

JERSEY / JUDGMENT

Hickman Estate [2009]

JRC 049 (19 March 2009)

[2009] JRC 049

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judgment

the commissioner 1. On 9 th March 2009, the Court imposed a moratorium on the institution, prosecution and/or enforcement of proceedings in respect of the immoveable estate of the late Duncan Philip Sebastian Hickman ("Mr Hickman"). 2. Following the Court's approval of a procedure to enable the executor of the moveable estate of Mr Hickman to deal with competing claims of the creditors (

[2009] JRC 040), Mr Le Quesne, as tuteur of Sebastian Peter Philip Hickman, brought his own representation in relation to the immoveable estate of Mr Hickman. 3. As recited in that judgment, there are currently claims totalling £7,048,801.42 against the moveable estate which has assets of some £1,695,000 to meet those claims. 4. Mr Hickman owned 4 Le Champs des Arbres, in the parish of St Lawrence ("the property") and by his last will in relation to his immoveable estate, he devised the life interest to his widow Gillian Mary Hickman and the reversion to his son, Sebastian Peter Philip Hickman. His principal heir at law is his sister, Deborah Jane Hemaya. The will was registered on 24 th June 2008. The property has been valued at approximately £1m. 5. As the moveable estate is insolvent, the creditors will wish to have recourse to the immoveable estate. Article 3 of the Loi (1862) relative au partage d'héritages provides as follows:- "Celui qui aura une créance ou autre réclamation vers la succession d'une personne décédée laissant des héritages, et dont la créance ou réclamation n'aura pas été poursuivie vers le défunt et l'Acte de la Cour Royale enregistré dans le Livre des Obligations, devra, afin de conserver une garantie sur les héritages appartenant audit défunt, faire, dans l'an et jour de la mort de son débiteur, sa réclamation juridique vers l'héritier et faire enregistrer l'Acte de la Cour Royale dans le Livre des Obligations, sous peine d'être évincé de sa garantie sur les héritages de ladite succession, et que sa créance soit considérée comme une simple dette vers les héritiers." 6. The period of a year and a day from the date of Mr Hickman's death expires on 3 rd May 2009. Whilst there appears to be no authority on the point, it was the view of counsel (expressed in the proceedings brought by the executor) that what is required under Article 3 is the issuing of proceedings against the heir before the expiration of a year and a day, not that such proceedings must be finally determined by then. It would not be feasible for

unliquidated claims which were contested to be finally determined within that period. 7. The tuteur, life tenant and principal heir recognized the likelihood of the creditors wishing to have recourse to the immovable estate to meet any deficiency in the moveable estate and in order to avoid a multiplicity of actions against them before 3rd May 2009, offered undertakings to the Court in consideration of the Court imposing a moratorium on the bringing of such claims. The undertaking of the tuteur (given with the consent of his electeurs and two Jurats) is in the following terms (those of the life tenant and principal heir being in similar terms):- "I DAVID FISHER LE QUESNE, as Tuteur of SEBASTIAN HICKMAN, undertake the following: 1. I will use my best endeavours to sell the property. Should I fail to sell the property within what I regard as a reasonable time or for what I regard as a reasonable consideration, I shall refer the matter to the court. 2. I shall hold the property and/or all proceeds from the sale of the property after payment of court fees/stamps and reasonable estate agent and conveyancing fees: (1) to the order of the court; (2) to satisfy: (a) any court order for the payment of costs; and (b) any deficit of the movable estate of Duncan Hickman in accordance with the procedure described in Schedule 3 of the act of court dated 29 January 2009 (or as it may be amended); 3. Subject to any court order to the contrary, I waive Sebastian Hickman's right to plead prescription in relation to any creditor who wishes to institute proceedings against him in relation to the immovable estate of Duncan Hickman. 4. These undertakings are irrevocable save to the extent that they may be changed by order of the court." 8. The known creditors who are named as respondents to the representation have been notified of the representation and the form of the undertaking has either been agreed or not opposed. Clearly it is in the interest of all of the creditors that the cost of their bringing individual claims against the heir should be avoided and that their claims against the immovable estate should be dealt with in a manner which is fair and which will ensure equality between them, subject to those claims which have preference in law. That is achieved through the undertaking which will bring about the sale of the immovable estate and the application of the net proceeds of sale to the moveable estate to the extent necessary to meet any deficiency therein. 9. Although the matter was not the subject of argument before the Court, we were satisfied that the Court had the inherent jurisdiction to regulate claims against those interested in the immovable estate of Mr Hickman by imposing a moratorium and this on the basis of the undertakings given by those interested in the immovable estate to the Court for the benefit of the creditors. By so doing, the Court prevents a multiplicity of claims and ensures both fairness and equality of treatment. We granted liberty to apply both to the known creditors (who are respondents to the representation) and to unascertained creditors. Authorities Hickman Estate

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