

JERSEY / JUDGMENT

Cotrel- -Christmas [2013]

JRC 097 (20 May 2013)

[2013] JRC 097

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the commissioner: 1. The Viscount has applied to the Court for directions as to whether funds he is holding should be paid to the first respondent ("Mr Christmas") or retained by the Viscount until the abandonment or determination of the appeal brought by Mr Christmas against the compensation order made against him. 2. The representation was brought by the Viscount on 14 th May, 2013, when the Court convened the respondents and ordered that the matter be treated as a cause de brièveté . 3. On 26th July, 2012, Mr Christmas was convicted of one count of fraudulently inducing the third respondent ("Mrs Cotrel ") to invest or loan money (£100,000) contrary to the Investors (Prevention of Fraud)(Jersey) Law 1967 . On th October, 2012, Mr Christmas was sentenced to a period of imprisonment of 15 months. 4. On 11 th December, 2012, on the application of the second respondent ("the Attorney General") under the provisions of the Proceeds of Crime (Jersey) Law 1999 , the Court granted a saisie judiciaire over the realizable property of Mr Christmas, which property included a Legal and General endowment policy in the name of Mr Christmas due to mature on 21 st December, 2012. On 15 th January, 2013, the Viscount received the matured funds from the Legal and General endowment policy in the sum of £94,195.41. 5. On 18 th February, 2013, the Attorney General confirmed that he would not be proceeding with confiscation proceedings against Mr Christmas, but the application to lift the saisie judiciaire was not heard until the afternoon of the 8 th April, 2013, which had been set aside for the Attorney General's application for a compensation order against Mr Christmas. 6. Having been notified by the Attorney General of his intention to lift the saisie judiciaire , Mrs Cotrel applied ex parte on 8 th April, 2013, for interim injunctions freezing inter alia the funds held by the Viscount in support of a civil claim against Mr Christmas. 7. Sir Christopher Pitchers, Commissioner, refused to grant the interim injunctions ex parte and ordered an inter partes hearing that day before the Court sat to consider the Attorney General's application for the compensation order and to lift the saisie judiciaire . At that inter partes hearing, Mr Jones, for Mr Christmas, did not oppose the granting of interim injunctions in principle, but sought certain variations to those interim injunctions to permit Mr Christmas to bring his mortgage into good standing and to pay his legal fees for the defence of the civil proceedings. It would seem that the Order of Justice was not signed at that stage, pending agreement between the parties as to the precise wording of the interim injunctions. 8. On the afternoon of 8 th April, 2013, the Court

made a compensation order against Mr Christmas in favour of Mrs Cotrel which is recorded in the Act of Court as being in the following terms:- "Upon hearing Her Majesty's Solicitor General and the advocate for the defendant Christmas, the Court, having noted that the defendant Lewis is not being pursued at this time as he has no material assets, ordered that, by virtue of the 1994 Law, the defendant Christmas shall pay by way of compensation the sum of £100,000, such compensation to be paid in the following manner: (i) £60,000 to be paid within twenty-eight days hereof; and (ii) the remaining £40,000 to be paid within twelve months of the date hereof; or, in default of payment in full or part, sentenced the defendant Christmas to a term of twelve months' imprisonment." 9. Following the making of the compensation order, the Court then lifted the saisie judiciaire . According to the skeleton argument of Mr Jones (although there was no evidence before me to this effect), the Solicitor General submitted that Mr Christmas should be given " five minutes" to decide whether or not to pay the compensation order, presumably out of the funds held by the Viscount, or in default to serve an additional sentence of 1 year. The Commissioner invited Mr Christmas, through Mr Jones, to provide an undertaking to pay the compensation order. On legal advice, Mr Christmas declined to either pay the compensation immediately or give any undertaking in that respect. Mr Jones advised the Court that he would consider whether or not to lodge an appeal against the compensation order, upon which the Commissioner granted an interim injunction on the basis of Mrs Cotrel's civil claim which had been lodged earlier that day over inter alia the funds held by the Viscount. The Order of Justice submitted by Mrs Cotrel was signed by the Commissioner on 10 th April, 2013. 10. On 24 th April, 2013, Mr Christmas lodged an application for leave to appeal against the compensation order made by the Court on 8 th April, 2013, that is due to be heard by the Court of Appeal on 21 st July, 2013. 11. On 10 th May, 2013, with the leave of the Court, Mrs Cotrel withdrew her civil claim against Mr Christmas and the interim injunctions imposed upon Mr Christmas and over the funds held by the Viscount were lifted. Mr Jones sought an order that day that the Viscount pay the funds to Mr Christmas. The Court declined to make such an order sur le champ , having been informed by the Viscount's officer present in Court that the Viscount would be urgently seeking directions from the Court as to how he should proceed. Following that hearing Carey Olsen wrote to the Viscount making formal demand on behalf of Mr Christmas for the payment of the funds held by him. Submissions of the parties 12. The Viscount took a neutral stance in the matter. He did, however, contend in paragraph 11 of his representation that absent an appeal, Mr Christmas had the option whether to pay the compensation order (on the due date) or serve the default sentence. As Mr Jones pointed out, that option is reflected in the Act of Court as set out above by the use of the word "or". 13. Mrs Cotrel , who is 84, appeared in person and was content to rest on the wisdom of the Court. Her understandable concern was to receive the compensation ordered in her favour. 14. Mr Jones' central submission related to the provisions of the Criminal Justice (Compensation Orders)(Jersey) Law ("the Compensation Law"). That Law did not give Mrs Cotrel any right to enforce the compensation order. Enforcement lay with the Viscount pursuant to Article 5(1) which is in the following terms:- "5(1) Where any default is made in the payment of a compensation order, the Viscount may take the same proceedings for the enforcement of the order as the Viscount may take in the case of a default in payment of a fine." 15. Article 5(2) goes on to provide:- "5(2) Where a compensation order is made allowing time for payment or directing

payment by instalments, the Viscount shall not exercise the Viscount's powers to enforce payment until there is a default in complying with the order." 16. Although the first tranche of the compensation order in the sum of £60,000 would have become due on 7th May, 2013, Mr Christmas was not in default in complying with the order, pursuant to Article 6(5) of the Compensation Law which provides:- "6(5) Where a notice of appeal or to obtain leave to appeal to the Court of Appeal against a compensation order has been given within the time specified in Article 32(1) of the Court of Appeal (Jersey) Law 1961 or the Court of Appeal has, pursuant to paragraph (3) of that Article, directed that a notice of appeal against such an order shall be treated as if given within that period, the Viscount shall not take any, or any further steps towards the enforcement of the order until after the appeal has been abandoned or determined." Article 6(5) thus acts as a stay of the compensation order, effectively extending the time for enforcement to after the application for leave or the appeal has been abandoned or determined. Accordingly Mr Christmas is not currently in default of the compensation order. 17. Mr Christmas sought the return of the funds in order that he could apply them for the purpose for which they were originally intended, namely the repayment of part of the capital standing due and owing under the mortgage on his matrimonial home. Irrespective of the purpose to which Mr Christmas intended to use the funds, Mr Jones submitted that the Viscount had no right to retain them. To hold the funds against the formal demand that had been made for their payment was an act of "distrainment" in direct contravention to Article 6(5) of the Compensation Law which was mandatory in its terms. 18. Furthermore, Mr Jones submitted that by withholding the funds, the Viscount, as a public authority, was acting in a way which was incompatible with Mr Christmas's Convention rights, contrary to Article 7 of the Human Rights (Jersey) Law 2000. He referred to Article 8 of the Convention, but it is Article 1 of the First Protocol which would appear to be relevant and which provides:- "Protection of Property Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties." 19. Mr Jowitt, for the Attorney General, who had been convened to assist the Court, made four points:- (i) The decision needed careful thought, as it was clear that the funds, if released, would go in partial repayment of Mr Christmas's mortgage and might therefore frustrate the compensation order made by the Court. (ii) The purpose of the Compensation Law was to compensate victims of crime at the expense of offenders and not to give offenders a choice as to whether or not to pay that compensation. The purpose of the default sentence provisions is to encourage offenders to pay the compensation. If it was intended to give offenders a choice, the enforcement provisions contained in Article 5 would be redundant. That encouragement extends to offenders who are serving a sentence in default of the payment of a compensation order by providing at Article 5(6):- "Where, after a period of imprisonment or other detention has been imposed on any person in default of the payment of a compensation order, payment is made of part of the amount ordered to be paid, the term of the default sentence shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days of that period of

detention less one day as the sum paid bears to the amount ordered to be paid." (iii) The key question he said related to the interpretation of Article 4 of the Compensation Law which dealt with the payment of compensation orders and in particular, Article 4(1) and (2), which are in the following terms:- "4(1) Subject to paragraph (2) and Article 5, payment of a compensation order shall be made to the Viscount, who shall give a receipt for the payment and shall remit the payment to the person in whose favour the order was made. 4(2) A person in whose favour a compensation order is made shall not be entitled to receive the amount due to the person until (disregarding any power of a court to extend the time for making an appeal) there is no further possibility of an appeal on which the order could be varied or set aside." Was the reference to "payment of a compensation order" in Article 4(1) limited to payments made by the defendant or someone on his behalf with the intention of paying the compensation order or should those words be read as describing a process by which funds sufficient to satisfy the compensation order are transferred to the Viscount (irrespective of the intention) and in turn by him to the person in whose favour the order is made. If the former, then it is clear, he said, that these funds were not paid to the Viscount for the purpose of paying the compensation order; they came to him as a consequence of the *saisie judiciaire*. The Viscount had not regarded the funds as being paid for that purpose as no receipt for the payment had been issued by him pursuant to Article 4(1). The funds should therefore be returned to Mr Christmas. If the latter, then because the Viscount held the funds at the date of the compensation order, then, irrespective of why those funds came to him, the payment has been made for the purposes of Article 4(1) and the funds can be properly held by him pending the appeal. No entitlement on the part of Mrs Cotrel to those funds would arise until the appeal was determined. (iv) It was arguable that Article 5 of the Compensation Law gave the Viscount a civil cause of action to pursue payment of the compensation order and if so, all of the necessary conditions applicable to the granting of an interim injunction would have to be met. Mr Harris, for the Viscount, made it clear that even if arguable, the Viscount was not pursuing any such possible civil claim against Mr Christmas. Decision 20. Of the two interpretations put forward by Mr Jowitt, I incline towards the former. The Compensation Law separates the offender from the victim, so that it is to the Viscount that the payment is made and it is the Viscount, not the victim, who may "enforce the same". These funds were not paid by Mr Christmas or Legal and General to the Viscount for the purpose of his paying the compensation order. The funds came into the possession of the Viscount as a consequence of the *saisie judiciaire* granted pursuant to the Proceeds of Crime (Jersey) Law 1999, some months before the compensation order was made. The Viscount has not received the funds for the purpose of paying the compensation order and no receipt has been issued by him pursuant to Article 4(1). 21. The key point, in my view, is that the jurisdiction of the Viscount to enforce the compensation order, or indeed to exercise any powers over the assets of Mr Christmas, only arises when there is a default. Mr Christmas is not in default of the compensation order. He has exercised his right of appeal, which acts as a stay of the compensation order. Pending that appeal Article 6(5) of the Compensation Law provides that the Viscount "shall not take any steps" (my emphasis) towards the enforcement of the compensation order. To retain funds which belong to Mr Christmas against his formal demand can only be regarded as a step towards enforcement; for what other purpose is he being deprived of his funds. 22. Until there is a default Mr Christmas is free in law

to deal with his assets as he sees fit. The Compensation Law does not permit of any interim steps that can be taken by the Viscount to secure payment in due course. It seems likely that these funds will go to reduce Mr Christmas's mortgage (thus increasing the equity in his matrimonial home) but however he chooses to deal with his own funds, we simply do not know whether, if the compensation order becomes payable following the appeal, Mr Christmas will pay. If he does not do so, it is at that point that the Viscount's powers of enforcement arise. A consequence of his failure to pay, or of the Viscount being unable to recover the sums by enforcement, is that he will serve a further term of imprisonment. 23. I agree with Mr Jowitt that the Compensation Law does not give Mr Christmas a choice between payment and imprisonment and to the extent that the Act of Court of the 8th April, 2013, gives that impression, it stands to be amended by substituting the word "and" for the word "or". A compensation order is after all an order of the Court. Mr Christmas has been ordered to pay Mrs Cotrel £100,000. Article 5(1) empowers the Viscount to take the same enforcement proceedings as he would take in the case of default in payment of a fine. His powers in relation to a fine are set out in Rule 11(5) of the Royal Court Rules 2004 which are in the following terms:- "11(5) Fines and forfeitures

- (1) It shall be the duty of the Viscount to collect all fines and other penalties imposed by the Court and to dispose of all forfeitures ordered by the Court.
- (2) An order imposing a fine or other penalty shall be taken to authorize the Viscount to distrain on the moveables of the offender and to apply them, or the proceeds of sale thereof (the sale being effected either at a public auction or at a valuation), towards the satisfaction of the fine or other penalty and of the costs incurred by the Viscount." 24. Article 3 of the Compensation Law, in relation to the default sentence, is in the following terms:- "Powers of the court (1) Where a court makes a compensation order it may -
 - (a) allow time for payment of the amount due under the order;
 - (b) direct that the said amount be paid by instalments of such amount and on such dates as may be specified in the order;
 - (c) subject to paragraph (2), fix a term of imprisonment (in this Law referred to as a "default sentence") which the person liable to make the payment is to undergo if any sum which the person is liable to pay is not duly paid or recovered ." (my emphasis) There is thus express reference in Article 3(1)(c) to both payment by the offender (or someone on his behalf) and recovery by the Viscount, pursuant to his powers of distraint on the moveables of the offender. I am therefore of the opinion that if the compensation is not paid on the due date but there are moveables upon which the Viscount can distrain , then he "may" do so and, in the interests of the victim, should do so. Any sums recovered by such distraint would, pursuant to the provisions of Article 5(6) of the Compensation Law, reduce the default sentence proportionately. 25. Whether the serving of a default sentence extinguishes the compensation order was not the subject of discussion at the hearing. There is English authority that in the case of a fine, serving the default sentence extinguishes that fine

- see H M Treasury-v-Harris

[1957] 2 All England Law Reports 455. If that were to apply under Jersey law, then because the Viscount's powers of enforcement under Article 5(1) of the Compensation Law are limited to those he can take in the case of default in the payment of a fine, it would seem that on serving the default sentence under a compensation order it would then become unenforceable by the Viscount (and no-one else can enforce compensation orders). 26. Thus in summary the Viscount is holding some £94,000, which belongs to Mr Christmas and which the Viscount received as a consequence of the saisie judiciaire and not for the purposes of paying the compensation order. Pursuant to Article 5(1) of the Compensation Law, the Viscount's enforcement powers over the funds only arise upon default and Mr Christmas is not in default. Furthermore pending the appeal, Article 6(5) of the Compensation Law prohibits the Viscount from taking any steps towards enforcement, which retaining the funds against formal demand would constitute. The Viscount has no right in law to retain the funds. 27. Accordingly I direct the Viscount to pay these funds to Mr Christmas or to his order forthwith. Costs 28. Mr Jones applies for costs for Mr Christmas. This is a representation brought by the Viscount who is the Court's Executive Officer for the assistance of the Court as to how he should deal with the monies held by him in circumstances that were unusual. Having convened the parties with an interest in the matter, he played a neutral role thereafter. The fact that I have found that the monies should be paid to Mr Christmas does not mean, in my view, that it was unreasonable for the Viscount to have sought such directions. Indeed, in my view, it was reasonable for him to have done so. 29. The Viscount should not be deterred from seeking the assistance of the Court by the threat of adverse costs orders being made against him. Without the benefit of any authority, I am of the view that a case of misconduct on his part would have to be made out, and no such case is made out here. 30. Therefore, notwithstanding the consequences to Mr Christmas, in these circumstances the right order for me to make is no order for costs. Authorities Investors (Prevention of Fraud)(Jersey) Law 1967. Proceeds of Crime (Jersey) Law 1999. Criminal Justice (Compensation Orders)(Jersey) Law 1994. Human Rights (Jersey) Law 2000. Royal Court Rules 2004. H M Treasury-v-Harris [1957] 2 All ELR 455. Page Last Updated: 26 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2013/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/cotrel-christmas-2013-jrc-097-20-may-2013>

Prepared on 26 October 2026 · Esheria