

David Eves

Appellant

v.

Hambros Bank (Jersey) Limited

Respondent

FROM

THE COURT OF APPEAL OF JERSEY

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,
Delivered the 18th December 1995

Present at the hearing:-

Lord Goff of Chieveley
Lord Jauncey of Tullichettle
Lord Nicholls of Birkenhead
Lord Steyn
Lord Hoffmann

[Delivered by Lord Hoffmann]

In 1988 Mr. Eves borrowed £100,000 from Hambros Bank (Jersey) Ltd. ("the bank") on the security of a *hypothèque conventionnelle* over his house in St. Helier. In 1991, after the failure of two companies through which Mr. Eves had run a travel agency and hotel business respectively, he fell into arrears with the interest. In proceedings which terminated with a refusal of special leave by this Board on 13th February 1995, the bank obtained summary judgment for £128,121.06. There followed a *dégrévement* at which the bank accepted tenure of the property. It then sought an order for possession. Mr. Eves resisted on a number of grounds but the order was granted by the Royal Court and affirmed by the Court of Appeal. On 5th October 1995 their Lordships' Board granted special leave to appeal on two grounds only. The first was that the order of the Royal Court vesting the property in the bank pursuant to the *dégrévement* was vitiated by a breach of natural justice because the Hon. J.A.G. Coutanche, who sat as a jurat on that occasion was, or had been, a director of the bank. The second was that the Royal Court had dealt summarily with Mr. Eves's objections to the possession order

instead of directing pursuant to Rule 6/7(1) of the Royal Court Rules 1992 that the application be placed in the pending list and heard at a later date after pleadings had been completed.

It might at first sight seem remarkable that a director of the bank should have sat as a member of a court which made an order vesting the title to Mr. Eves's house in the bank. It would appear to be an obvious infringement of the fundamental principle of natural justice that no man is to be a judge in his own cause. In truth, however, matters are not so simple.

Dégrévement is a form of execution against a debtor's immovable property which was introduced into the law by the *Loi (1880) sur la propriété foncière*. The procedure may be summarised as follows. First, the judgment creditor applies *ex parte* to the court for an *acte Vicomte chargé d'écrire* which he then serves upon the debtor. This document, to which the nearest English analogy is a statutory demand under the Insolvency Act 1986, tells the debtor that he must satisfy his creditor's judgment within two months after service "*sous peine que ses biens-meubles et héritages seront adjugés renoncés*." Such an order was made against Mr. Eves on 30th September 1994. Its operation was suspended while he exhausted his rights of appeal against the summary judgment. But on 17th February 1995, after their Lordships' Board had dismissed his application for special leave to appeal, the Bailiff ordered that the period of two months should be deemed to expire on 31st March 1995. On that date, the next stage in the process took place. This was an application by the judgment creditor, again *ex parte*, for an order adjudging the debtor's property renounced and appointing two advocates as attorneys to conduct the *dégrévement*. The order is made on production of the Viscount's record of service of the *acte Vicomte chargé d'écrire* and an affidavit on behalf of the creditor stating that the debt has not been satisfied. The next step is for the attorneys to apply to the Greffier to fix a date for the *dégrévement* and to give public notice by advertisement in the press as well as personal notice to persons having *hypothèques* and certain other kinds of interests in the property. The Greffier draws up a list or *Codement* of the interested persons to whom notice has been given as well as any unsecured creditors who have asked to be placed upon the list. On the day appointed for the *dégrévement* the Greffier goes through the list in reverse order of priority, starting with any unsecured creditors and calls upon each in turn to elect whether to accept the tenancy of the property on condition of paying all prior claims or else to forfeit his interest. The Articles of the 1880 *Loi* which deal with these final stages of the *dégrévement* are 94 to 96:-

" Art. 94

Le jour fixé pour le dégrèvement, le Greffier, après s'être assuré que les divers intéressés ont été dûment assignés à paraître devant lui, fera l'appel des dits intéressés. Ceux qui, ... étants présents, refuseront de se porter tenants aux biens en dégrèvement, seront évincés de toute réclamation ou hypothèque sur le dits biens, et leurs contrats et autres pièces seront absolument nuls et comme non-avenus, sans préjudice toutefois aux dispositions des Articles 50 et 51.

Art. 95

Lorsqu'un intéressé ou ayant-cause se déclarera tenant, le Greffier fera un record de teneur annonçant la date que porte le contrat ou autre pièce sur lequel le tenant aura accepté cette qualité, et déclarant tous contrats et hypothèques postérieurs en date, renoncés et de nul effet ni valeur, et assujettissant la personne qui se sera portée tenante, à tenir pour valables tous contrats et payer toutes rentes et hypothèques d'une date antérieure qui concernent l'héritage en dégrèvement.

Art. 96

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 la dite teneur, et la Cour, par son acte confirmant la dite teneur, adjugera alors au tenant la propriété des biens de la teneur et autorisera le Vicomte ou l'un des Dénonciateurs, Officiers de Justice, à en mettre ledit tenant en possession, lequel acte l'Attourné fera enregistrer dans le livre des Contrats du Registre Public."

In the present case the *dégrèvement* was appointed to take place at 10 a.m. on Friday 7th July 1995. The other creditors having renounced, the bank declared itself willing to become tenant and the Greffier drew up the record in accordance with Article 95, declaring that the bank had accepted the tenancy and that all subsequent interests were null and void. In the afternoon of the same day, the attorneys applied to the Court pursuant to Article 96 for an order confirming the bank's tenancy. The bank of course consented to the order.

It was on this occasion that Jurat Coutanche was sitting as a member of the court. As Sir Godfray Le Quesne Q.C. remarked when giving the judgment of the Court of Appeal, it might have been better if he had withdrawn and allowed some

other jurat to join in the making of the order. On the other hand, it is easy to understand why he did not. There were no doubt other matters in the court's list that afternoon and he would have thought that he was only being asked to make an agreed order.

Instead, however, Mr. Eves appeared in court, stood up and asked for the application to be adjourned so that he could file evidence. There is no official record of what happened; their Lordships have only an affidavit from Mr. Eves and a newspaper report which he has exhibited. He says that he addressed the court for about ten minutes, saying that the *dégrévement* should not take place until the conclusion of other litigation which he was conducting and saying that he needed time to obtain evidence relevant to the other proceedings. The Deputy Bailiff heard him out and then, after conferring with Jurat Coutanche, said that the *dégrévement* would be confirmed but that he could come to court again a week later if he had found any new evidence.

It is argued for Mr. Eves that in refusing to adjourn the proceedings, Jurat Coutanche joined in a decision adverse to Mr. Eves's interests and in so doing, acted as a judge in his own cause. But Mr. Eves was not a party to the proceedings before the court. It is a striking feature of the *dégrévement* that it makes no provision for any participation by the debtor. He is not summoned to the meeting before the Greffier nor is he given notice of the application for confirmation under Article 96. The matter of confirmation is entirely one between the attorneys and the creditors. By Mr. Eves's own account of the matter, he only learned of the application by overhearing a conversation in the Greffe while he was there attending to his other litigation.

It is true that until the *dégrévement* has taken place, the title to the property remains vested in the debtor. He can therefore apply to the court to halt the *dégrévement* to allow him to make a *remise de biens* (see *In the matter of the dégrévement of the immovable property of Barker* [1985-86] JLR 186) or on some other ground. But Mr. Eves's appearance before the court on the afternoon of 7th July 1995 was not to make such an application. He had already made several such applications. On 1st May 1995 he applied for leave to appeal from the order for *dégrévement* of 31st March 1995 and a stay pending appeal. Both were refused. On 5th May 1995 he applied to make a *remise de biens*. After consideration of a report from two jurats, the court on 31st May 1995 refused the application. On 8th June 1995 he applied by Order of Justice to restrain further proceedings in the *dégrévement*. This was refused on the following day and an application for leave to appeal was dismissed by the single judge on 5th July and the full court on 6th July. So when Mr. Eves appeared in court on 7th July 1995, he

was not making any application in proceedings which he had initiated to arrest the *dégrévement*. He had already tried every conceivable method of doing so and failed. He was appearing to oppose the confirmation of the bank's tenure under Article 96. In their Lordships' view, this was a question on which he had no *locus standi* to be heard. It must follow that he has no right to challenge the order on the ground that it was vitiated by bias or on any other ground internal to the making of the order. In order for a litigant to be able to complain that a member of the tribunal has made himself a judge in his own cause, there must be a question which has to be decided as between the litigant and another party. In this case there was none.

The fact that the Court listened politely to what Mr. Eves had to say rather than simply telling him that he would not be heard does not in their Lordships' view alter the nature of the proceedings. It is submitted for Mr. Eves that, as he was a litigant in person, the Court should have treated him as making another application to stay the *dégrévement*. Whatever the merits of such an application, he would have been entitled to have it heard by an impartial court. Their Lordships think that there is more than one answer to this submission. First, there was no fresh originating process on which such an application could be based. The application for leave to appeal against the refusal of the earlier application, which had been founded upon an Order of Justice, had been dismissed on the day before. Secondly, Mr. Eves, although in person, was an experienced litigant. It must have been clear that he was not bringing fresh proceedings but seeking to insert himself into the *dégrévement* procedure. Thirdly, in their Lordships' view it would have been too late to make an application to stay the *dégrévement*. In the *Barker* case the Court of Appeal left open the question of whether the *dégrévement* became irrevocable when a creditor accepted tenancy of the property under Article 95 or when the tenancy was confirmed under Article 96. Their Lordships consider, however, that the language of Articles 95 and 96 makes it clear that the acceptance of the tenancy by the creditor confers legal rights upon the parties to the *dégrévement*. The creditor accepting the tenancy becomes entitled to the property, the creditors in priority to him become entitled to be paid and the security interests of the other creditors are annulled. Provided that the requirements of the *dégrévement* have been satisfied, the Court is obliged under Article 96 to confirm the tenancy. The order of the Court and its registration operate only as a conveyance to complete a transaction which, as a matter of contract, became binding at the earlier stage.

It follows that the order of confirmation was not vitiated by the interest of Jurat Coutanche. Their Lordships recognise the importance of the rule that no person sitting in a judicial capacity should have a pecuniary interest in the outcome of the proceedings. As Lord Goff of Chieveley said in *Regina v. Gough* [1993] A.C. 646, public confidence in the administration of justice requires that a decision made in such circumstances should not stand. But this statement was made with reference to proceedings in which the party objecting was legitimately concerned. On the other hand, public confidence in the administration of justice also requires that the process should not be abused and the rights of litigants frustrated by technical objections to proceedings in which the defendant has no legal interest.

Their Lordships can dispose of the second ground relatively briefly. Rule 6/7(1) provides as follows:-

"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."

The application for an order for possession, although in substance part of the process of execution after judgment, was in form an ordinary action commenced by Order of Justice. Rule 6/7(1) is therefore *prima facie* applicable and is expressed in mandatory terms. But the learned Deputy Bailiff refused the application to place the action on the pending list on the ground that it was an abuse of the process of the court. There was in his view no ground of objection to the possession order which had not already been raised and determined against Mr. Eves at earlier stages of the proceedings.

Their Lordships consider that despite the mandatory terms of Rule 6/7(1), any court must have an inherent power to protect other litigants from the abuse of its processes. Leaving aside the point on natural justice, the Deputy Bailiff was entitled to consider that to allow Mr. Eves to delay the proceedings in order to raise his other grounds of defence would be an abuse of process. Some of the history of this litigation has already been recounted. It would be tedious to recite it in any greater detail. Suffice it to say that Mr. Eves is strongly of the view that his failure in business was no fault of his but attributable to a conspiracy against him by members of the Tourism Committee of the States which has subsequently been joined by the bank, competing hoteliers, the judiciary and a substantial part of the legal profession of the Island. He has deployed these arguments with uniform lack of success on numerous occasions at every stage of the proceedings and at every level of the judicial hierarchy. The natural justice point, with

which their Lordships have already dealt, was a pure point of law which was fully argued before the Court of Appeal and this Board. It could not have been improved by any further evidence which Mr. Eves might have put before the Royal Court. Accordingly, their Lordships consider that there is nothing in the second ground of appeal. They will humbly advise Her Majesty that the appeal should be dismissed.