

JERSEY / JUDGMENT

Gothard v Strada Drilling International Limited 09-Apr-2021

[2021] JRC 112 (09 April 2021)

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[2021] JRC 112 [New search] [Help] Companies. [2021]JRC112 Royal Court (Samedi) 9 April 2021
Before : R. J. MacRae , Esq., Deputy Bailiff, and Jurats Christensen and Hughes Between
Mr Gothard Applicant And Strada Drilling International Limited Respondent IN THE
MATTER OF AN APPLICATION BY PAUL A GOTHARD FOR A DECLARATION IN RESPECT
OF STRADA DRILLING INTERNATIONAL LIMITED IN THE MATTER OF THE
BANKRUPTCY (DÉSASTRE) (JERSEY) LAW Advocate D. P. Le Maistre for the Applicant.
Advocate D. Evans for the Respondent. The Viscount was present. Extempore judgment
the deputy bailiff: 1. This application first came before the Court on 19 th February 2020
when Mr Gothard made an application to place Strada Drilling International Limited ("the
Company") en désastre . 2. We recorded at paragraph 4 of our judgment given on the 9 th
March 2020, Gothard v Strada International Limited [2020] JRC 043A , the date to which the
application was first adjourned, that we did not think it would be in the interests of the
creditors and Mr Gothard , in particular, to place the Company en désastre at that point,
nor did we think it appropriate to dismiss the application. Accordingly, we adjourned the
application for certain further purposes including for the filing of an affidavit by Mr
Strange the director of the Company. 3. The application was adjourned again on the 1 st of
October 2020 for various purposes, there being a prospect or so (it appeared at that time)
that the creditors of the Company might be repaid. The Court received an undertaking on
that date that there would be a meeting of the creditors arranged by the Company within 3
months. Mr Strange was ordered to file a further affidavit at the end of that period. 4.
Those matters, including the creditors meeting, have been dealt with in the third affidavit
of Mr Strange filed for the purposes of this hearing. Mr Strange remains the sole director
of the Company. Owing to the efforts that he has made to refinance Strada Design Limited
which owns all the shares in the Company, he will in the near future no longer be the
major shareholder or indeed a director of Strada Design Limited. In these circumstances

he will be unable to procure that the creditors of the Company are paid, and he no longer opposes this application to place the Company en désastre . 5. Accordingly, there has been a change of position on the part of the Company which no longer objects to this application. Mr Strange says in the last paragraph of his third affidavit that although being able to pay the Company's creditors would be far preferable to it being placed en désastre , he no longer believes that being able to repay those creditors, including Mr Gothard , is a realistic prospect. 6. We have received written and oral submissions from the Viscount supplemental to the submissions that she made to the Court in February 2020. The sole asset of the Company is and remains a specialised drill in Australia owned by an Australian subsidiary of the Company. The Viscount notes that the drill appears to have a value of no more than £300,000, although the estimate of the value has altered from time to time. 7. The shares in the Australian company which owns the drill on behalf of the Company are subject to a security interest held by the company's biggest creditor which is owed over two million pounds. The proceeds of sale of the drill are unlikely to repay this debt, let alone produce funds available to unsecured creditors such as Mr Gothard . As the Viscount points out to the court, the drill is a highly technical piece of equipment which may be difficult to sell. 8. The Viscount suggests that in the circumstances it may not be appropriate for the court to exercise its discretion to order a désastre as sought by the applicant Mr Gothard , as the only beneficiary would be a secured creditor who/which already has the protection of its security over the drill. 9. As to the possible proceedings against former directors of the Company which have been mooted by Mr Gothard , there is no certainty of establishing any breach of duty. There are investigations which would need to take place. None of the original directors apparently are within the jurisdiction. In view of the limited assets available in this case, if the court was to make an order placing the Company en désastre , then the Viscount repeats her request that Mr Gothard indemnify her in relation to her costs in the initial sum of £10,000, and reminds the Court of the principles in respect of indemnification of the Viscount in these circumstances as considered in the recent judgment of the Court In the matter of DP9 Limited

[2020] JRC 047 . 10. Further the Company is not the only party to this application which has changed its position. Mr Gothard wrote to court yesterday and has made submissions through counsel today. He says that, in short, having regard to the position of the Viscount and the overall merits of his application that he no longer wishes to proceed and wishes to withdraw his application. 11. He says that in view, in particular, of the indication from the Viscount in respect of indemnity that she seeks, and the risk of request for further indemnification by her that he feels that the significant legal fees he has already incurred in an attempt to recover the debt owed to him, approximately £129,000 mean that he, with reluctance wishes to withdraw his application for a declaration placing the Company en désastre . He would support a creditors winding up and would participate in that process. 12. Accordingly, the court he is faced with the unusual position of an eleventh-hour change of position on behalf of both the applicant and the Company in respect of this application to place the Company en désastre . 13. In the circumstances, as this is an

application made by Mr Gothard , then we decline to place this Company en désastre as originally sought and we gave him leave to withdraw his application. It will now be for the Company to ensure that it is wound up. The Company is insolvent and the director should now ensure that a creditors winding up takes place. Advocate Evans told us that this is what is now intended. Authorities Bankruptcy (Désastre) (Jersey) Law. Gothard v Strada International Limited [2020] JRC 043A In the matter of DP9 Limited

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