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ROYAL COURT
(Samedi Division)

175

8th September, 1995

Before: The Deputy Bailiff, and
Jurats Bonn and de Veulle

The Attorney General

- v -

Royston Maldwyn Evans

1 count of obtaining credit, while being a person in respect of whose property a *déclaration en désastre* had been made, contrary to Article 25(1) of the Bankruptcy (*Désastre*) (Jersey) Law, 1990.

Plea: Guilty.

Age: 41.

Details of Offence:

Whilst *en désastre* the Defendant obtained overdraft facilities for the purpose of his business, which he ran with two partners, amounting to approximately £3,000. Despite being aware of his obligations he failed to advise the bank that he was *en désastre*.

Details of Mitigation:

Guilty plea. Co-operative although had no explanation for why he failed to inform the bank. No evidence of dishonesty or aggravating factors such as personal gain.

Previous Convictions: A number but none relevant.

Conclusions: 1 year's probation with 10 hours of community service.

Sentence: Conclusions granted.

Advocate R.G. Morris for the accused.
A.R. Binnington, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: Article 25 of the Bankruptcy (Désastre) (Jersey) Law, 1990, reads:

5 *"No debtor shall obtain credit in excess of such sums as shall be prescribed during the course of the désastre unless he informs the intending creditor of the declaration".*

10 The Law, as Crown Advocate Binnington has said, is perfectly fair and it strikes a balance to enable those who have failed in business to get themselves back on their feet again while dealing fairly with the interests of creditors. This is an important Article. We have only to look at Article 24 to realise that, because that Article states that no debtor during the course of a désastre shall accept appointment as administrator, a curator, a director of a company, an elector, a liquidator of a company, a trustee, a tuteur and shall not hold any public office, nor shall he sit on a jury.

20 Therefore the law takes a very stern view while presumably attempting to deal compassionately with those who have fallen into financial distress.

25 We have to say that Mr. Evans had explained to him Article 25 on at least two occasions and he accepts that he took that advice. Yet showed what we would describe as a blatant disregard of the repercussions of what he was doing because he went on to incur overdraft facilities (with others) with Lloyds Bank when he had informed his own bank of the problems that he faced under Article 30 25.

35 This has, as the learned Crown Advocate has said, been the first prosecution under this law. We agree that there has been a flouting but no dishonesty.

40 We have looked at the case of Sundranpillai Theivendran (1992) 13 Cr.App.R.(S) 601, but that case, although it helps us in part, does not help us fully because England has the facility of suspended prison sentences. We have also had careful regard to the Probation Report which has been prepared and to the mitigating factors set out in it.

We would not wish to say that an Article 25 infraction will not in the future incur a term of imprisonment because a term of imprisonment for an offence such as this is often fully justified. But in the particular circumstances of this case we will follow the conclusions of the learned Crown Advocate and sentence you, Evans, to probation for 12 months with 10 hours community service.

Authorities

Sundranpillai Theivendran (1992) 13 Cr.App.R.(S) 601.