

JERSEY / JUDGMENT

Eves v Viscount [2001]

JRC 106 (16 May 2001)

[2001] JRC 106

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judgment

the deputy bailiff: 1. On 21st March, 1996, acting pursuant to an order of the Royal Court dated 18th August, 1995, the Viscount evicted the Plaintiff and his wife from the premises known as The Rest, Green Street, in the Parish of St. Helier. The Plaintiff alleges that, in the course of this eviction, two pictures, which he values at £15,000, were lost as were a number of other items. He brings this action against the Viscount seeking damages in respect of the lost items. The Background 2. On 31st March, 1995 the Royal Court adjudged the property of the Plaintiff to be renounced and appointed Attorneys to conduct a *degrèvement* of the Plaintiff's immovable property. The Plaintiff's financial difficulties arose out of two businesses which he had run, namely Blue Horizon Travel and the Glendale Hotel. These had both been operated by limited liability companies. The Plaintiff has instituted litigation against various defendants in connection with these businesses but such litigation is not relevant for today's purposes. 3. The *degrèvement* was conducted before the Deputy Judicial Greffier on 7th July, 1995 and the tenure of the immovable property owned by the Plaintiff, namely The Rest, was accepted by Hambros Bank (Jersey) Limited ("Hambros"). On the same day the Royal Court confirmed Hambros as "tenant après *degrèvement*" and authorised the Viscount to put Hambros in possession. At a meeting held on 26th July, 1995 and in a subsequent letter, the Plaintiff made it clear that he would not co-operate in any eviction and he would be challenging the *degrèvement* through all possible avenues, including the European Court of Human Rights. 4. On 18th August, 1995, on the application of Hambros, the Royal Court made a further order. It ordered the Plaintiff to vacate the Rest within two weeks and authorised the Viscount to evict him should he fail to vacate within that period. The Court also authorised the Viscount to evict Mrs Eves, their son and any person in occupation of the property unless they showed *prima facie* existence of a tenancy by 1st September. 5. On 29th February, 1996, Mr Adrian Willis, the Principal Enforcement Officer of the Viscount, personally delivered letters to Mr and Mrs Eves at the property. The letter to the Plaintiff emphasised that the Viscount had been instructed to proceed without delay to enforce the Act of the Royal Court of 18th August. He requested Mr and Mrs Eves to arrange to vacate the property and stated that if the property was not vacated by 3.00 p.m. on Friday 15th March, the Viscount would enforce the Act without notice within seven days thereafter. He explained that, in these circumstances, the premises would be secured and Mr and Mrs Eves would not be allowed

to return. Any contents remaining on the premises might be moved to storage at their expense. The letter went on to recommend that they vacate voluntarily and that they contact the Housing Department. It is clear that, at the meeting when the letters were handed over, Mr and Mrs Eves both made it absolutely clear that they were not going to vacate voluntarily. They said that the press would become involved and Mrs Eves asserted that she would have to be dragged out. 6. On 8th March the Housing Department agreed to allocate a two bedroomed flat to Mr and Mrs Eves namely, Flat 61, La Collette, Green Street, St. Helier. On 12th March Mr Willis again wrote to the Plaintiff. He referred to the fact that there was now alternative accommodation available and repeated the deadline of 3.00 p.m. on Friday 15th March, following which the Court order would be enforced without further notice or indulgence being granted. There was further correspondence including a letter dated 18th March from Mr Willis to Advocate Fielding, who had been appointed on legal aid to represent Mrs Eves in connection with the imminent eviction. Mr Willis agreed to defer putting the eviction into force until at least 5.00 p.m. that day in order to give Advocate Fielding time to apply to the Court for a stay if appropriate. We have not been informed as to whether such an application was made but, in any event, no such relief was granted. 7. Accordingly, on Thursday 21st March, 1996, beginning at approximately 10.00 a.m., Mr Willis and a number of colleagues, supported by four officers of the States of Jersey Police attended at the Rest in order to evict Mr and Mrs Eves. Mr and Mrs Eves left the premises at approximately midday and were driven by a police inspector to 61 La Collette leaving the Viscount's Department in charge of the Rest. 8. We ruled at an early stage that we did not need to hear evidence of all that was said and done during the two hour period between the arrival of the Viscount's officers and the departure of Mr and Mrs Eves save insofar as it was relevant to the question at issue, namely the alleged loss of two pictures and other items as claimed in the proceedings. It was quite clear that this was a time of very considerable tension and stress. It was upsetting for Mr and Mrs Eves to be evicted from their home of so many years and it was a difficult task for Mr Willis and his team, bearing in mind the refusal of Mr and Mrs Eves to accept that they had to go. What is not disputed is that Mr Willis informed Mr and Mrs Eves that they should take anything which they felt they needed immediately and that the other items would be delivered to them or placed in storage. They each took one suitcase containing personal belongings. It is also not disputed that Mr Willis asked Mr and Mrs Eves to identify any valuable items which they were leaving behind and that none were specifically identified by Mr or Mrs Eves. Mr Mourant has sought to rely on this failure to mention the two pictures as supporting the Viscount's case that they did not exist. However we are not inclined to place any weight on this particular failure. As we have said, this was a moment of extreme tension and stress for Mr and Mrs Eves and their tempers were running high. We do not think that it would be right to draw any adverse inference from the failure to refer to the paintings as specific valuables in such fraught circumstances. 9. Over the course of the next few days, the majority of the contents were moved to 61 La Collette and other items were placed in storage at Le Gallais. On Friday, 29th March, Mrs Eves signed a disclaimer (subject to certain exceptions) in respect of many of the items which were still left on the property at that date. On 1st April Mr Willis formally handed the property over to Hambros by delivering the key on site to Advocate Roscouet and to Mr Adrian Rowland, a director of Hambros. He gave them a copy of Mrs Eves' disclaimer and informed them that they

were free to dispose of the remaining contents as they saw fit. Hambros instructed Mr David Manning to dispose of the remaining contents and he appears to have done so on the 3rd and/or 4th April. 10. What is at issue is whether, during this process, two pictures, which the Plaintiff claims belonged to him, disappeared. The Plaintiff alleges that these two pictures were stored in the garage when he left and he values them at £15,000. The Plaintiff also claims for a number of other items which he alleges were situated in the garage at the time of the eviction but have since gone missing. They are as follows:- Item Sum claimed Scalextric set £122.00 Lego Set and extras £47.00 Table Tennis table £185.00 Bats and balls £27.50 Two Christmas trees £126.00 Ladder £85.00 Total £592.50 The Plaintiff asserted that the figures shown were replacement values. He had telephoned various shops in order to establish the cost of buying a new item in each case. Accordingly the total claim is £15,592.50. 11. With this introduction to the factual background we now turn to consider the evidence in relation to the issues. We do not propose to recite all the evidence, which was heard over a number of days. We will simply highlight those aspects which seem to us to be most significant. We have considered the evidence as a whole when reaching our conclusions but, for ease of understanding, we will set out the evidence in relation to the pictures separately to that in relation to the other items. Furthermore, because there is a dispute as to whether the two missing items, if they existed, were paintings or prints, we will use the neutral term "picture".

The evidence (a) The Plaintiff 12. The Plaintiff stated that one of the pictures was of St. Tropez. In 1979 he and his wife had been on holiday to the South of France. On their return he had noticed a picture of St. Tropez hanging in the office of a friend, Mr Leslie Minty. Mr Minty shared an office with the Plaintiff. The Plaintiff commented on how much he liked the picture. Mr Minty then said that the Plaintiff could have it. The picture remained in the Plaintiff's office and moved with him through various successive offices over the years. Mr Minty has since died. In his evidence the Plaintiff said that "speaking from memory" it was an oil painting, although in cross-examination he appeared to be more uncertain, indicating that he did not know if it was a print but that, as far as he knew, it was an oil. He described it in some detail. Essentially it was a picture of boats in the harbour at St. Tropez. 13. The other picture was also acquired in 1979. As we have mentioned earlier, the Plaintiff and his wife were on holiday in the South of France. They noticed this picture in an art gallery or shop in St. Maxime and the Plaintiff purchased it. It was a picture of a street scene in St. Maxime showing a restaurant (where the Plaintiff and his wife had eaten) and some people sitting in the restaurant and outside on the pavement. He said in evidence that he "believed" the picture to be a watercolour. He said that, from memory, he had paid 30-35,000 French Francs. He had paid by credit card. However he had not made any enquiries of his bank or credit card company to check their records for that period. He had hung the picture in his office on his return. 14. By 1994 both pictures were situated in the Blue Horizon offices at 9 Caledonia Place, St. Helier. In that year Blue Horizon Holdings Limited was declared en désastre and the Viscount took possession of all its assets. These included the contents of 9 Caledonia Place. An inventory and valuation was prepared by Bonhams and Langlois Limited ("Langlois") on 14th February, 1994 at the request of the Viscount. The Plaintiff accepted in evidence that the inventory listed one of the two pictures. It did so under the heading "A glazed print - Mediterranean fishing village". The picture was stated to be situated in the "back office". The Plaintiff asserted that Langlois had omitted to include the other picture in the

inventory, which was hung in what was known as No. 2 office. Indeed, as we shall see from the evidence of Mr Renouf, the Viscount does not dispute that there was a second picture of the South of France in the No. 2 office at Caledonia Place. Both pictures were released to the Plaintiff on 6th April, 1994. The Plaintiff signed receipt No. 0702 on that date in respect of several items including the two pictures. The two pictures were described in the receipt as " two prints in frames (South of France) ". The Plaintiff asserted in evidence that these were the two missing pictures. He expressly relied upon the receipt as showing that the two pictures which are the subject of the claim existed in February, 1994 and were handed over to him. 15. He said that he had taken the pictures home and put them in the garage. He placed them against the wall towards the rear of the garage on the left hand side. He thought that he had placed a bit of wood over them in order to protect them. He said that, although they were his two favourite paintings, he nevertheless did not do anything more with them or move them into his house. They remained where they were in the garage until the eviction and were accordingly still there on 21st March, 1996. 16. He accepted that during the eviction and in the days which immediately followed, he did not remember the pictures or say anything about them to the Viscount's officers. He said that he was too distressed by what was happening. But on Wednesday, 3rd April (some two days after the property had been handed over to Hambros, although the Plaintiff did not know this at the time) he and his wife were walking past The Rest at about 10.00 a.m.. They noticed that the garage doors were open and that many of their possessions were still in the garage. In particular, they noticed the two pictures, which had been moved. They were now situated near the front of the garage. They were in full view and were leaning against the left hand wall. Mr Rowland of Hambros and another man were walking around the property. The Plaintiff and his wife stopped to observe what was going on from the bridge over Snowhill car park but, after a short while, Mr Rowland and his colleague disappeared. The Plaintiff and his wife immediately went to Le Gallais and spoke to a Mr Grimshaw. They advised him that there were some goods of theirs, including two valuable paintings, in the garage and asked that he arrange to deliver them to the Plaintiff and his wife immediately. Mr Grimshaw apparently said that he could not act without speaking to the Viscount. He said that he would get back to them after he had spoken to the Viscount but the Plaintiff did not hear again from Mr Grimshaw that day. 17. At about 9.30 a.m. the next day, Thursday, 4th April, the Plaintiff passed The Rest. He saw that the garage had been completely cleared. He was told by an employee from Hambros that everything had been dumped. It is not disputed that the Plaintiff immediately went around to Hambros and demanded to see Mr Rowland. He asserts that, when he saw Mr Rowland, he complained that the two pictures were missing. Although, in a letter dated 29th May, 1996 to the Viscount, Mr Rowland asserted " at no time during the interview I conducted with Mr Eves did he make any reference to any missing paintings " we are in no doubt that he was mistaken in saying this and that the Plaintiff's recollection is correct. That is because of a file note dated 4th April, 1996 made by Mr Willis in connection with a discussion which he had with the Plaintiff shortly after the Plaintiff's meeting with Mr Rowland. That file note begins by stating " Adrian Rowland of Hambros telephoned stating that Mr Eves had attended at the bank complaining that 2 paintings, which he claimed were in the garage at 29 Green Street were missing. Shortly afterwards Mr Eves attended here claiming the same thing amongst other miscellaneous matters ". 18. Having been

told by Mr Rowland that he should take the matter up with the Viscount, the Plaintiff immediately went round to see Mr Willis and renewed his complaint about the missing pictures. Mr Willis made various enquiries of Mr Rowland but in the end said that he did not accept that there were any such pictures. The Plaintiff made it clear that he was not satisfied and would make a claim for his lost possessions. He then returned to Hambros where further heated discussions took place. Eventually Mr Rowland gave the Plaintiff the name of Mr Manning of Fetch and Karrie as being the person who had removed the remaining contents from The Rest. The Plaintiff then spoke to Mr Manning following which he once again returned to the offices of Hambros. He maintained that the two pictures had been stolen. Mr Rowland denied this and said that, if the Plaintiff believed that they had been stolen, he should go to the police. The Plaintiff then immediately went to a small police station nearby. The officer on duty at that station said that the amount involved was too high for him to deal with and he referred the Plaintiff to Police Headquarters. Subsequently on 23rd April the Plaintiff had an interview with Inspector Langford, who apparently informed him that the Viscount would be responsible for any missing items and would have insurance against such an eventuality. 19. The Plaintiff's claim in respect of the pictures was particularised as follows in the pleadings:- "1 Kafka painting of St. Maxime- Sur-Mer: specially commissioned £10,000 painting of St. Tropez - gift £5,000" 20. However it became clear when the Plaintiff gave evidence that he had not made any enquiries as to the market value of either of these pictures. As he put it, it was a personal matter. The values which he claimed were his estimate of the value of the pictures to him. He had no idea of who had painted the picture of St. Tropez, and he had never made any enquiries. As to the picture of St. Maxime, he did not know who the artist was, nor had he made any enquiries to find out until after the picture had disappeared. Following its disappearance, he had discussed the matter with his wife and they had concluded that it might have been painted by Kafka. He produced an extract from the *Dictionnaire des Peintres* (by E. Benezit) (1999 edition) in which the following entry appeared in respect of Kafka:- "KAFKA Cestmir Né le 14 novembre 1922 à Jihlava. xx e siècle. Tchecoslovaquie. Peintre. Abstrait. Il fit ses études. de 1940 à 1945, à Zline, puis à Prague, de 1945 à 1949. Il participe à des expositions de groupe, en Tchecoslovaquie, et, en 1963, à la Biennale de São Paulo, en 1965 à Paris, Bochum et Baden-Baden, en 1966 à Munich, etc. Il peint des transcriptions poétiques de la réalité qui se souviennent des agencements linéaires de Paul Klee." 21. The Plaintiff's evidence was probed by Mr Mourant in cross-examination on a number of aspects. The key areas were as follows:- (i) Mr Mourant referred to an affidavit sworn by Mrs Eves on 7th January, 1992 in unrelated proceedings in which she deposed:- "... all the contents of my home at The Rest aforesaid save only the personal clothing, belongings and effects of my said husband, are the absolute property of myself, my children, other members of my family or of those persons lodging with us in the said property". This affidavit had been reaffirmed by her in a further affidavit sworn on 2nd May, 1995 when she said:- "I would also like it to be noted that by affidavit sworn by me on the 7th day of January 1992, all the contents of my home at 29 Green Street, The Rest, St. Helier are the absolute property of myself, my children, other members of my family or those persons lodging with us in the said property". It was suggested to the Plaintiff that, if the pictures existed, they belonged to his wife. The Plaintiff did not accept this. He said that the pictures were his. One had been given to him by Mr Minty and he had paid for the other.

They fell within the phrase "personal belongings and effects of my husband" as set out in the first affidavit. (ii) Mr Mourant also referred to an 'affidavit of pauperism' sworn by the Plaintiff and his wife jointly on 10th February, 1995 in connection with a petition for special leave to appeal to the Judicial Committee of the Privy Council in respect of their action against Hambros. The affidavit said:- "We, David Eves and Helga Maria Eves (née Buchel) Petitioners in the above action do solemnly swear on oath that we are not worth more than £500 apart from our wearing apparel and the subject matter of the appeal and that we are unable to provide sureties". Mr Mourant put to the Plaintiff that he could not possibly have thought that he owned paintings worth £15,000 in the light of that affidavit. The Plaintiff's response was that "the subject matter of the appeal" covered all the various claims against him and that these claims greatly exceeded the assets of him and his wife in any event. (iii) Mr Mourant also put to the Plaintiff the proposal form for his house insurance at The Rest dated 22nd February, 1989. He pointed out that in section I there is a question "what is the replacement cost of your High Risk Items i.e. ...". There then followed a number of boxes dealing with different types of items. Against the box headed "pictures, works of art, curios and collections" the Plaintiff had inserted the figure £500. Furthermore, in a further box headed "if the replacement cost of any High Risk Item exceeds £1,000, list items and values below", the Plaintiff had not inserted any item. Mr Mourant put it to the Plaintiff that this proposal form was wholly irreconcilable with a belief on the Plaintiff's part that he owned pictures worth £10,000 and £5,000 respectively. The Plaintiff's initial response was to suggest that perhaps he had not included them as they were physically situated in his office. When it was pointed out to him that, in response to interrogatories, he had asserted on oath that the pictures were covered by his household insurance policy, he said that he must have overlooked them and that he had not given much thought to the details in the form or to the figure of £500. His main interest was the aggregate insurance figure and he felt that that was high enough to cover all his assets. (iv) Finally Mr Mourant put it to the Plaintiff that, in his pleadings, he had referred to the St. Maxime picture being "specially commissioned". The Plaintiff admitted that the picture had not been specially commissioned in the sense that it had been painted to his order. He had only meant that he had purchased it specifically. (b) Mrs Eves 22. Mrs Eves gave evidence which broadly supported that of her husband. Although not present at the time of the gift, she recalled that the Plaintiff had informed her that Mr Leslie Minty had given him a picture of St. Tropez and this picture hung in her husband's various offices until the désastre of Blue Horizon. She said that it was definitely an oil painting. As to the picture of St. Maxime, she said that this had been purchased from a studio when she and the Plaintiff were on holiday in the South of France. It was definitely a watercolour. She recalled that one of the restaurants in the picture was clearly named as "Sans Soucis". She thought that they had been told at the time of purchase that it was painted by an artist who came regularly to the South of the France from Paris. They could not read the signature but thought that the name began with "K". She agreed that it could not be described as an abstract painting. She nevertheless thought that the picture was by Kafka, although she accepted that she did not know much about him apart from the fact that he came from Czechoslovakia. 23. She confirmed that the Plaintiff had taken delivery of both pictures in April 1994 from the Viscount following the désastre of Blue Horizon and had put them both in the garage at The Rest. She said that they were placed against the left hand wall towards

the back of the garage and they were covered by a cloth. So far as she was concerned they remained there until the eviction. She confirmed that, shortly after the eviction, she and the Plaintiff had walked past The Rest and had seen the two pictures in the garage. They had been uncovered and moved near to the front of the garage leaning against the left hand wall. She said that it was as if they were ready for someone to take them away. 24. She was asked about the disclaimer which she had signed on 29th March, 1996. She agreed that Mr Ian Pattle of the Viscount's Department had come round to see her at 61 La Collette in order to see whether she required to keep any of the items which were still left behind in The Rest at that stage. She agreed that she dictated the list to Mr Pattle who wrote it down in his notebook, which she subsequently signed. The passage in relation to the garage made it clear that she relinquished " ... all items in garage except for boxes of football programmes, one wine rack, scaletrix, orange mountain bike style bike [sic], 2 deck chairs, table tennis table ". She accepted that she had signed the notebook immediately under the passage which read " I relinquish ownership of all of the above items, and they may be disposed of without further notice ". She was asked why she had not mentioned the two pictures given that she was disclaiming a number of things in the garage but had specifically not disclaimed other items in the garage. Her response was that she had been under considerable stress, having just been evicted from her home of many years, and that she just did not have the two pictures in mind when she signed the disclaimer. 25. That concluded the evidence on behalf of the Plaintiff and we then heard evidence from a number of witnesses on behalf of the Viscount. We will deal with them in the most convenient order rather than in the order in which they were heard. (c) Adrian Willis 26. Mr Willis is the Principal Enforcement Officer of the Viscount's Department, a position which he has held for some eight years. He explained that his duty was to put the order of the Court of 18th August, 1995 into effect. When carrying out an eviction he always tried to secure the co-operation of the person being evicted so that, if possible, the matter went through with the least difficulty to all concerned. On this occasion he had written to the Plaintiff and Mrs Eves on more than one occasion and had also visited them. Unfortunately, it was clear that they were not willing to cooperate. At the meeting the Plaintiff had made it clear that he would resist physically. He said words to the effect "There will be a punch up". It was for that reason that Mr Willis sought the assistance of four police officers from the States of Jersey Police when he attended to evict the Plaintiff and Mrs Eves. 27. When carrying out an eviction, his first task was to secure possession of the property by arranging the removal of the persons concerned from the premises. Once evicted, they were not normally allowed back for fear of any further difficulties or disputes. Once the person was evicted, the Viscount would then arrange to deal with the contents. The first step was to have an inventory prepared by an independent agent such as Langlois. The contents would be dealt with according to the wishes of the owner. If need be, they would be placed in storage and this was done at the cost of the person evicted but the Viscount guaranteed the storage charges. Once all items of value had been removed, the Viscount was often left with a number of minor or damaged items of no value. It was his practice to invite the owner to disclaim anything which he did not wish to have in his new accommodation or to place in storage. The items would then be disposed of. It was however a matter for the person concerned as to whether he or she was willing to sign a disclaimer or not. 28. Mr Willis stated that he arrived at approximately 10.00 a.m. on Thursday, 21st March in order

to carry out the eviction, the Plaintiff and Mrs Eves having failed to leave by the deadline set out in the correspondence. As set out above, his first priority was to secure the removal of Mr and Mrs Eves. He was aware that they had accommodation to go to. Indeed he had personally contacted the Housing Department at an early stage to explain that Mr and Mrs Eves were about to be evicted and had nowhere to go. It was following that intervention that the Housing Committee had offered the Plaintiff and Mrs Eves the flat at 61 La Collette. He told Mr and Mrs Eves that they could take one suitcase each and as many belongings as they could handle between them. In the event they took personal clothing etc.. He asked them to identify any valuables left behind but they did not identify any. Mr and Mrs Eves left The Rest just before midday and were driven to their new accommodation by a police inspector. Langlois came in to carry out the inventory of the contents that afternoon. 29. Mr Willis said that his first priority was to deliver the voluminous legal and confidential files of Mr Eves to the new address and these were delivered to La Collette Flats the next day. On Monday, 25th March Le Gallais, on the instructions of the Viscount, began packing the contents. Mr Ian Pattle of his department was in charge of supervising the packing and removal of the contents during the week beginning 25th March. The plan was to deliver to Mr and Mrs Eves all those items which they wished to have at La Collette Flats and to store the remainder at Le Gallais. In practice the vast majority of items were delivered to La Collette Flats. 30. It was standard procedure to seek a disclaimer once there was nothing of any particular value left in the premises. Because of the affidavits sworn by Mrs Eves (referred to above) asserting that the contents of the home were all hers, he had assumed that, after removal of the Plaintiff's personal belongings such as clothing etc., nothing left in the property belonged to him. Accordingly a disclaimer had only been sought from Mrs Eves. By the end of Friday 29th March, the eviction was complete so far as he was concerned. Mr and Mrs Eves were at their new accommodation at La Collette; the contents had either been delivered to them at that address or placed in storage and Mrs Eves had signed a disclaimer in respect of all those items left on the premises. Accordingly, on Monday, 1st April, he met at The Rest with Advocate Roscouet, the advocate to Hambros, and Mr Adrian Rowland, a director of Hambros. He handed over the key together with a copy of the disclaimer thereby formally putting Hambros in possession of the property pursuant to the order of the Court. He made it clear that Hambros were free to dispose of the remaining contents as they thought fit in view of the disclaimer. 31. As to the evidence of Mr Eves to the effect that, on 3rd April, he had gone to Mr Grimshaw of Le Gallais to complain that some of his belongings were still on the property, Mr Willis recalled that Mr Grimshaw had telephoned him but he could not be certain of the date, nor of the exact nature of the query. He had however explained to Mr Grimshaw that the property was now in the hands of Hambros. 32. He stated that, on 4th April, he was telephoned by Mr Rowland and told that Mr Eves was at Hambros complaining about some missing items including two pictures. Mr Rowland said that Mr Eves was on his way round to see Mr Willis. The Plaintiff then arrived and repeated his claim about two pictures being missing from the garage. There was some discussion (which was explored before the Court) as to whether these were two pictures which had been situated behind a mattress in the dining room and had subsequently been delivered to La Collette. Suffice it to say that the Court is quite satisfied that these were two quite different pictures to those which are the subject of the claim. The upshot of the meeting on 4th April was that, after making

enquiries of Mr Rowland, Mr Willis said that there was no trace of any such pictures and that, in any event, Mrs Eves had signed a disclaimer in respect of all remaining items. The Plaintiff was not at all happy with this and made it clear that he would be making a claim for lost items. 33. Mr Willis said that he had not at any stage noticed two pictures in the garage although he accepted that he did not carry out a detailed search and was not involved in the day to day supervision of the removal of the contents. This was undertaken on his behalf by Mr Ian Pattle, assisted by Mr Lester Hamon and we now turn to their evidence. (d) Ian Pattle 34. Mr Pattle is an Enforcement Officer of the Viscount's Department with some fifteen years experience. He gave evidence which supported that of Mr Willis concerning the events of Thursday, 21st March and the delivery of the legal and confidential papers to the Plaintiff at La Collette Flats on Friday, 22nd March. 35. On Monday, 25th March Le Gallais arrived in order to pack and remove the contents. He was responsible for supervising that removal assisted by Mr Hamon. The policy was to ensure that a member of the Viscount's Department was present at all material times in order to ensure the security of the contents. Because no preparation had been made by the Plaintiff or Mrs Eves for the eviction, the first day was spent wrapping and packing items individually. Deliveries to La Collette Flats commenced on Tuesday, 26th March and continued periodically throughout the week. The Plaintiff and Mrs Eves had been asked to provide a short list of items of which they had the most urgent need, in order that these could be delivered first. However the list which was produced by the Plaintiff on 25th March was extremely long and covered the majority of the contents. Accordingly Mr Pattle and Mr Hamon exercised their own initiative as to which items they considered were most necessary for Mr and Mrs Eves and should therefore be delivered first. 36. On 25th March, Mr Pattle was in possession of the typed inventory prepared by Langlois as a result of their visit on Thursday, 21st March. He used this to check items. The Court has seen this document. Mr Pattle would write against each item in connection with its disposal. If it was delivered to La Collette Flats he would tick the item and write down the date of the delivery. If it was placed in storage he would note that against the item. Where, following the visit to Mrs Eves on Friday, 29th March (described below), an item was to be left on the premises for disposal, he would write a note to that effect against the item in the inventory. Where extra items were discovered which had been missed from the inventory, he would write down the item in manuscript on the inventory and make a note as to what had happened to it. However he accepted that he had not done this for all items situated in the garage. He or his colleague personally checked that each item was put into the appropriate Le Gallais van. 37. As to the garage, Mr Pattle said that it was full of old boxes filled with papers and other items. It was very dirty and disorganised. Items were piled haphazardly. There were a quantity of cans and compressors belonging to EPS Coatings Limited. The Plaintiff had leased part of the garage to EPS for storage purposes. EPS removed its items during the course of the week. Mr Pattle did not see any pictures in the garage. He said that he rummaged through the garage looking for any items of value. He looked inside many of the boxes. He was of the opinion that if two pictures of the size described by the Plaintiff had been stored on the left hand side at the back of the garage covered by a cloth or something similar, he would have found them. 38. By the morning of Friday, 29th March, the majority of the contents had been delivered to 61 La Collette Flats, which was now very full. What was left appeared to Mr Pattle to be of little or no value or in poor condition.

In accordance with normal policy, he therefore visited Mrs Eves to see what else she required to have delivered, whether she wished to put anything else into storage and whether she was prepared to sign a disclaimer in respect of those items which she did not wish to keep. 39. He met with Mrs Eves and they sat at the table in the kitchen of the flat. He had the Langlois' inventory open on the table but did not show it to her. He did not need to refer to it often as he was very familiar with the contents of each room at The Rest, having spent the week supervising the removal process. He went through each room in The Rest in turn asking Mrs Eves whether she wished to keep this item or that item and, if so, whether it was to be delivered to her or placed in storage. He wrote down the results of their conversation in his notebook. For the most part, he brought up specific items and asked Mrs Eves about them but Mrs Eves was very familiar with the contents of her home and occasionally she referred to items unprompted by Mr Pattle. In respect of each item she was asked whether she wished to have the item delivered to the flat, placed in storage or whether she wished to disclaim it. 40. In relation to the garage, Mr Pattle originally assumed that she would wish to disclaim all the items as they appeared to him to be of little value. He commenced by writing in his notebook " all items in garage ". However Mrs Eves came up with a number of items from the garage which she wished to keep. For the most part she brought up these items unprompted by Mr Pattle. Indeed some of them were not listed in the Langlois' inventory (e.g. the boxes of football programmes and the table tennis table). Mr Pattle thought that he may have prompted her concerning the mountain bike and the wine rack. According to Mr Pattle, Mrs Eves was perfectly calm throughout this process. He was aware that she could be excitable, as had been the case on the day of the eviction. He was at pains to ensure that the discussion was as calm as possible. He was quite satisfied that she understood fully the implications of the disclaimer. He asked her to read the notes in his notebook and to sign those pages. He specifically drew her attention to the two passages which appeared immediately above her signature on the second page:- "All other items not excepted on above list. I relinquish ownership of all of the above items, and they may be disposed of without further notice" . 41. Finally he confirmed the events of 4th April concerning the Plaintiff's visit to the Viscount's office and his complaint that the two pictures were missing. (e) Mr Hamon 42. He has been an Enforcement Officer at the Viscount's Department since 1996. He was asked to help supervise the packing and removal of the effects from The Rest. As he put it, his task was to make sure that nothing "went out of the back door". He confirmed that Mr Pattle had the Langlois inventory and was ticking off the items on the inventory as they were dealt with. 43. He did not recall going into the garage until the Thursday afternoon or Friday morning before he and Mr Pattle went to see Mrs Eves at La Collette Flats. When he went into the garage he recalled seeing piles of cardboard boxes which were full of magazines. Some of them were beginning to deteriorate. There were other items such as some bicycles, a table tennis table etc.. They looked around the garage for anything of value but did not identify anything which might be required by Mr and Mrs Eves. He did not recall seeing any pictures. If the pictures were of the size suggested by the Plaintiff i.e. some 34 x 25 inches, he would have seen them. 44. He was present when Mr Pattle prepared the disclaimer with Mrs Eves in her flat on the morning of Friday 29th March. In essence he gave evidence consistent with that of Mr Pattle including the fact that Mrs Eves mentioned some items from the garage but she did not mention any pictures. (f) The other evidence 45. We can

summarise the other evidence more briefly. Mr John Langlois is the chairman of Langlois and Mrs Susan Gay is a director of the company. They produced a valuation dated 30th August, 1995 of the contents of The Rest. This was done on the instruction of Hambros. Being a valuation it did not list items of a non-commercial value. They were subsequently called in on the afternoon of 21st March 1996 to prepare an inventory of the contents of The Rest for the Viscount's Department immediately following the eviction of the Plaintiff and Mrs Eves. As it was an inventory they included many items which they had not included in the valuation. Both accepted that the fact that the two pictures were not shown in the inventory as being situated in the garage did not mean that the pictures were not there. As Mr Langlois put it, they would not necessarily look under a cloth. Mrs Gay accepted that it was quite possible that they missed two pictures stored at the back of the garage under a cover of some sort. She accepted that they failed to list a number of other items which all parties were agreed were in fact situated in the garage i.e. a lego set, a table tennis table and two artificial Christmas trees. 46. Neither Mr Langlois nor Mrs Gay could give much assistance as to the value of a Kafka painting. Neither had previously heard of him. Since the mention of him in this case, they had made enquiries but there were no records of any Kafka painting having been sold at auction. In the absence of an auction price, it was very difficult to assess market value. One could only assess the quality and nature of a picture and try to assess what someone might have paid for it. Mrs Gay had searched the internet and had found reference to an exhibition by fourteen Czech painters which said as follows:- "This exhibition of a small selection of works on paper by fourteen of the Czech Republic's most renowned artists is on loan from the Ann & Jacques Baruch Collection. The diversity of expression found in this display is an indication of the ingenuity of each of these personalities. Dating from the 1960s to the 1990s, no one style or expression dominates. Under the oppressive communist system, the artists worked in cultural isolation without contact or critics, segregated from the mainstream of world art. The tension of these troubled times evoked an internal authentic approach in thought and form, as evidenced in their work. Perhaps without the pressures of the art world, they had an opportunity to honestly create art for art's sake". (emphasis added). Kafka was one of the painters. Mr Langlois agreed that a painting of a street scene in St. Maxime could not be described as abstract art, as referred to in the Dictionnaire des Peintures. 47. Mr Langlois also confirmed that he had prepared the inventory and valuation of items at the Blue Horizon offices in February, 1994. He was asked about item 8 in the back office "a glazed print - Mediterranean fishing village" upon which he had placed a value (when added to six other items) of £3. He said that this meant that the value of the print was nominal. It would only be included at auction if sold with other more valuable items. The fact that he had described it as a print meant that he had assessed it as a print and not as a watercolour or an oil. 48. Finally Mr Langlois was asked about market values generally. He emphasised that it was very difficult without seeing the particular picture. But in general, an oil painting of the sort described (i.e. St. Tropez harbour) by an unknown artist would probably fetch about £30 or £40 at auction. A print of the same scene would fetch slightly less. A watercolour of a South of France street scene by an unknown artist would fetch at auction in the region of £20 or £30 if 2 x 1 ½ feet. If it was larger, say 3 x 2 feet, it might fetch £50. 49. When it was put to him that the Plaintiff said that he paid (in sterling terms) approximately £3,000 for a watercolour of a street scene of the South of France, Mr Langlois said that, for a picture which

had no "history", £3,000 would be a lot of money. If it was bought at a gallery, then there would be a very substantial mark up on the price which the picture could be expected to fetch at auction.

50. Mr Christopher Renault is employed in the Désastre Section of the Viscount's Department. He had responsibility for the administration of the désastre of Blue Horizon in 1994. He instructed Langlois to prepare an inventory and valuation of the contents of the offices of Blue Horizon at 9 Caledonia Place. He was present when the inventory and valuation was carried out by Mr John Langlois on 14th February, 1994. 51. Subsequently he met with the Plaintiff at the Blue Horizon offices on 6th April, 1994. The purpose was for the Plaintiff to identify any items which he claimed belonged to him rather than to Blue Horizon. They went around the premises. Mr Renault made a hand-written list of items claimed by the Plaintiff. This list was produced to the Court. Two pictures were included. One was listed as "one print of South of France from office no 2". The other was described as "print of South of France". Mr Renault said that the second of these had been listed in the Langlois inventory as being situated in the "back office". It was described under item 8 of that inventory as "a glazed print - Mediterranean fishing village". The first picture did not appear on the inventory but it had been hanging in the office known as "office No. 2". Before us, the Plaintiff accepted that this was so. 52. Mr Renault said that he then prepared a receipt (No. 0702) which was dated 6th April and was signed by the Plaintiff. It listed the items delivered to him on that day from the Blue Horizon offices. Included amongst the items listed on the receipt were "two prints in frames (South of France)". 53. Mr Renault said that he had released the pictures because he assumed them to have no value. If he had thought that they had any value, he would have sought a formal valuation. He was supported in this by the fact that Langlois had valued the print situated in the back office as being of nominal value. He said that both pictures were glazed prints (i.e. they were covered by glass). That was why he had described them as prints in receipt 0702 and in his handwritten list. He said that they were some 10 x 8 inches. When it was put to him by the Plaintiff that they were much larger than that, namely some 34 x 25 inches, he said that he was certain of the size because he had carried them out himself. He could not now recall why he had described them as being of the South of France. He thought it was possible that the Plaintiff had told him this; alternatively it was from their appearance. However, he could not now recall their content. Although he did not paint himself, his mother had painted both oils and watercolours. He would know an oil painting if he saw one. He was satisfied that these were prints. 54. Mr Adrian Rowland is a director of Hambros. He recalled attending at The Rest with Advocate Roscouet to receive the keys from Mr Willis on 1st April. He returned for a longer inspection on 3rd April. He was accompanied by Mr Callec, an employee of Hambros. They spent some three hours looking around the property. It was a mess. He went into the garage. There were boxes of magazines and lots of other items. He instructed Mr Callec to organise for the disposal of all the contents. He understood that Mr Callec had engaged Mr Manning to carry out this function and that it was effected on 3rd/4th April. Mr Willis had informed him on 1st April of the disclaimer by Mrs Eves and that Hambros were therefore free to dispose of all of the remaining items in the premises. It did not occur to them that any of them might be the Plaintiff's. He did not see any pictures in the garage. He confirmed that the Plaintiff made three visits to the Hambros office on 4th April to complain about missing belongings. These were heated meetings. Although Mr Rowland thought that the Plaintiff had not mentioned the

two pictures specifically at the first meeting, he accepted in the light of Mr Willis' file note (to which we have made reference earlier) that the Plaintiff may have done so. 55. Finally we can refer very briefly to the evidence of Mr Paul Savory, a foreman at Le Gallais and Mr Andrew Wellman, a Director of Alexander Forbes, insurance brokers. Mr Savory confirmed that Le Gallais had been instructed to carry out the removal from The Rest and had taken certain items into temporary storage at the conclusion of the week of 25th March. Le Gallais had been working from the inventory and valuation dated 30th August 1995 prepared by Langlois. He was not sure how they had received this. The Viscount did not have a copy of this document and was working off the much fuller inventory of 21st March 1996. No list of the items taken into temporary storage had been made. He produced a form dated 17th April, 1996 which showed that what was described as "all goods" were to be removed from the Le Gallais stores and delivered to 61 La Collette Flats. The document had been signed by the Plaintiff by way of acknowledgement of delivery. Although not mentioned in that document, we were shown other documentary evidence suggesting that a fridge and a gas cooker were in fact retained by Le Gallais and later sold at auction for the benefit of Mrs Eves. 56. Mr Wellman explained the proposal form for the contents insurance to which we have referred earlier and which was before the Court. He accepted that customers did not always fill out such forms correctly and that insurers could sometimes show flexibility in the event of loss when a form had not been filled out completely accurately. Findings of fact (a) Were there two pictures in the garage? 57. It is not disputed that there were two pictures of the South of France situated in the Blue Horizon offices, nor that these were delivered to the Plaintiff on 6th April, 1994. These are the two pictures at issue. Nor is it disputed that these two pictures were not found at The Rest at the date of the eviction and they have not been accounted for to the Plaintiff or Mrs Eves by the Viscount. The question which we have to decide is whether they were still situated in the garage at the Rest on 21st March 1996. 58. The Plaintiff, supported by his wife, says that, since 1994, the pictures had been placed at the back left hand side of the garage. There was some inconsistency between the Plaintiff and his wife as to whether the pictures were covered by wood (according to the Plaintiff) and by cloth (according to Mrs Eves). We do not think that that inconsistency is particularly significant. They both saw the two pictures on 3rd April when they were walking past. By then the pictures had been uncovered and brought to the front left hand side of the garage as if ready for taking away. They contacted Le Gallais to express their concern. Nothing came of this. Early the next day they saw that everything had been removed from the garage, including the pictures. It is not disputed that they immediately went to Hambros and then to the Viscount's Department in order to complain about the missing pictures. As we have already said, we find that the missing pictures were mentioned by the Plaintiff to Mr Rowland upon his first visit to Hambros that morning. Later that day, the Plaintiff also complained about the missing pictures to the police. 59. The Viscount relied primarily on the evidence of Mr Pattle and Mr Hamon to the effect that they had rummaged through the garage and did not see the two pictures. They believed that if the pictures had been there, they would have found them. Mr Mourant also relies upon the weaknesses of the Plaintiff's evidence in relation to the value of the pictures (to which we shall refer later) in support of his contention that we should not accept the Plaintiff's evidence that the pictures existed at all. He also relies upon the fact that, in evidence, the Plaintiff and Mrs Eves described the pictures as

having wooden frames whereas, in an answer to interrogatories which he swore on 24th April, 1988, the Plaintiff stated that he did not know what kind of frame the two pictures had. Mr Maurant further points out that neither Mr Rowland nor Mr Willis saw the pictures in the garage although it was accepted that neither of them carried out a detailed inspection. He also relies upon the fact that Mrs Eves did not refer to the pictures when she signed the disclaimer in relation to the contents of the garage. 60. We have not found it easy to resolve this issue. But on balance we have concluded that the Plaintiff has satisfied us that the two pictures were stored in the garage on 21st March, 1996. We would summarise our reasons for so holding as follows:- (i) Given that the pictures were definitely in existence on 6th April, 1994, the only alternative to their being at The Rest on 21st March, 1996 was that they had been sold or otherwise disposed of by the Plaintiff or Mrs Eves between 1994 and 1996. Our assessment of the evidence as to the general state of the contents of The Rest in 1996 and our assessment of the Plaintiff and Mrs Eves from their evidence was that they were "hoarders"; they tended to keep things rather than dispose of them. (ii) If the pictures were not there at the date of the eviction, the Plaintiff and Mrs Eves are lying in saying that they were and that they saw them on 3rd April. More significantly, the Plaintiff must have been lying on 4th April when he went round to Hambros and then to the Viscount's Department in order to complain of the missing pictures and was also lying when he went to the police later that day to make a complaint. Given the stress and strain of the events surrounding the eviction, we think it improbable that the Plaintiff and Mrs Eves were in the appropriate frame of mind to plan an elaborate deception in relation to two pictures on 4th April and to see this through by complaining to the police as well as to the Viscount. If it was a deception, why confine it to two pictures? In our judgment the actions and words of the Plaintiff (including his outrage and aggression at the offices of Hambros and the Viscount on 4th April), were consistent with a man who genuinely believed that two pictures which he owned had gone missing at the end of a fortnight which had seen him evicted from his home. (iii) As will be seen later, we do not accept certain aspects of the evidence of the Plaintiff and his wife in connection with the pictures. But, having seen and heard them in the witness box we think that, in relation to the core allegation as to whether or not there were two pictures stored in the garage, they are telling the truth. 61. In so finding, we make no criticism of the honesty or efficiency of the officers of the Viscount's Department who were responsible for the contents. We have no doubt whatsoever that, as they assert, they did not in fact see the pictures. This was a garage stuffed full of junk, boxes, old belongings and so forth and the pictures were comparatively small, were covered up and were stored right at the back left hand side of the garage. We are not surprised that they were missed. It would be an easy thing to do. Nor do we make any criticism of Hambros or those employed by Hambros to dispose of the contents. We are unable to make any finding as to exactly what happened to the pictures. We have not heard evidence from all the possible witnesses. But so far as Hambros and its contractors were concerned, they had been told by the Viscount that all of the remaining items at The Rest (including all the contents of the garage) had been disclaimed by Mrs Eves and they were accordingly free to do with them as they wished. 62. There is then the question of who owned the pictures. The Viscount relies on the affidavit sworn by Mrs Eves (referred to in paragraph 21(i) above) to the effect that the contents of The Rest were all hers save for the "personal belongings and effects" of the Plaintiff. We accept the evidence of

the Plaintiff and Mrs Eves that one of the pictures was given to him by Mr Leslie Minty and the other was purchased by him whilst on holiday in the South of France. They therefore belonged to him and fell within his personal belongings and effects. He is therefore entitled to claim for their loss. 63. Mr Mourant accepted that the Viscount owed a duty of care towards the Plaintiff (and Mrs Eves) in respect of their possessions and was under a duty to account to them for those possessions. He accepted that, if the Court found that the pictures were in the garage at the date of the eviction, the Viscount was liable in damages to the Plaintiff for their value. We think that he was correct to make that concession and accordingly we now turn to consider the value of the pictures. (b) What was the value of the pictures? 64. The Plaintiff's case on the pleadings was very clear. He had begun by writing to the Viscount on 16th May 1996 asserting that one picture was by Kafka with an estimated value of £10,000 and the other was of St. Tropez with an estimated value of £5,000. He demanded a cheque for £15,000 by return. That remained his stance and was the assertion in the pleadings to which we have referred earlier. 65. When he came to give evidence, the Plaintiff stated that he had only considered the possibility of the St. Maxime picture being by Kafka after it had disappeared. He produced no evidence in support of the assertion that the picture was by Kafka save that he and his wife thought that there might be a "K" in the signature. In essence it became clear that it was mere speculation on the part of him and his wife. Furthermore it was inconsistent with what we know of Kafka from the evidence given in this case. From the Dictionnaire des Peintres produced by the Plaintiff, he was apparently an abstract painter. Furthermore, the inference from the information found on the internet by Mrs Gay was that he seems to have spent most of his time behind the Iron Curtain. The picture of St. Maxime, as described, cannot possibly be said to be abstract art, nor is there any evidence that Kafka would have been in a position to live in Paris and travel down regularly to the South of France in order to paint whereas this was, according to Mrs Eves, what was said to her about the artist when the picture was purchased. In our judgment the Plaintiff has failed to show any grounds whatsoever for concluding that the picture of St. Maxime was painted by Kafka. Nor, in any event, has he produced any evidence of what the market value of a Kafka painting would be. 66. The Plaintiff's case therefore becomes that we are dealing with an oil painting of St. Tropez by an unknown artist which he was given in 1979 and a watercolour of St. Maxime by an unknown artist which he purchased in St. Maxime for some 30-35,000 francs in 1979. When giving evidence, the Plaintiff stated that he had made no enquiries as to the market value of these two pictures. Indeed he did not claim that the figures of £10,000 and £5,000 respectively were their respective market values. He stated that the figure was taken as being their value to him. He admitted that he had no idea what they would fetch if sold. We have to remind ourselves that the Plaintiff is not entitled to damages for sentimental value. We can only award compensation at the level of the market value of these two pictures. 67. Were there two valuable paintings as claimed by the Plaintiff? We have concluded that there were not. In our judgment these two pictures were glazed prints of the respective scenes having a very modest value. Our reasons for so concluding can be summarised as follows:- (i) We have independent evidence of the nature and value of one of the pictures. In the February 1994 valuation, which Mr Langlois prepared in respect of the Blue Horizon désastre, he described the picture which was hanging in the back office as being "a glazed print" upon which he placed a purely nominal value (£3 when added to other items).

Unfortunately it did not emerge in evidence whether this was the St. Tropez or the St. Maxime picture. The Plaintiff criticised Mr Langlois' evidence on the grounds that he had probably given the picture no more than a cursory inspection and he had failed to list the second picture which was hanging in the "no 2 office". However Mr Langlois is a very experienced auctioneer and valuer. We consider it to be inconceivable that he would mistake an oil or a watercolour for a glazed print. We therefore accept his evidence that the picture which he saw was not an oil or a watercolour. Although he only gave evidence in respect of one of the pictures, this finding is damaging to the credibility of the Plaintiff and Mrs Eves in relation to both pictures. Whether the picture seen by Mr Langlois was that which was claimed to be an oil or that which was claimed to be a watercolour, the fact remains that we have found the evidence of the Plaintiff and Mrs Eves in respect of that picture to be wrong. That therefore damages their evidence in relation to the other picture. (ii) Mr Renault's handwritten notes, which he made when he went around the Blue Horizon premises on 6th April, 1994 with the Plaintiff, listed both pictures as prints of the South of France. We accept, of course, that Mr Renault, unlike Mr Langlois, is not an expert. Nevertheless he stated that his mother painted and that he knew an oil painting if he saw one. He was satisfied that both of these pictures were prints. Whilst not conclusive on its own, his evidence is consistent with that of Mr Langlois. (iii) When writing out receipt 0702 for signature by the Plaintiff, Mr Renault described both pictures as prints. This was signed by the Plaintiff. Again we accept that this is not conclusive as the Plaintiff may not have been paying particular attention to what was written. Nevertheless it gives further support for the view that these two pictures were both prints. If the Plaintiff had really thought that one was a valuable oil painting and the other a valuable watercolour, he would surely have queried the description which he was signing. (iv) The Plaintiff asserts that he paid 30,000 to 35,000 francs for the St. Maxime picture in 1979. He said that he paid by credit card. Yet he produced no evidence to support this assertion. On the contrary he admitted that he had not even made enquiries of his bank or credit card company in order to see if they had records which would show what he paid. On his evidence the Plaintiff paid (in very approximate sterling terms) some £2,500 to £3,000 for the St. Maxime picture (using the rate of exchange which the Plaintiff thought applied at the time, namely 11.50 to 12 francs to the pound). Yet when, in 1989, he filled in a proposal form for his household insurance, in response to the question "what is the replacement cost of your ... pictures, works of art, curios and collections?" he inserted the figure of £500. Similarly when asked to list on the form any single item with a value of more than £1,000 he left it blank. The Plaintiff asserts that perhaps he did not give the matter close attention and he was more concerned with the aggregate insurance value, which was sufficient. We do not find this convincing. The question about pictures was very simple. If the Plaintiff had failed to answer the question, there might have been more force in what he says. However he did answer it. He asserted to the insurance company that the replacement cost of his pictures etc. was £500. We find that to be wholly inconsistent with a belief on his part that he owned two valuable paintings, for one of which he had paid up to £3,000. (v) We have considered the other pictures at The Rest as listed and valued in the valuation prepared in August 1995 by Langlois Limited. It is notable that all the pictures are of very modest value. The highest individual value is £20. On the face of it, it would have been completely out of character for the Plaintiff to splash out £3,000 on a picture. (vi) The Plaintiff and Mrs Eves both

asserted that these two pictures were the Plaintiff's favourite pictures. If the Plaintiff is right, they were also by far the most valuable pictures which either of them owned. In these circumstances we find it inconceivable that, on receiving delivery of the two pictures from Mr Renault in 1994, the Plaintiff stored them in the garage until March 1996. We accept that he was much taken up during this period with the various litigation in which he was embroiled concerning Blue Horizon, Glendale Hotel and his own home. Nevertheless it is inherently unlikely that a person would store his two favourite and most valuable pictures in a garage filled with junk and which was leased out for storage purposes to a firm of paint suppliers, so that the employees of such firm would have free access to the garage. In our judgment, if these really were the Plaintiff's favourite and most valuable pictures, we think that he and his wife would either have hung them in the house or, at the very least, stored them in the house where they would have been safer and the conditions would have been better. We heard evidence that a number of items, including pictures, were stored in the dining room. The Plaintiff's actions in leaving the pictures covered over in a garage are much more consistent with their being two small glazed prints of very modest value. (vii) Additional doubt on the claim that these two pictures were the Plaintiff's favourite paintings is thrown by the fact that, when answering interrogatories in these proceedings in 1998, he answered on oath that he did not know what the frames of the two pictures were made of. Yet when he gave evidence he asserted that they were both wooden frames and he and his wife went on to describe them in some detail. (viii) If these really were the Plaintiff's two favourite pictures of such a high value, we consider it very unlikely that Mrs Eves would have failed to remember their existence when discussing the disclaimer with Mr Pattle. She did, after all, recall such items as a table tennis table and football programmes. 68. In summary we are unable to accept that the Plaintiff paid 30,000 to 35,000 francs for the picture of St. Maxime. We find that both pictures were glazed prints. 69. As to value, we have direct evidence of the value of one of the prints. Mr Langlois valued the glazed print situate in the back office at the Blue Horizon offices at a nominal £3 when added to other items. He explained this low figure on the basis that such items would not sell at auction on their own but would have to be included with other items. However we take account of the fact that Mr Langlois' valuation was prepared for the purposes of a *désastre*. We consider that such prices are often lower because of the forced nature of such sales. If a person is prepared to take longer to sell an item, its value may be slightly greater. Mr Langlois accepted the accuracy of a letter dated 22nd March 2001 from Mr John Falle, Managing Director of the Napier Gallery, St. Helier, to Mr Eves. In that letter Mr Falle made it clear that the valuation of prints was a complex matter. As with all art, factors that needed to be taken into account included veracity, rarity, age (up to a point), condition and provenance. It was not true to say that all prints were virtually worthless even by comparison to watercolour paintings and oil paintings. Mr Langlois indicated that a print of St. Tropez harbour would fetch slightly less than an oil painting of the same scene, which he said would be £30-£40. We conclude that there is no reason to think that the valuation of the other print would have been materially different. 70. The fact remains that we are dealing with prints by an unknown artist of commonplace scenes of the South of France. We are willing to make some allowance for the fact that Mr Langlois' valuation related to a forced sale at auction. Nevertheless we are quite satisfied that the market value of these two prints was very modest.

Doing the best we can we assess that market value as being £25 in respect of each print. 71. Even if we had concluded that the missing pictures were in fact a watercolour and an oil, we would still have considered their value to be very modest. Again they would remain paintings of commonplace scenes by unknown artists. If we had so found then, having regard to the evidence of Mr Langlois as to the value of such oils and watercolours, we would have assessed the value of each picture as being in the region of £30-£50. 72. However in view of our finding that these were prints, we award damages of £50 to the Plaintiff in respect of the missing pictures. The other items claimed The evidence 73. The evidence in relation to each of the other items claimed by the Plaintiff can be summarised very briefly. (a) Scaletrix . The Plaintiff and Mrs Eves said that a Scaletrix set was in the garage. According to Mrs Eves the main set was in a box and there was a plastic bag containing extra cars etc.. She asserted that the extras contained in the bag were delivered to her at La Collette Flats but that the main set had gone missing. Mr Pattle agreed that there was a Scaletrix set in the garage. However it was not a new set in a Scaletrix box. He saw tracks etc. in one of the boxes situated in the garage. Mr Hamon also said that the Scaletrix was loose in one of the big boxes in the garage. He could not recall it being in two parts as suggested by Mrs Eves. Mr Pattle said that the Scaletrix was delivered to La Collette Flats on 29th March in accordance with Mrs Eves instructions in the disclaimer and he had marked this against item 298 (shown as Scaletrix) of the Langlois inventory dated 21st March 1996. (b) Lego . Mr Pattle and Mr Hamon both accepted that there had been some Lego in one of the cardboard boxes as was claimed by the Plaintiff and Mrs Eves. However the Defendant's case is that this item was covered by the disclaimer. Accordingly it was not removed prior to the property being handed over to Hambros. Presumably it was disposed of by the Hambros contractors. (c) Table Tennis table . Mr Pattle and Mr Hamon accepted that there was a table tennis table stored in a folded position against a wall in the garage. It was accepted that, in the disclaimer, Mrs Eves had made an exception for the table tennis table and had instructed that it be placed in temporary storage at Le Gallais. Mr Pattle said that he gave instructions that this should be done. Mr Hamon gave evidence that he saw the table tennis table being placed into the Le Gallais van in order to go into storage. It was one of the last items to be loaded. He saw it being tied down. The Plaintiff and Mrs Eves say that the table tennis table was not amongst the items subsequently delivered by Le Gallais from temporary storage to La Collette Flats on 17th April. It has gone missing. (d) Table tennis bats and balls . The Plaintiff asserted that these were situated in the garage. Mrs Eves, on the other hand, thought that they were kept inside the house, possibly downstairs. Neither Mr Pattle nor Mr Hamon saw these items in the garage. They have not been seen since the eviction. (e) Christmas trees . The Plaintiff and Mrs Eves assert, and Mr Pattle and Mr Hamon accept, that there were two artificial Christmas trees situated in the garage at the time of the eviction. There is however a difference of opinion as to whether they were in a usable condition or not. The Defendant asserts that they were covered by the disclaimer. They were accordingly left in the garage and not removed prior to the property being handed over to Hambros. (f) Ladder . There were a number of references to the existence of all or part of a metal ladder situated outside the house. However the Plaintiff made it clear that the claim related to a wooden step ladder which was situated in the garage. He said that he had been given it by a friend a number of years previously. Neither Mr Pattle nor Mr Hamon recalled seeing a wooden step ladder in the garage.

The Viscount's case is that, if there was such a ladder, it was covered by the disclaimer. Findings of fact 74. We propose first to deal with the ownership of the various items. As we have already said, Mrs Eves swore affidavits in 1992 and 1995 asserting that all the contents of the Rest were hers or her children's save for the Plaintiff's personal clothing, belongings and effects. 75. On 25th March 1996, a few days after the eviction, the Plaintiff wrote to the Viscount and said:- "I would also inform you that as 95% of the contents belong to my wife and my sons, any removal of their goods, in view of the order of the Royal Court of 18th August, will be unlawful". The same day he wrote again saying:- "I am now enclosing a list of the furniture and effects belonging to my wife which she wishes to be transferred to the above address without delay". He attached a lengthy list which referred to almost everything which one could expect to find in the Rest. He listed furniture, TV, radios, pictures, kitchen equipment, carpets and curtains etc.. In order to emphasise the point as to ownership he wrote at the foot of the list:- "all these items are my wife's possessions and as such must be respected, as they are not part of the *degrèvement*". 76. Finally, on 21st April, Mrs Eves wrote to the Viscount and confirmed that 95% of the contents belonged to her and her sons. She made a claim in respect of certain listed items which she said were missing. The listed items for which she claimed included the Scaletrix (which she said belonged to Robert) and the Lego. 77. In evidence the Plaintiff stated that he had bought the Scaletrix and the Lego for his sons in about 1979/80. He said that he had bought the table tennis table many years ago for the children together with the bats and balls and that he owned them. He also claimed ownership of the two artificial Christmas trees and the ladder. He claimed that all of these fell within the 5% of the contents which he owned. 78. Mrs Eves agreed that the Scaletrix and the Lego belonged to the children. She said that the Plaintiff had bought the table tennis table. She was not sure about the Christmas trees. 79. It is quite clear to us that, at a time when all of the Plaintiff's assets were under threat because of the claims against him by Hambros, the Plaintiff and Mrs Eves concluded that it was in their interest to assert that almost everything situated in the Rest belonged to Mrs Eves and the children, so that the contents would be safe from attack by Hambros or any other creditors of the Plaintiff. That remained their position even after the eviction as is shown in the letters to which we have referred. Now, conveniently, it is said that the particular items claimed for all happened to be part of that very small proportion of contents which belonged to the Plaintiff. We do not accept this. The Plaintiff and Mrs Eves are to be held to the version of events which they have consistently put forward since 1992, namely that virtually all the contents belonged to Mrs Eves and the children. We do not accept the Plaintiff's evidence that the items claimed belonged to him. We hold that the Scaletrix and the Lego belonged to one or more of the children, failing which to Mrs Eves. We hold that all the remaining items listed were owned by Mrs Eves. 80. The Viscount made it quite clear in his Answer filed on 19th June, 1997 that he did not accept that the Plaintiff owned the items claimed. He asserted that they were owned by Mrs Eves. The Plaintiff was therefore on notice that this point was being taken against him. Indeed he acknowledged as much because, in his Reply dated 25th June 1997, he referred to the possibility of joining Mrs Eves to the action. However he never did so. 81. Our finding that Mrs Eves or the children owned all the items is sufficient to dispose of the claims in this respect. The Plaintiff did not own any of the items and therefore he cannot claim for their loss. However, we have heard full evidence on the matter.

Accordingly, although no application to this effect was made by the Plaintiff, we considered at one stage whether to join Mrs Eves as co-Plaintiff. We decided not to do so as we could foresee a possible argument about prescription. Furthermore we concluded that, in view of our findings of fact, the joinder would not achieve anything for the reasons which follow. 82. We are satisfied that the disclaimer signed by Mrs Eves on 29th March was a legally binding document. We accept the evidence of Mr Pattle and Mr Hamon as to the circumstances in which the disclaimer was signed. In our judgment Mrs Eves knew what she was doing. On occasion she promoted discussion of particular items. Whilst we have no doubt that the events of the previous week had been extremely distressing for her, we are quite satisfied that these events had not rendered her unfit to participate properly and fully in a discussion as to what should be done with the items which still remained at the Rest on the Friday morning. There was "cause" for the disclaimer because otherwise, items of no or nominal value would have to be put into storage at the expense of the Plaintiff and Mrs Eves or delivered to the flat. We have considered the Plaintiff's criticisms of the procedure used for the disclaimer. We think there was some force in some of them and we make certain observations later on this aspect. However we are satisfied that none of those criticisms are sufficient to detract from the legal effect of this document. 83. The disclaimer relinquished ownership of all items in the garage except for " ... boxes of football programmes, 1 wine rack, Scaletrix, orange mountain bike style bike [sic], 2 deck chairs, table tennis table ". It follows that Mrs Eves had relinquished ownership of the table tennis bat and balls, the Christmas trees and the ladder. She could not therefore claim successfully for the loss of these items even if she were to be added as a co-plaintiff. In relation to the Lego, even though in law it probably belonged to one or more of her children rather than to Mrs Eves personally, she held herself out as being authorised to speak for the children in relation to items situated in the Rest (e.g. she gave instructions concerning the Scaletrix) and in our judgment the Viscount was entitled to act on her instructions. It is to be noted that she claimed in the letter of 21st April, 1996 for the loss of the Lego. We therefore hold that the disclaimer also extended to the Lego so that a claim would fail. 84. As to the Scaletrix, we accept the evidence of Mr Pattle to the effect that all the Scaletrix which was in the garage was delivered to La Collette Flats. We therefore dismiss the claim in this respect. 85. As to the table tennis table, we accept the evidence of Mr Hamon that it was taken into temporary storage by Le Gallais. We are unable to ascertain what happened to it thereafter. However, if Le Gallais failed to deliver it to Mrs Eves, her claim lies against Le Gallais and not against the Viscount. We consider that the Viscount had discharged his duty to her by placing the items into storage at a reputable storage house in order to be held for her. 86. For the various reasons which we have described above, we find for the Defendant. We therefore dismiss the Plaintiff's claims in respect of all the other items and would do so even if Mrs Eves were joined as a co-Plaintiff. Postscript 87. Whilst not essential to our decision, we think it might be helpful to make certain observations in case they are of assistance in future cases. 88. Although we have accepted the evidence of Mr Hamon on behalf of the Viscount that the table tennis table was taken into temporary storage by Le Gallais, there is nothing in writing to support this. Because it was an item which was omitted from the Langlois inventory, there is no manuscript note on the inventory to the effect that it was taken into storage (unlike items which were listed on the inventory). Similarly, it appears that Le Gallais do not make any list of items taken into

temporary storage. We think that this is unsatisfactory and we invite the Viscount to consider whether he needs to ensure that a list of items placed in storage is made and acknowledged by the relevant storage company, so that there is clear proof of what was and what was not taken into storage. 89. The Plaintiff was very critical of the fact that the inventory of the contents of the Rest made on 21st March by Langlois was not shown to him or his wife until the discovery process in this action. In particular, he contended that it should have been shown to Mrs Eves at the time of the disclaimer. The response of the Viscount's officers was that it was a document prepared for the use of the Viscount's department and it was not their practice to show it to the person evicted. In our view it would be helpful for such an inventory to be disclosed to the person evicted as soon as possible. This would help identify any errors or omissions and would also reduce the scope for misunderstanding or mistrust. We invite the Viscount to review his practice. 90. We understand the policy of the Viscount of seeking to obtain a disclaimer in respect of what is left after removal of all items which are required by the person who has been evicted. However it is a significant decision for a person to agree to disclaim items hitherto owned by him. We think it is of importance that the person being asked to disclaim should be given - and be seen to be given - the maximum opportunity to bring to mind any item situated on the relevant premises. We think that the method followed should be reviewed. As we have already said - and as the Plaintiff strongly contended - we think that as a first step the person being asked to disclaim should be shown the inventory of contents. This will often stimulate the memory. Furthermore a disclaimer along the lines of "everything else situated in the premises" is potentially vulnerable to misunderstanding and a manuscript note in the officer's notebook (with no copy available for the person disclaiming) is too informal and is not ideal. It was criticised strongly in evidence by Mr Langlois for purporting to be an inventory. We recommend that the Viscount should review the matter with the help of an advocate with a view to producing a standard form to be used for disclaimers. The form would allow for the maximum possible particularisation of items which are to be disclaimed, although we accept that there will always be a certain amount of "junk" which cannot be particularised. The form should also specify those items still on the site which the person decides not to disclaim and what is to happen to those items (e.g. storage or delivery to the new address). There should be a clear statement of the legal effect of signing the document and there should be provision for a copy of the completed document to be left with the person concerned so that he has an immediate record of what he has disclaimed. In making these recommendations we intend no criticism of the officers of the Viscount's Department in the case, who were following normal practice. 91. We have heard no evidence as to what happened in the two hours or so between the arrival of the Viscount's officers at the Rest at 10.00 a.m. on Thursday, 21st March and the departure of the Plaintiff and Mrs Eves shortly before midday. We know that the Plaintiff and Mrs Eves feel a deep and abiding sense of bitterness and injustice generally about the whole process leading up to their eviction and specifically about the events that morning. We make no findings in relation to events during that two hour period as we have not heard the evidence. But we have seen the correspondence which led up to the eviction and we have heard evidence as to what happened prior to the arrival of the Viscount's Officers and after the departure of Mr and Mrs Eves. We are quite satisfied that the Viscount had no alternative but to carry out the eviction and that the Viscount's Officers were only doing their

duty. The Plaintiff and Mrs Eves had made it abundantly clear in advance that they were not going to co-operate with the eviction in any way. They have only themselves to blame for what occurred. Subject to the caveat referred to above in relation to the events during the two hour period, we have concluded that the officers of the Viscount undertook a very difficult task in a proper and professional manner. 92. Finally we would wish to pay tribute to the manner in which the Plaintiff conducted the case before us. Every so often his anger and bitterness bubbled to the surface but at all times he displayed courtesy to the Court and his submissions (particularly his closing submissions) were well prepared and well argued. 93. For the reasons which we have given, we award the Plaintiff damages of £50. No Authorities Page Last Updated: 02 Nov 2015

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Prepared on 25 October 2026 · Esheria