, and
Sir Peter Crill, K.B.E.

<u>Between:</u>	Hambros Bank (Jersey) Limited	Plaintiff
<u>And:</u>	David Eves	Defendant

Application by the Defendant, under Rule 15 of the Court of Appeal (Civil)(Jersey) Rules, 1964, for a stay of execution, pending determination of an appeal, of the Order of the Royal Court (Sarnedi Division) of 18th August, 1995, whereby the Royal Court:

(1) ordered the Defendant to vacate the property within 2 weeks; (2) authorized the Viscount to evict the Defendant from the property should he fail to comply with the order set out in paragraph (1) above; (3) ordered the Defendant to disclose to the Plaintiff forthwith the names of all the occupiers of the property and the nature of their tenure of occupation; and (4) authorized the Viscount to evict the Defendant's wife and son, together with other persons in occupation of the property, unless they are able to show *prima facie* evidence of a tenancy within 2 weeks;

Advocate A.P.Roscouet for the Plaintiff.
The Defendant on his own behalf.

JUDGMENT

1. We have before us an application of Mr David Eves for a stay, pending appeal, of execution of an order made by the Royal Court on the 18th August, 1995. This order confirmed an order of justice issued by Hambros Bank (Jersey), Ltd against Mr Eves and ordered Mr Eves to vacate within two weeks a house called "The Rest" in Green Street.
2. The dispute between the Bank and Mr Eves has been occupying the attention of the Royal Court, this Court and the Judicial Committee of the Privy Council during more than three years. A number of judgments have been delivered setting out the details. We do not intend to repeat these details yet again, but in order to explain how today's application arises we

have to say something about the long and hard fought course of the proceedings.

3. In 1988, Mr Eves borrowed £100,000 from the Bank, secured by a simple conventional hypothec upon "The Rest", which is Mr Eves' home. In December, 1991, the Bank instituted proceedings for repayment of this loan, alleging that Mr Eves had failed to make payments of interest in accordance with the loan agreement, and repayment of the loan, with accrued interest, had therefore become due. The Bank eventually applied for summary judgment under Part VII of the Royal Court Rules. On the 23rd June, 1993, the Judicial Greffier gave judgment for the principal sum of £100,000, and on the 11th January, 1994, for arrears of interest on £28,121.06.
4. Mr Eves appealed against these judgments. The Royal Court dismissed his appeals on the 26th May, 1994. Mr Eves then applied to this Court for leave to appeal against the Royal Court's decision. This application was dismissed, first by a single Judge on the 2nd June, 1994 and then by the full Court on the 30th September, 1994. On the latter date Mr Eves applied for leave to appeal to the Privy Council against this Court's decision. The Court adjourned his application then, but dismissed it on the 11th January, 1995. Mr Eves then presented a petition to the Privy Council for special leave to appeal. The Privy Council dismissed this petition on the 13th February, 1995.
5. Mr Eves had disputed the Bank's claim at every level. At every level up to the highest his resistance had failed and the Bank's case had prevailed. The two judgments, and the bank's right to recover £128,121.06, had become unassailable.
6. Having obtained the judgments, the bank had still to enforce them. To this end they took the usual steps. On the 30th September, 1994, as soon as this Court had refused to give leave to appeal against the Royal Court's decision upholding the summary judgments, the Bank obtained from the Royal Court an *Acte Vicomte chargé d'écrire*. The enforcement of this Acte was stayed because Mr Eves' application for leave to appeal to the Privy Council was then pending. On the 17th February, 1995 - a few days after the Privy Council had dismissed Mr Eves' petition - the Bank applied to the Royal Court to adjudge all Mr Eves' property renounced. The Court adjourned this application to the 31st March. On that day, the period of two months allowed by the *Acte Vicomte chargé d'écrire* for payment of the debt having elapsed, the Court adjudged all Mr Eves' property to be renounced, ordered a *dégrévement* of his immovable property and appointed two attorneys to conduct the *dégrévement*. Mr Eves applied to this Court for leave to appeal against this order. On the 1st May, 1995 a single Judge dismissed this application.

7. On the 5th May, 1995 Mr Eves applied to the Royal Court for permission to make a *remise de biens*. The Court appointed two Jurats to examine this application, and postponed the *dégrévement*, which had meanwhile been fixed for the 11th May. The Jurats reported that in their opinion it was not (in the words of the Loi (1839) sur les remises des biens) "*utile d'accorder ladite remise*". Having received their report, the Court on the 31st May, 1995 refused to give Mr Eves permission to make a *remise*, and ordered the continuation of the *dégrévement*.
8. Mr Eves' next move was to issue an order of justice, which, when served on the bank and the attorneys on the 8th June, 1995, operated as an immediate interim injunction restraining them from proceeding with the *dégrévement*. The next day (9th June) the Royal Court, on the application of the Bank, discharged this injunction. Mr Eves applied to this Court for leave to appeal against this order. This application was argued for three days before the Bailiff, sitting as a single Judge of the Court. In a reserved judgment delivered on the 5th July, 1995 the Bailiff dismissed the application. The full Court confirmed this decision on the 6th July.
9. The *dégrévement* took place in the morning of the 7th July, 1995. The bank accepted tenure of "The Rest". That afternoon, the Royal Court confirmed the Bank's tenure, and authorized the Viscount to place the Bank in possession of the house. Mr Eves asked the Court for a week's delay, which the Court refused.
10. Mr Eves had challenged the process of execution at every stage. On every occasion, both in the Royal Court and in this Court, his challenge had failed. Even after the Royal Court ordered the *dégrévement* to continue on the 31st May, 1995, Mr Eves tried to get the Bank restrained from proceeding with it. That attempt failed in the Royal Court on the 9th June, and this Court refused leave to appeal from the Royal Court's decision on the 6th July. The validity of the *dégrévement* then became unassailable here. On the 7th July, when the Royal Court confirmed the bank's tenure, Mr Eves ceased to be the owner of "The Rest" and the property in the house was vested in the Bank.
11. The Act of the Royal Court of the 7th July, 1995 was served on Mr Eves by an officer of the Court on the 26th July. Thereupon Mr Eves said he had no intention of vacating the house. The Act was in common form, concluding with the words: "*Et est le Vicomte autorisé à l'en mettre en possession*". In spite of these words, the prevailing view of such an Act is that it does not entitle the Viscount to evict a debtor who refuses to leave. The Bank therefore issued an order of justice, asking the Court to order Mr Eves to vacate the house within a week. When this order of justice came

asked that the matter be placed on the pending list. The Court refused, confirmed the order of justice, and ordered Mr Eves to vacate the house, but extended to two weeks his time for doing so.

12. Mr Eves gave notice of appeal against this order, and applied to the Royal Court for a stay pending the hearing of the appeal. The Royal Court dismissed this application on the 25th August. Thereupon Mr Eves made to this Court the application for a stay which is now before us.
13. It is convenient to consider first the true nature of the Bank's order of justice. The Bank was awarded two judgments, which it has defended successfully against Mr Eves' challenge at every level up to the Privy Council. The Bank's right to recover from Mr Eves the sum represented by those judgments is therefore unassailable. The process of execution has been challenged by Mr Eves but justified by the bank at every stage. The Bank's right to have "The Rest" subjected to *dégrévement* is also therefore, as far as this Court is concerned, unassailable. In other words, the validity of the two judgments and the validity of the Royal Court's order of a *dégrévement* are both *choses jugées*, beyond challenge here.
14. The *dégrévement* itself, and the Royal Court's order (of the 7th July, 1995) confirming the Bank's tenure of "The Rest", were no more than performance of the order of a *dégrévement*. The purpose of the Bank's order of justice was merely to get the order of the 7th July, 1995 (which authorized the Viscount to put the Bank into possession of "The Rest") put into effect. Properly regarded, the order of justice was a step in carrying out the *dégrévement*. No defence to the order of justice could be established by any challenge to the validity of the original judgments or of the order of a *dégrévement*. The only conceivable ground of such a defence would have been an allegation of some irregularity in the performing of the *dégrévement* after it had been ordered by the Court.
15. Mr Eves did suggest, in his argument before us, that there had been such an irregularity. When the Royal Court confirmed the Bank's tenure in the afternoon of Friday, 7th July, one member of the Court was Jurat Coutanche. Mr Eves submitted that the Court was not properly constituted because Jurat Coutanche is, or has been, a director of the Bank.
16. If the Court's business on the 7th July had been to decide any dispute between the Bank and another party, there could have been no answer to this objection. In our judgment, however, the Court was not engaged upon such business. It was carrying out the function imposed by art. 96 of the *Loi (1880) sur la propriété foncière*. Art. 95 provides for a creditor accepting tenancy at the *dégrévement*, art. 96 goes on:

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"L'Attourné fera assigner sans délai à la Cour du Samedi, soit en vacance soit en terme, le tenant, pour voir confirmer la teneur; et la Cour, par son acte confirmant ladite teneur, adjugera alors au tenant la propriété des biens de la teneur, et autorisera le Vicomte, ou l'un des Dénonciateurs, Officiers de Justice, (45) à en mettre ledit tenant en possession: lequel acte l'Attourné fera enregistrer dans le Livre des Contrats du Registre Public."

17. Under this article, the Court does not decide any dispute or perform any judicial act or exercise any discretion. It performs the administrative act of confirming tenure already accepted by the creditor under the terms of the Law, and consequentially adjudges ownership to the creditor and authorizes the Viscount to put him into possession. The language of the article shows that the Court, having received the record of the *dégrévement*, has no discretion as to its action, but must confirm the tenure. The terms of the article also demonstrate that there is no dispute before the Court for adjudication, for it is only the creditor having accepted tenure whom the Attorney has to bring before the Court. The presence of the debtor is not required.
18. The nature of the act performed by the Court on the 7th July being as we have described, the Court was not improperly constituted by reason of the presence of Jurat Coutanche, nor did his presence cause any prejudice to Mr Eves.
19. Without detracting in any way from this conclusion, we desire to add one observation. Members of the public are not acquainted with the details of the *Loi (1880) sur la propriété foncière*, nor with the distinction between judicial and administrative acts of the Court. They may therefore be surprised to see, among the members of the Court confirming the tenure of property, a Jurat connected with that property even indirectly, e.g. by a directorship of a company interested in the property. The Royal Court may wish to consider whether such a situation should in future be avoided.
20. In addition to this objection to the constitution of the Court, Mr Eves outlined to us a number of matters which he said he would want to raise as defences to the Bank's order of justice. Most of these were matters which Mr Eves has put forward several times unsuccessfully in the course of this litigation and, if they ever had any relevance to the claim giving rise to the two judgments now being enforced - in our judgment they had not - have no possible reference to the Bank's order of justice now under consideration. Mr Eves also submitted that in certain respects the proceedings infringe his rights under the European Convention on Human

Rights. That Convention is not part of the law of Jersey. If Mr Eves' allegations had any validity, they might found a complaint against the Government of the United Kingdom before the Commission of Human Rights. They form no part of the questions which we have to decide.

21. One matter remains. Mr Eves submitted that, when he asked the Royal Court on the 18th August to place the matter on the pending list, the Court had no power to refuse. He relied on Rule 6/7(1) of the Royal Court Rules 1992, which provides:

"When a Defendant wishes to defend an action that has come before the Court, he shall ask the Court to order that the action be placed on the pending list and, provided that the Defendant shall then give an address for service in the Island, the Court shall so order ..."

Mr Eves contended that this mandatory language compelled the Court to accede to his request.

22. On the 25th August, 1995 the Royal Court delivered its reasons for its order of the 18th August. The Court said that it refused to put the matter on the pending list because it

"considered the application as vexatious, frivolous, and an abuse of the process".

In the special circumstances of this case, that decision, in our judgment, was right.

23. As we have already said, this was not an ordinary order of justice. It was a step in the carrying out of the *dégrévement*, the validity of which was *chose jugée* and so beyond challenge. Nothing which was urged by Mr Eves could possibly justify the Court in frustrating or delaying the execution of its own order. The application to place this matter on the pending list was in the strictest sense an abuse of the process allowed by Rule 6/7(1).

24. Mr Eves referred to the case of Stephens -v- Stephens [1989], JLR N-3, which was not cited to the Royal Court. The full judgment in that case is not reported, but we have obtained it from the Greffe. The Royal Court said that Rule 6/7(1)

"gives to a Defendant, the Court thinks unfortunately, an absolute right, on a mere statement that he wishes to defend, to have the action placed on the pending list. The words "... the Court shall so order" are mandatory upon the Court ... a Defendant can make use of

the pending list merely to secure a tactical delay."

25. Stephens -v- Stephens was an action brought upon a money claim. It is not necessary for the decision of the present case to consider whether the view which the Court took of the operation of rule 6/7(1) in an ordinary action of that kind was right or wrong. Here the Royal Court was being asked, under the form of an order of justice, to assure the execution of its own order. In these circumstances the application to place the matter on the pending list was, as we have said, an abuse of the process under this rule. We reach this conclusion in the special circumstances of the case before us, and say nothing about the effect of the rule in other cases.

26. We can see no feature of this case which would justify a stay of execution pending appeal. On the contrary, the appeal has no prospect whatever of success, and to grant a stay would be unjustifiably to delay the valid execution of a valid judgment. The application must therefore be dismissed.

27. Mr Eves now faces eviction from the house in which he and his family have lived for many years. It is only natural to feel sympathy with a man confronted by such a catastrophe, even if it results, as in this case it does result, from the due process of the law following his default upon obligations which he accepted. Decisions of the Courts cannot be dictated by such feelings. It is our duty to consider what is the effect of the law in the circumstances before us, and to decide the case accordingly. That we have done, with the result which we have stated.

Authorities

Stephens -v- Stephens (17th April, 1989) Jersey Unreported;
(1989) JLR N.3.

R.S.C. (1995 Ed'n): 18/19/33,36.

Loi (1880) sur la propriété foncière: Articles 95, 96.

Royal Court Rules 1992: Rule 6/7(1).