

JERSEY / JUDGMENT

Gibbons -v- Monarch and Gibbons

[2016] JRC 059A (10 March 2016)

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judgment

the deputy bailiff: 1. This is an application by Robert Gibbons, the second respondent, to adjourn a hearing presently set down for one day on 16 th of this month. The hearing which was to be mostly on the papers is to determine whether or not the substratum of the first respondent, Monarch Investments Limited, has been lost with an aim, eventually, if agreement cannot be reached between the parties of moving to a just and equitable winding-up. This is a dispute between two brothers who are the shareholders in the first respondent. Directions were given on 26 th August, 2015, at a time when the second respondent was a litigant in person leading to what was then intended to be the completion of this matter. 2. By consent, on 29 th December, 2015, the dates then set aside for the hearing were adjourned. The reason for this was that the second respondent had then recently instructed legal advisors to assist him and as a result of that adjournment the date presently fixed, 16 th March, was put in the Court diary. Since that time the second respondent has failed to give his lawyers sufficient instructions to meet the requirements of the directions specifically to prepare evidence and to prepare outlined submissions and to file those in proper time with the Court. He applies for an adjournment. He does so on the basis of two letters from Dr Thomas speaking to the stress for which he is being treated. He is, as is characterised to me, overwhelmed by the requirements of preparing for the court cases that he is dealing with. 3. In the first of those letters, that of the 2 nd February, 2016, Dr Thomas indicates that the second respondent continues to be unable to deal with the necessary preparation for the imminent hearings due to what is characterised as a "psychiatric condition". His inability to prepare the hearings and meet procedural deadlines compound his stress levels and secondly, that, in Dr Thomas' view, that situation was likely to recur until the ongoing legal situation had been resolved. In a follow-up letter of 10 th March provided to the Court this morning Dr Thomas indicated that the second respondent's anxiety levels hindered his ability to prepare for and respond to procedural deadlines but, nonetheless, he had the capacity, the ability, to instruct a lawyer and Dr Thomas could see no reason why the second respondent could not be in a position to provide proper instructions. Clearly, then, we are faced with a situation where the second respondent has the mental capacity to provide instructions but is overwhelmed by the burden of doing so in the context of these proceedings and other proceedings that he is involved in. 4. Advocate Palmer, for the second respondent, urges the Court to grant this one further

adjournment. She is confident from her own dealings with her client that he can give instructions and that she is also confident that with his lawyers help he can put together the evidence needed to be before the Court if he is afforded a short further delay. Advocate Renouf, on the other hand, for the representor says that, in effect, enough is enough, this has gone on quite long enough and his client, who is also in poor health, is prejudiced by the delay and is entitled to finality. 5. The principles that I am to apply are well rehearsed in various judgments of the court and for convenience I look to the case of Cummins-v-Howlands (Furniture) Limited

[2014] JRC 165 at page 3 of 7 where, in quoting from the Les Pas Holdings case (States Greffier-v-Les Pas Holdings Limited

[1998] JLR N3a), the Master said:- "In deciding whether to grant an adjournment, the court should consider the following factors: the importance and probable adverse consequences of the proceedings to the party seeking the adjournment; the risk of that party's being prejudiced in his conduct of the proceedings if the application is refused; the risk of prejudice to the other party if the application is granted; the convenience of the court; the interests of justice generally in the efficient dispatch of court business; the desirability of not delaying future litigants by adjourning early and thus leaving the court empty; and the extent to which the party seeking adjournment is responsible for creating the difficulty leading to his application... The power to adjourn should be exercised with great care and only when there is a real risk of serious prejudice which may lead to injustice: in practice, this test is difficult to satisfy" 6. This is, to my mind, a difficult matter. The factors are fairly evenly balanced but in my view the Court would not wish to proceed to a final determination of this matter without being satisfied that it had afforded the opportunity necessary for evidence to be deployed from both sides unless it was constrained to do so. The prejudice of a small further delay to the proceedings is, in our view, balanced by the potential prejudice to the second respondent in the conduct of the proceedings if we were not to afford a short adjournment. Against that, finality is an important matter and we should put in place a process which will lead to that finality. I am also conscious that counsel for the second respondent, who has the charge of the matter before the Court, is currently unwell and is not expected back into the office until the th . Furthermore, although preparation has undoubtedly been done by the representor, I cannot see that an adjournment would waste substantial costs because that preparation will be available for the next occasion. 7. Accordingly I order a short adjournment of this matter. I direct that the parties shall within 24 hours attend before the Bailiff's Judicial Secretary to re-fix a single day. I reserve the matter to myself so it will need to be re-fixed for a day when I can preside. The date will need to be no sooner than but the earliest date after six weeks from today. That provides an opportunity for a further two weeks to prepare paperwork and still follow the deadlines contained in the existing directions of the Court. Therefore the original directions of the Court will continue to apply including liberty to apply and we do so on that basis that the second respondent can meet the orders of the Court with the careful assistance of his legal advisors. If, notwithstanding that help, he continues to fail to meet the directions of the Court, the Court will not be sympathetic to another application

for an adjournment other than for totally compelling reasons. 8. I leave over the mater of costs to be argued at the time of the final

determination.

Authorities Cummins-v-Howlands (Furniture) Limited

[2014] JRC 165 . States Greffier-v-Les Pas Holdings Limited

[1998] JLR N3a. Page Last Updated: 13 Apr 2016 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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