

JERSEY / JUDGMENT

Hore v Valmorbida [2021]

JRC 242 (30 September 2021)

[2021] JRC 242

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

judgment

the deputy bailiff: 1. The Court sat on 14 th July 2021 to hear argument as to whether or not the Court was empowered to give judgment in this case and, if it was empowered, whether it should exercise its discretion to do so. 2. The trial in this case commenced on 10 th May 2021 and concluded on 18 th May 2021. 3. The Court spent the rest of 18 th May 2021 agreeing its findings of fact and the presiding judge began work the following week on the draft judgment and that judgment was in excess of twenty pages in length and covered many, although by no means all, of those findings of fact. 4. Before the Court could complete drafting this judgment, the parties notified the Court by correspondence, commencing 27 th May 2021, that the parties had agreed terms of settlement. 5. The email dated 27 May said 'It is naturally a matter for the Court to consider whether to progress with the preparation of a judgment in the window between now and the further notification of the parties on 14 June' [the date upon which the 'Settlement Sum' was due to be paid], but counsel went on to say that 'It may be considered expedient in the interests of the administration of justice for further work in relation to the preparation of the draft judgment on this matter to be stayed until after 14 June' . 6. As to the Settlement Agreement reached between the parties, the terms were, and do, remain confidential to the parties and are not known to the Court. 7. On 14 th June 2021, the Court was notified that settlement had been 'finalised between the parties' . The Court received a draft Tomlin Order which provided inter alia that the parties were to 'irrevocably withdraw' their various pleadings and that all further proceedings in the action be stayed, save for the purpose of carrying the terms of the Settlement Agreement into effect. 8. On, or about this date, the First Defendant arranged for a 'Settlement Sum' to be paid to the Plaintiffs. 9. The Court indicated by email dated 14 th June 2021 that it was, nonetheless, 'likely to issue a judgment in due course' . 10. By way of response to that message, the Defendants' advocate wrote to the Court on 15 th June 2021 setting out authorities which considered this issue, citing (only) cases such as the Royal Court decision in *FG Hemisphere Associates LLC v Democratic Republic of Congo*

[2010] JLR 484 and the English case of *Prudential Assurance Company v McBains Cooper* ('Prudential')

[2000] 1 WLR 2000) which stated that, in summary, the Courts power to deliver a judgment ceased in circumstances where the parties to civil litigation had settled the dispute and a draft judgment had not been issued for the parties' consideration. 11. The contents of the letter, in terms of the relevant authority, whether English or Jersey cases, were partial and incomplete. Subsequent correspondence from the Defendants' advocate, in particular the letter of 1st June 2021, did not initially remedy that position. 12. It was fortunate that during this period the Court did not reach a concluded view on whether or not it should give judgment as it only had before it authorities which strongly suggested that the Court was not permitted, in the current circumstances, to do so. 13. However, on 22nd June 2021, the Defendants' advocate wrote to the Court saying that the letter of 15th June 'was prepared in circumstances of great urgency' and 'did not contain a full exposition of all the relevant authorities'. 14. The Defendants' advocate had spoken to the Plaintiffs' advocate the previous day 'concerning a number of cases decided after *FG Hemisphere* ' and various additional authorities were sent to the Court, including the Jersey decision in *Morelli v Morelli*

[2016] (2) JLR Note 11, *Barclays Bank Plc v Nylon Capital LLP*

[2011] EWCA Civ 826 and the Hong Kong decision of *Zhang and Others v DBS and Others*

[2019] JLR 366 particularly at paragraphs 3 to 6. 15. Having regard to this letter and helpful subsequent correspondence from the Plaintiffs' advocate dated 2nd July 2021 the Court convened a hearing and, on the application of the Plaintiffs' advocate, excused their attendance (in order to save costs) and we were furnished with detailed written submissions from the Defendants' advocate and heard further oral submissions from the Defendants' advocate on that day. 16. The Plaintiffs rest on the wisdom of the Court as to the outcome of the matters to be determined in this judgment, namely whether or not the Court, as a matter of law, retains a discretion to deliver a judgment when a trial is concluded but before the judgment has been handed down, in circumstances where the parties have settled the proceedings and, secondly, if the Court does retain its discretion, whether the discretion should be exercised in this case. 17. The Defendants' position is that the Court has no such discretion and, if it does, it should be exercised against handing down its judgment. The case law 18. The starting point is the decision in *Prudential* , where the English Court of Appeal considered the Court's power to deliver judgment in circumstances where the judge sent a written draft judgment to both parties' legal representatives in accordance with practice, setting a date for the handing down of the same. On that date, the parties agreed outside Court to settle the action and the judge, at the invitation of the parties, adjourned the handing down of his

judgment.

The parties subsequently compromised the action. The judge, having heard the parties' objections to his handing down of his judgment, felt that there were strong public interest grounds for delivering the judgment in open court and granted the parties permission to appeal

that decision and then adjourned the handing down of the judgment. 19. The appeal by both parties was dismissed. Brooke LJ, giving the judgment of the Court of Appeal, said at page 2008F: "It follows that under the new practice the process of delivering judgment is initiated when the judge sends a copy of it to the parties' legal advisers. Provided there is a lis in being at that stage, it will be in the discretion of the judge to decide whether to continue that process by handing down the judgment in open court or to abort it at the parties' request. I agree with the judge that there may well be a public interest in continuing the process, notwithstanding the parties' wishes that he should not do so, and that there can be no question of a judge being deprived of the power to decide whether or not to do so simply because the parties have decided to settle their dispute after reading the judgment which has been sent to them in confidence. Counsel accepted that the logical consequence of the arguments they were both urging on the court was that the parties could prevent the judge from delivering judgment even if it contained findings of serious fraud or serious negligence , [emphasis added] if the defendant was willing to pay the claimants large sums of money to suppress them. They also accepted that unless there was anything in the procedures of the House of Lords (which they had not researched) to the contrary it would be open on their arguments to the parties to private litigation, on reading the copies of their lordships' opinions made available to them shortly before they were delivered in the House, to settle their dispute there and then and require that the speeches should not be delivered. The longer we tested their thesis, the more fragile it appeared. When we put to counsel the point made by the judge to the effect that if they were right, powerful defendants like insurance companies could pick and choose which judgments they were happy to see published and which judgments they were willing to pay money to suppress, we were told that it has always been a characteristic of the common law that it has developed haphazardly. It was then suggested to us that there might be one rule for first instance courts and a different rule for appellate courts. For the latter, it appeared to be conceded during the course of argument that this court might have a residual discretion to hand down its judgment notwithstanding the fact that the parties had compromised their dispute, if only to correct errors in the reported judgment in the court below or to reconcile conflicting lines of authority." 20. He concluded at page 2009H: "In my judgment the judge was correct in the way he gave his ruling in this matter, for the reasons he gave. He did possess a discretion to decide whether or not to hand down his judgment, and there are no grounds on which this court could interfere with the way in which he in fact decided to exercise his discretion. As I have said, although much of his judgment was of interest only to the immediate parties to the dispute, there were three rulings on points of law which were potentially of wider interest, and a judge sitting in a specialist jurisdiction like the Technology and Construction Court is uniquely well placed to judge whether it would be of value if his judgment was a matter of public record." 21. A similar issue fell to be determined in Jersey in 2010 in the FG Hemisphere case, where Commissioner H Page QC reserved the judgment of the Royal Court and provided the advocates with a draft. Although much of the judgment was concerned with issues of fact, a very substantial part dealt with issues of law including the nature and effect of *arrêt entre mains* . Two days before the date fixed for formal handing of the judgment, the Court was informed that settlement discussions were in progress and was then asked to withhold publication of the judgment to await the outcome of those discussions. The

Court dismissed this application and held that the public interest in publication of substantial sections of the judgment that dealt with points of law outweighed the parties' wishes that it should not be published; and the judgment would therefore be formally handed down and published in the usual way. 22. The Court recognised that there was no previous Jersey authority on the point and accordingly the Court elected to rely on English cases including, in particular, *Prudential* which was called the 'leading authority'. 23. Even though this was a judgment of the Royal Court at first instance, Page, Commissioner, at paragraph 13 of his judgment, described various points of law which he said were "of substantial general interest, particularly in a jurisdiction such as this with a major financial services industry". 24. However, subsequent to *FG Hemisphere and Prudential*, the English Court of Appeal came to a different decision in *Barclays Bank v Nylon Capital* ('the Barclays case'). 25. In that case, Lord Neuberger of Abbotsbury, MR, giving one of the two judgments of the Court, albeit obiter (as the Defendants correctly identify in this case), said the following: "73. I turn now to deal with a very different issue. After Thomas LJ had prepared his judgment in draft, and circulated it to Etherton LJ and me, the parties notified the court that they had reached agreement and effectively requested the court not to give judgment. 74. Where a case has been fully argued, whether at first instance or on appeal, and it then settles or is withdrawn or is in some other way disposed of, the court retains the right to decide whether or not to proceed to give judgment. Where the case raises a point which it is in the public interest to ventilate in a judgment, that would be a powerful reason for proceeding to give judgment despite the matter having been disposed of between the parties. Obvious examples of such cases are where the case raises a point of law of some potential general interest, where an appellate court is differing from the court below, where some wrongdoing or other activity should be exposed, or where the case has attracted some other legitimate public interest. 75. It will also be relevant in most cases to consider how far the preparation of any judgment had got by the time of the request. In the absence of good reason to the contrary, it would be a highly questionable use of judicial time to prepare a judgment on an issue which was no longer live between the parties to the case. On the other hand, where the judgment is complete, it could be said (perhaps with rather less force) that it would be a retrospective waste of judicial time and effort if the judgment was not given. 76. The concerns of the parties to the litigation are obviously also relevant and sometimes very important. If, for their own legitimate interests, they do not wish (or one of them does not wish) a judgment to be given, that request should certainly be given weight by the court. (Of course, in some cases, the parties may request a judgment notwithstanding the fact that there is no longer an issue between them). 77. Where there are competing arguments each way, the court will have to weigh up those arguments: in that connection, the reasons for any desire to avoid a judgment will be highly relevant when deciding what weight to give to that desire. 78. In this case, I consider that the argument for handing down our judgments is compelling. First, by the time we were informed that the parties had settled their differences, the main judgment, representing the views of all members of the court, had been prepared by Thomas LJ, in the form of a full draft which has been circulated to Etherton LJ and me. Secondly, a number of the issues dealt with in that judgment are of some general significance. Thirdly, although we are upholding the judgment below, we are doing so on a rather different basis, so it is right to clarify the law for that reason as well. Fourthly, so far as the

parties' understandable desire for commercial privacy is concerned, we have not said anything in our judgments which are not already in the public domain, thanks to the judgment below. Finally, so far as the parties' interests otherwise are concerned, no good reason has been advanced for us not giving judgment." 26. This decision was not drawn to our attention in the early correspondence from the Defendants and clearly, on the face of it, covers the facts in this case, because as Lord Neuberger said, whether or not a judgment in draft has been circulated to the parties and whether or not the case is being determined at first instance or on appeal, then the Court retains a discretion to give judgment when the case has been fully argued. In particular, it identifies 'obvious examples' of when the Court may wish to proceed to give judgment as cases where there is 'a point of law of some potential general interest' (as, on any view, there is in this case) or where 'some wrongdoing or other activity should be exposed' (which, on any view, also applies in this case). 27. The Defendants correctly submit that *Prudential* and decisions that followed it were not mentioned by Lord Neuberger in the passage which we have just quoted. 28. However, the *Barclays* case has been applied in various English authorities and, indeed, in at least some of them, has been followed. One example is *Greenwich Limited v Dowling*

[2014] EWHC 2451 (Ch) . In that case, Smith J, said at paragraph 131 to 134: "131. There is clearly an inconsistency in the various decisions. The clearest decision, in my view, is that of Lord Neuberger in the *Barclays Bank* case. It is to my mind artificial to have a situation that a judgment can in effect be stopped by the parties by an agreement made before they see the draft judgment but not afterwards. I can see no logical reason for that. It is true to say that the early authorities were not cited to the Court of Appeal in *Barclays Bank*, but as a matter of policy it seems to me that the reasoning in Lord Neuberger's judgment must plainly be correct in the modern environment. The court must retain a general discretion whether before or after the parties have seen a draft judgment to continue to deliver a judgment where it is appropriate so to do. 132. If I am wrong, then the authorities appear to suggest that when the court has told the parties of the result (see *Glaxo* above) the court has a duty to give the reasons, if it is in the public interest so to do. Equally, the *Prudential* case establishes that where the Judge has prepared a draft and released it, a subsequent compromise cannot prevent him if he so wishes from releasing that judgment. 133. In the present case I had of course pronounced the result with reasons later. The factual scenario is therefore the same, as in the case of the *Glaxo* decision. 134. Further, in my view even if the parties have effectively put an end to the dispute between themselves, that in itself cannot stop the court from raising matters which concerns it. For example, if during the course of the trial it was clear that a party had perjured themselves or was guilty of fraudulent conduct it would be a matter of public interest that that should be known and the judge would be perfectly entitled, in my view, to deliver a judgment on dealing with those matters because the parties cannot unilaterally block such a matter by compromising the case." 29. The comments made by Smith J in paragraph 131 to 134 are on all fours with what occurred in this case, as we will briefly summarise below. 30. Both *FG Hemisphere* and the *Barclays* case were considered by the Royal Court in *Morelli v Morelli*

[2016] JRC 172 . In a postscript to the judgment, the Royal Court, W. Bailhache Bailiff presiding, said that after the draft judgment in that case had been circulated the parties had reached agreement. It was contended by one of the parties that there was no public interest in the publication of the judgment, whereas the advocate for the other party disagreed and wished for the judgment to be handed down, which it was. 31. At paragraph 35, the Court considered the " line of cases " including Prudential "which make it plain that it is well established that if the parties agree terms of settlement before the process of handing judgment down has started, the Court has no jurisdiction to hand the judgment down do not apply" . 32. At paragraph 36, the Court said this: "36. Advocate Kistler submitted that the comments of Lord Neuberger M R in Barclays Bank Plc v Nylon Capital LLP were summary comments which did not draw on any of the relevant authorities and perhaps for that reason should not be relied upon. Certainly it is true that at paragraph 74 Lord Neuberger indicated that "where a case has been fully argued, whether at first instance or on appeal, and it then settles or is withdrawn or is in some other way disposed of, the Court retains the right to decide whether or not to proceed to give judgment". The reference to the discretion of the Court to proceed to give judgment where a case settles before the judgment process has started at first instance would appear to be a departure from the line of cases which we have referred to above. However, leaving that point aside, the remaining comments of Lord Neuberger seem to us to be a useful summary of principles, consistent indeed with the FG Hemisphere case which is of direct relevance to us in Jersey. It is noteworthy that the factual circumstances in Barclays Bank Plc v Nylon Capital appear to have been that the judgment process had started because Thomas L J, as he then was, had circulated a draft judgment to his fellow judges on the Court of Appeal, albeit that no sign of that judgment, even in draft, had arrived with counsel. Applying that by analogy, it would follow that where the judge in Jersey has prepared a draft judgment and circulated it to the Jurats, the process of delivering judgment had started. If I were to apply that test in the instant case, that process started on 14th September." 33. The Court decided, at paragraph 37, to " at all events" proceed on the basis of the decision of the Court in FG Hemisphere . We do not read the decision of the Royal Court in Morelli v Morelli as holding that Lord Neuberger was wrong in the Barclays case, but merely that his approach was in part a departure from the line of authorities presented to the Court in that case. 34. The approach that Lord Neuberger adopted, which Smith J described as 'plainly...correct in the modern environment', has now been adopted by the Hong Kong Court of Final Appeal in a case involving a trust governed by Jersey law and thus reported in the Jersey Law Reports, namely the Zhang case decided in November 2019. Prudential was cited, together with other authorities, to the Hong Kong Court of Final Appeal and the relevant part of the judgment of the three judges of the Court of Final Appeal (including Lord Neuberger) with which the other two judges agreed, says: "3. The question of the scope of a court's discretion to deliver judgment in a case notwithstanding the settlement of a case after argument but before judgment is delivered has not previously arisen in any reported decision in Hong Kong. However, in England and Wales, the applicable principles were established by the Court of Appeal's decision in Barclays Bank plc v. Nylon

Capital LLP. It has been applied in *Greenwich Inc. Ltd. v. Dowling*) (

[2014] EWHC 2451 (Ch) , at paras. 131 and 134) and in *Re Dalnyaya Step LLC* (in liquidation) (No. 2); and has overtaken the earlier decision in *Prudential Assur. Co. Ltd. v. McBains Cooper* (a firm) stated by Lord Neuberger of Abbotsbury, M. R. (as his Lordship then was as follows) [The judgment then recited paragraph 73 to 77 from the Barclays case - already quoted above.]

4. Barclays Bank was adopted by the Supreme Court of Victoria in *Clarke v. Great Southern Fin. Pty. Ltd.* ([2014] VSC 516, per Croft, J. at para. 23) and similar principles were applied by the Queensland Court of Appeal in *Voss v. Suncorp-Metway Ltd.* (No. 1). Principles similar to those laid down in Barclays Bank were also applied by the Supreme Court of New Zealand in *Osborne v. Auckland Council* ([2014] 1 NZLR 766, at paras. 39-44).
5. We are satisfied that the principles set out in the citation from Barclays Bank at para. 3 above should be adopted in this jurisdiction in exercising the court's discretion whether or not to deliver judgment in an appeal notwithstanding the parties' settlement.
6. The present case involves issues of law of general importance and, as was pointed out in argument, has attracted considerable public interest in Hong Kong and internationally. The draft judgment was completed and in the final stages of preparation for handing down when the parties informed the Registrar of the impending settlement. As will be seen in the reasons which follow, we are differing from the judgments appealed from and consider it necessary to correct certain erroneous propositions accepted below. Publication of this judgment will not impinge on any issues regarding confidentiality or privacy as it does not go beyond the detailed account of the parties' dealings set out in the judgments below. The parties have not made any submissions indicating any opposition to the judgment being handed down. For all these reasons, we consider in the proper exercise of our discretion, we should hand down our judgment notwithstanding the settlement." Conclusion on the first issue 35. We have no doubt that the customary law of Jersey should be developed in the same way that English common law and the common law of various other Commonwealth jurisdictions has been developed. Accordingly, the Court has a discretion to deliver a judgment in this and any case notwithstanding that the parties have compromised after a trial which has concluded with full argument being heard (as in this case), but before judgment is delivered or, to be clear, before the process of handing down a judgment has commenced. Considerations on the second issue 36. The second issue is whether or not the Court should exercise its discretion to give judgment in this case. 37. We were assisted by submissions from both parties. The Plaintiffs' advocate said that in favour of publication were various issues including issues of law which might 'usefully be clarified (and therefore be in the interests of the legal profession and wider public interest) by judgment in these proceedings, including: (i) the effect of fraud / dol which induces a contract or that the contract is void ab initio or voidable; and (ii) the Jersey law test for waiver / renonciation and / or whether the principles applicable to affirmation as a matter of English law apply in that context' . 38. The first point is a matter upon which there is conflicting authority and it

would, in the view of this Court, be very useful for a full-time judge of the Royal Court to express their view upon it in order to bring clarity and certainty to an area where such clarity is warranted. As to the second issue identified by counsel for the Plaintiffs, that is an area upon which there is no Jersey authority, as was accepted by both counsel in argument, and a decision of the Royal Court would be very useful. The Jersey law of contract is important, not merely to parties contracting in Jersey but internationally for those who do business in and through the island. Any decisions of the Royal Court which bring clarity to areas of the law of contract which are either disputed or unclear or upon which there is no authority are generally regarded as welcome. 39. The fact that this is a decision of the Royal Court and not the Court of Appeal does not mean that it is not any less desirable that a judgment should be handed down and published. The Royal Court heard full argument in relation to these issues and it cannot be predicted when they will next fall for consideration by the Royal Court and, indeed, whether any such future decision might ultimately be appealed. Further, it is generally appropriate for developments of the customary law to be considered and determined at first instance. As Lord Hope said in *Snell v Beadle* in the Privy Council

[2001] JLR 118 at paragraph 21: "21. For these reasons, their Lordships consider that, as the customary law of Jersey has not been enshrined in a coutume, the proper approach is to regard it as being still in a state of development. It is capable of being refined or clarified by judicial decision as the customary law is applied to a new set of facts." 40. As the Court of Appeal (*Jones JA*) subsequently said in *Yates v Reg's Skips*

[2008] JCA 077B , when considering whether or not the Court of Appeal should make certain findings in relation to the extent and principles of the law of *voisinage* , at paragraph 33: "33. Whilst such issues may be capable of resolution without difficulty, resolving them might involve some development of the Customary Law. We believe that it is right that, wherever possible, such development should be considered in the first instance by the Royal Court, rather than by the Court of Appeal without the Royal Court's assistance." Evidence given at trial 41. The evidence in this case exposed the First Defendant, Mr Valmorbida, as a man who was serially dishonest. Mr Valmorbida said in evidence in chief that not only was he a well renowned art dealer, but that he had an extremely good reputation and a presence in the art world on both sides of the Atlantic. 42. When he was cross-examined, he was revealed to be dishonest, evasive and accepted that he had both used and created false documents for the purpose of obtaining loans from four lenders on the footing that he owned artwork which, in each case, was largely not owned by him. The extent to which his evidence was dishonest is demonstrated by the fact that Mr Valmorbida was cautioned to the effect that he need not say anything, but anything he might say may be used in evidence against him, either in Jersey or in other jurisdictions. On two occasions, the Court had to break during the course of Mr Valmorbida's evidence for him to be given legal advice as to the terms of the caution. Both breaks were, at least in part, instigated by his own advocate and occurred with the consent of the Plaintiff's advocate. It is extremely unusual for a Defendant in a civil case to be cautioned in this way

and members of the Court had no prior experience of the principal witness in a case (as Mr Valmorbida was) being cautioned. The effect of his evidence was that before closing arguments his advocate conceded for the first time on behalf of Mr Valmorbida that in light of the evidence at trial Mr Valmorbida had indeed made fraudulent misrepresentations. 43. In addition to making false representations to the First Plaintiff, as pleaded by the Plaintiffs (by way of example only): (i) For the purpose of the immediate onward resale or "flipping" of a painting for \$1.75m to a purchaser, Mr Valmorbida had the invoice altered to show him and not the Second Defendant as the purchaser and to inflate the purchase price by \$200,000 so as to deceive the buyer, a Mr Crawley, into believing that he had paid the cost price of the painting: Mr Valmorbida failed to account to the Second Defendant for the profit of \$200,000 consequently made; (ii) In very similar circumstances in respect of another painting purchased by the Second Defendant for \$1.025 million, Mr Valmorbida again had the purchase invoice altered to show that the purchase price had been \$1.25 million in order to deceive the intended purchaser; (iii) Mr Valmorbida admitted knowingly making false representations to Investec Bank including to the effect that he owned certain paintings that were in fact owned by the Second Defendant for the purpose of obtaining funds for himself; (iv) Mr Valmorbida made several representations which he knew to be false to Falcon Fine Art, London, in January 2018 for the purpose of securing a loan in the sum of \$6.5 million from them which was to be secured against paintings worth millions of dollars which he said were part of his art collection but in large measure were not; the proposal was kept secret from the Plaintiff and the Board of Directors of the Second Defendant; further he arranged for invoices to be falsified so as to show that he was the owner of art that was in fact owned by the Second Defendant; (v) Mr Valmorbida made representations which he knew to be false to The Fine Art Group at about the same time as he was making false representations to Falcon Fine Art in order to secure a loan made to him personally from The Fine Art Group in the sum of \$5.5 million. In order to obtain the said loan Mr Valmorbida admitted using a painting consigned to him by a client as security without the consent of that client and admitted purporting to give The Fine Art Group security over a painting by Auerbach which he did not own (he directed that a forged invoice be created) and, having obtained the loan and in the knowledge that he could not without the consent of The Fine Art Group sell paintings upon which the loan was secured nonetheless went on to sell such a painting. Furthermore, Mr Valmorbida admitted knowingly using falsified invoices in order to represent to The Fine Art Group that he owned paintings by Francis Bacon and Basquiat which were in fact owned by the Second Defendant. The \$5.5 million obtained was paid to Mr Valmorbida's personal bank account in the Isle of Man; (vi) Mr Valmorbida admitted to lying under oath when making a statutory declaration in London on 12 th February 2018 to the effect that each work of art was "100% legally and beneficially owned by me" for the purpose of obtaining monies from The Fine Art Group when he knew the declaration was untrue. (vii) Mr Valmorbida admitted that he retained for himself sale proceeds from the sale of certain works of art owned by the Second Defendant of which, at the time, he was 50% shareholder. For example, he sold a painting by Basquiat for \$6

million contrary to the terms of the agreement with The Fine Art Group and without discussion with the Plaintiff or the Board of Directors of the Second Defendant, which owned the painting. The proceeds were paid into Mr Valmorbida's personal bank account. He accepted that they should have been paid to the Second Defendant. Mr Valmorbida sold a painting by George Condo for \$6 million which was owned by the Second Defendant without notice to the Plaintiff or the Second Defendant and had the proceeds paid to his personal bank account. (viii) Mr Valmorbida admitted making false representations to Sotheby's as to his ownership of certain works of art for the purpose of securing a loan from Sotheby's against such works of art; when the loan to The Fine Art Group was repaid by Mr Valmorbida (Mr Valmorbida having breached the loan agreement). The loan from Sotheby's in the sum of \$6.7 million was secured on 19 September 2018. The funds obtained were paid to Mr Valmorbida's personal account. Mr Valmorbida made a declaration as to the collateral provided to Sotheby's that he was the sole and absolute owner and that he would not sell, assign, pledge, transfer or encumber the artwork. This was false. Some of the art provided to Sotheby's as security for the loan was owned by the Second Defendant, some had already been pledged to the Plaintiff as security under a settlement agreement; one artwork was owned by a third party. Neither the Plaintiff nor the directors of the Second Defendant were told that their assets were being provided for security to Sotheby's. (ix) Pursuant to the settlement agreement made between the First Plaintiff and Mr Valmorbida executed in approximately October 2018, Mr Valmorbida promised to pay various sums to the First Plaintiff in three instalments, the said payments being secured by seven artworks listed in the said agreement which Mr Valmorbida promised, inter alia, not to sell, assign, transfer, mortgage, charge or deal with in any manner until the total sum due under the agreement was paid to the First Plaintiff on or before 31 November 2019. In fact, of the seven works of art listed, with a specified value for the purpose of the agreement of \$14.8 million, Mr Valmorbida had already knowingly sold two and retained the proceeds for himself and pledged four in favour of Sotheby's in order to obtain funds from them, only leaving one unencumbered and unsold painting with a given value of \$500,000. 44. Accordingly, there can be no unfairness to Mr Valmorbida in this judgment revealing his conduct to a wider audience. It is very much in the public interest for a person with Mr Valmorbida's profile to have his dealings exposed. 45. Furthermore, nowhere in the extensive written or oral submissions received by the Court is there any suggestion that Mr Valmorbida will be prejudiced in the Court's findings of fact being published. 46. There is no risk of the claims between Plaintiff and Defendant being re-opened as they have been compromised. 47. At the hearing on 14 th July 2021, the Court indicated at the end of the hearing that, in any event, the case papers in this case will be transmitted to the Attorney General of Jersey for his consideration as to whether or not they should be sent to the Director of Public Prosecution. However, this Court does not know what action, if any, the DPP will take and that is a separate matter and should not be a factor that either points in favour or against publication of this judgment, save the fact that it seems to be inevitable that the Attorney General for Jersey and/or the Director of Prosecutions will be assisted in better understanding this case if there is a

published judgment from the Royal Court. 48. It seems to us that the only real argument of significance against publication of the judgment is the fact that there will be expenditure of additional judicial resources in completing the drafting of a judgment and then handing it down. However, this should not be at the expense of other cases to be tried by the Court and members of the judiciary are used to devoting substantial time outside Court hours drafting and re-drafting judgments. 49. The Court accepts the Defendants' advocates assertion that the Defendants' legal team was unable to identify a single case on all fours with this one, namely a case where a Court has elected to complete the drafting and continue to deliver a judgment after the case had settled. There may be various reasons for this. It is unusual for cases to settle after the completion of a seven-day trial. It was suggested that for the Court to produce a judgment in these circumstances would discourage parties from compromising a case, either before or during a trial. To that, our response is that the vast majority of cases, if they settle at all, are settled prior to trial and, indeed, if they settle during a trial then the Court will not have heard all the arguments and have completed hearing the case and, accordingly, will not be in a position to issue a judgment. Situations like the current one will be comparatively rare and it is unsurprising that there are not a significant number of cases on all fours with this one. 50. Accordingly, we were unanimously of the view that it was in the public interest for a judgment to be delivered in this case. 51. In addition to the matters ventilated in argument which we have set out above, the Jurats, in retirement, expressed the view that Mr Valmorbida appears still to own companies in Jersey and has service providers looking after his interests. It is important that they know of the findings that the Court has made in this case. 52. We do not know the extent to which the regulator is aware of the activities of Mr Valmorbida and the extent to which, if at all, the assets of the company may be the proceeds of, or connected to, crimes committed by Mr Valmorbida, should it be the case that any of these activities amount to crimes. There were certainly significant concerns arising from the evidence in relation to Mr Valmorbida's tax status and his attempts, on the evidence of the Plaintiff (which we accepted), to disguise his tax residence. 53. In conclusion, we have no doubt that it is in the public interest to publish a judgment in this case. *Authorities FG Hemisphere Associates LLC v Democratic Republic of Congo*

[2010] JLR 484 . *Prudential Assurance Company v McBains Cooper*

[2000] 1 WLR 2000 . *Morelli v Morelli*

[2016] (2) JLR Note 11. *Barclays Bank Plc v Nylon Capital LLP*

[2011] EWCA Civ 826 . *Zhang and Others v DBS and Others*

[2019] (2) JLR 366. *Greenwich Limited v Dowling*

[2014] EWHC 2451 (Ch) . *Morelli v Morelli*

[2016] JRC 172 . *Snell v Beadle*

[2001] JLR 118 . Yates v Reg's Skips

[2008] JCA 077B . Page Last Updated: 04 Oct 2021 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2021/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/hore-v-valmorbida-2021-jrc-242-30-september-2021>

Prepared on 26 October 2026 · Esheria