

JERSEY / JUDGMENT

Hughes -v- Minister for Economic Development [2015] JRC 058A (20 March 2015)

[2015] JRC 058A

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

judgment

the bailiff: 1. This judgment concerns the application by the appellant for leave to appeal, pursuant to Rule 4 of the Royal Court (Appeals from Petty Debts Court) Rules 2004 , in respect of a decision of the Judge of the Petty Debts Court Mr David Le Cornu, handed down on 20 th February, 2015. Advocate Le Cornu's decision was given on two preliminary points which had been pleaded and which it was thought convenient to deal with as preliminary issues. The first was that the appellant was asserted not to have a locus standi to bring the claim and the second was that the claim was in any event prescribed by virtue of the Law Reform (Miscellaneous Provisions)(Jersey) Law 1960 . The application for leave to appeal gives as the grounds of the appeal that the judge misdirected himself on points of law relating to the preliminary issues and in particular, in relation to the limitation defence, to the rules around empêchement de fait . 2. The application for leave to appeal was dated 25 th February, 2015, and is therefore in time. In covering correspondence, the appellant has requested that the application be dealt with on the papers as he is currently living in England, but if a hearing were to be necessary, that he be given good notice of the time fixed for such a hearing as he would have to make arrangements to travel to Jersey. Having read the papers I feel able to deal with the matter without an oral hearing, full skeleton arguments having been filed by both the appellant and the respondent before the Petty Debts Court. 3. It is apparent that there is no substantial dispute about the core facts, although there is some dispute about the interpretation to be given to them. It is noteworthy that the appellant does not take issue in his notice of appeal with the summary of facts set out in the judgment of Advocate le Cornu. 4. The essential dispute concerns the vessel Marie France which was acquired either by the appellant or by his son in August 2003. It was registered in the son's name. In the second half of 2009, the vessel was damaged in a storm and was lifted on to the harbour wall at St Aubin. In December that year, the appellant's son moved to Australia. He did not affect any repairs to the vessel and he failed to pay the harbour fees or arrange for them to be paid on his behalf. At that stage, there was already outstanding harbour fees for the fourth quarter of 2008 in respect of the vessel, and a judgment in default had been obtained in the Petty Debts Court against the appellant's son in respect of these fees. Action had been taken against

him because it was he who applied for registration of the vessel in his name following the change of ownership in August 2003. In November 2010 the Harbourmaster moved the vehicle from its location on the pier and in April 2011 he reached the conclusion that the vessel had been abandoned and he arranged for it to be sold at auction on 16 th April, 2011. On 22 nd July, 2014, the appellant issued a summons against the Harbourmaster claiming damages for the loss of the vessel and the cost of its recovery. He subsequently obtained leave to replace the Harbourmaster with the current defendant, and issued a summons against the current defendant on 15 th August, 2014, following which pleadings were filed and Advocate Le Cornu determined the issues of locus standi and limitation in favour of the respondent. 5. The decision handed down on 20 th February makes it plain that the Judge considered that the proper plaintiff was the son of the appellant, who is the registered owner of the vessel, and that accordingly the appellant had no locus standi to bring the action. It is clear that there is documentary evidence which supports that decision, but also that there is some documentary evidence which might go the other way. It is not clear that any evidence was actually called before the Petty Debts Court for the issue to be determined. At all events, I have seen not any transcript of evidence, and there is no indication of the appellant having been cross-examined on his evidence or of his having the opportunity of tendering other evidence in support of his case. It appears to me that there may be circumstances where the registered owner is potentially not to be treated as the actual owner and that the actual owner might in such circumstances be able to bring an action. It is not clear that this issue, which is really an issue of fact, has been appropriately dealt with in the Petty Debts Court and if this were the only basis for the decision, I would have granted leave to appeal. Accordingly, I turn to the limitation or prescription issues, on the assumption that, without deciding it, the appellant had locus standi to bring the action. 6. On the Court file which I have been shown, the action was commenced by summons on 15 th August, 2014. However, the Petty Debts Court Greffe seem to have maintained a claim summary form, on which stamps have been affixed, which refers to the original summons issued by the appellant against the Harbourmaster on 22 nd July, 2014. This document refers to the continuing proceedings beyond the issue of a revised summons to the respondent in August. It contains for example annotations with regard to the procedural orders made by Mrs Shaw in September. In those circumstances it seems to me that the proceedings were commenced by the appellant on 22 nd July, 2014, and that that is the effective date for the purposes of determining whether the proceedings have been brought in time or not. 7. The essence of the claim is that the Harbourmaster acted unlawfully by selling the vessel in April 2011. It is alleged the action was unlawful because Regulation 2 of the Harbours (Jersey) Regulations 1962 is in these terms, so far as is relevant:- "(1) The Harbourmaster may issue a direction requiring the removal of an unserviceable or abandoned vessel or other obstruction from -

- (a) a harbour; or
 - (b) territorial waters
- (2) The direction must be -

- (a) served on the owner of the vessel or obstruction; or
- (b) published if the owner is unknown or cannot be traced
- (3) If, within 7 days, the vessel or obstruction has not been moved in accordance with the direction the Harbourmaster may cause the vessel or obstruction to be moved.
- (4) If the Harbourmaster causes the vessel or obstruction to be moved -
 - (a) expenses incurred in removing and storing the vessel or obstruction shall be payable by the owner; and
 - (b) no claim for damages shall lie against the Harbourmaster or any person who moved and stored the vessel or obstruction.
- (5) If -
 - (a) the expenses mentioned in paragraph (4)(a) are not paid within 7 days of being demanded; or
 - (b) the owner of the vessel or obstruction cannot be found after reasonable enquiry the Harbourmaster may dispose of the vessel or obstruction in such manner as the Harbourmaster considers appropriate. ...
- (7) For the purpose of this Regulation a vessel or obstruction is to be taken to be unserviceable or abandoned
 - (a) if it appears to the Harbourmaster to be abandoned due to its state of neglect, lack of maintenance or lack of attention by its owner; or
 - (b) where it is occupying a space in return for the payment of a fee, charge or other consideration, if the fee, charge or other consideration has not been paid." 8. In this case, it appears that the Harbourmaster may have issued a direction, although none is obviously available on the papers. Certainly the Harbourmaster tried to have served two recorded delivery letters which I assume were intended to give notice of impending seizure and sale, but these were returned undelivered. Service had been attempted at an address in Jersey where the appellant's son lived until his emigration to Australia in December 2009 and which is available to the appellant as a holiday home and has been so at all material times. It is apparent that the property was empty in April 2011 which is why the recorded delivery letters were apparently returned. However, the documents before the Court indicate that on 20th October, 2010, a letter was sent by the deputy Commercial Director of the Harbours Department to the appellant's son at the address in Jersey referring to the outstanding account balance of £952.51 in relation to the vessel in these terms:- "It has been brought to my attention that your account is considerably in arrears. I must therefore inform you that should payment of £952.51 not be received within seven days, your boat Marie France will be impounded under Part 2 Regulation 7(b) of Harbours (Jersey) Regulations 1962 as amended, where a vessel is occupying a space in return for the payment of a fee, charge or other

consideration, if the fee, charge or other consideration has not been paid, the Harbourmaster may dispose of the vessel in such a manner as the Harbourmaster considers appropriate. I must also inform you that the boat may be auctioned in order to recover the outstanding debt." 9. Here then was notice given to the registered owner of the boat at the address which is the same address as that of the appellant and was the proper address of the registered owner that if the outstanding arrears were not paid, the boat would be impounded and liable to be sold by auction to recover the outstanding fees. It is to be noted that the original judgment in the Petty Debts Court for arrears of fees had been returned to the respondent by the Viscount's Department indicating that the debtor (the appellant's son) had left the address given and his whereabouts were unknown. 10. Furthermore it is clear that the appellant saw this letter, because in his letter of 17 th August, 2011, to Jersey Harbours he confirmed that he had received it - and indeed it is understood that he had sent it on to his son, living in Australia. 11. The nature of the appellant's claim in this case is for breach of statutory duty and/or in tort. In either case, the prescription period is three years from the date the cause of action arose. On the facts of this case, the cause of action arose on 16 th April, 2011, when the Harbourmaster procured the sale of the vessel Marie France by auction and proceedings therefore should have been brought by 16 th April, 2014. 12. The appellant asserts that there was an *empêchement de fait* which prevented him from bringing these proceedings in time. His first point is that this was a deliberate breach of the law by the Harbourmaster, because he did not serve a formal direction in April 2011 indicating that he was imminently to impound the boat and sell it. His second point is that he did not realise until May 2013, when the Solicitor General confirmed the point to him on instructions that the Harbourmaster accepted he had acted in breach of the Regulation by selling the vehicle in question without proper service of a statutory direction. 13. For the purposes of this application I will assume without deciding it that the respondent, through the Harbourmaster, acted unlawfully by impounding the boat and selling it. In my judgment, that is not sufficient to raise an *empêchement de fait* . If it were, the cause of action which is an asserted breach of statutory duty in selling without authority would never be capable of being prescribed. Yet that is clearly not the position. Assuming the breach of duty took place, it occurred when the vessel was sold on 16 th April, 2011, because that is the date on which damage was sustained by the owner. If there had been no breach of statutory duty, because the relevant directions had previously been served, there would be no case at all. The fact that there is an admitted breach of duty does not therefore amount to an *empêchement de fait* . 14. The second point which is raised is that the appellant did not know of the admission until 2013. Again that is not relevant. The actionable breach of duty is not dependent upon the date on which the appellant became aware of the breach, subject to the principles of *empêchement* to which I will now turn. The cause of action starts running from when the loss was sustained namely the date of the breach of statutory duty, again subject to the question of *empêchement de fait* . 15. The test of *empêchement* has been laid down in *Public Services Committee v Maynard*

- [1996] JLR 343 and there have been subsequent decisions of the Court of Appeal in *Boyd v Pickersgill*
- [1999] JLR 284 and of the Royal Court in *Re Nolan*
- [2014] JRC 078A . 16. In the *Maynard* case, the headnote reads:- "Prescription would not run against a plaintiff (or indeed a potential plaintiff) if he could show at trial that he had been prevented from pursuing his legal rights by an *empêchement de fait*, or practical impossibility, under the maxim *contra non valentem agere nulla currit praescriptio*, which clearly applied to actions both in contract and in tort. Although ignorance of the necessary facts was alone insufficient to invoke the maxim, it could be part of the necessary impediment, which in modern conditions, could arise from a variety of circumstances."
17. In *Boyd* , *Beloff JA* said at page 291:- "In my view, the epithet 'practical' deployed in *Maynard* softens rather than strengthens the concept of impossibility. It requires a consideration of what is in fact, not in theory, possible. While ignorance of a cause of action does not per se trigger a suspension of the limitation period, it may, in appropriate circumstances, constitute or create a relevant impediment. The issue before us is of what those circumstances may consist. The test, as it seems to me, is whether ignorance of the cause of action is reasonable in all the circumstances, reasonable, that is, both in respect of the facts giving rise to the cause of action and that a cause of action arises in such circumstances." 18. At page 295, *Sumption JA* said this:- "What ignorance the law regards as reasonable is a matter of legal policy, the precise limits of which will need to be explored from case to case. I am satisfied that the law regards ignorance as reasonable as a matter of legal policy where there was no means by which the particular plaintiff could reasonably have been expected to discover the facts on which her cause of action was based." 19. In essence, the appellant's application is based on the proposition that he does not live in Jersey and only comes to the Jersey property for holidays as a second home. He did not arrive in Jersey until 22 nd July, 2011, and he did not ascertain until August 2011 that the vessel *Marie France* was no longer on the pier at St Aubin and had been sold. The *empêchement de fait* is therefore said to arise because between April 2011 when the boat was sold and July 2011 when he came to the Island, he had no reasonable means of ascertaining that the sale had taken place. Thus he claims there was an *empêchement de fait*. 20. Advocate *Le Cornu* found that there was no *empêchement* on the present case that prevented the prescription period from running. The appellant had known that the vessel had been sitting on the harbour wall at St Aubin since the autumn of 2009 and that it was in a state of disrepair. He knew that in July 2010 his son was being pursued for payment of the arrears of harbour dues. He had not contacted the Harbour Office to explain that the vessel was legally his and he made no attempt to settle the outstanding arrears, instead sending them on for payment to his son in Australia. In assessing the reasonableness of the appellant's conduct, the judge noted that two recorded delivery letters were sent to the appellant's son giving notice of intended seizure and sale but both returned as undelivered, because neither the appellant nor his son had thought fit to advise the Harbourmaster of a contact address notwithstanding they both knew that considerable

arrears of dues for being incurred. 21. In those circumstances, the Judge found that if there were an empêchement, it was of the appellant's own making. 22. I agree with that analysis and would add the following reasons to supplement it:- (i) The appellant knew in October 2010 that the Harbourmaster was minded to impound the boat and have it sold by auction, because the letter to which I have referred gave notice to that effect. (ii) The appellant could have asked someone permanently in Jersey unofficially to keep an eye on his boat for him, and such a person would no doubt have reported that the boat was no longer in place as from April 2011. 23. In the assessment of whether the appellant has acted reasonably, it seems to me that the judge was absolutely right to take into account that the appellant claimed the vessel was his, was aware of the arrears due to the Harbourmaster and made no effort to pay them, failed to notify the Harbourmaster that he was the true owner or otherwise communicate with the Harbourmaster in any respect in connection with the vessel until after the boat was sold, and indeed took no steps to discharge a judgment debt due by his son in respect of a vessel which he asserted was in fact his own. In my judgment there is no objective sympathy to be expressed for such conduct and even if there were otherwise a good cause of action, it is clear that the cause of action accrued on 16 th April, 2011, and there was no empêchement which prevented it being brought before April 16 th 2014. 24. For these reasons, leave to appeal is refused. Authorities Royal Court (Appeals from Petty Debts Court) Rules 2004. Law Reform (Miscellaneous Provisions)(Jersey) Law 1960. Harbours (Jersey) Regulations 1962. Public Services Committee v Maynard

[1996] JLR 343 . Boyd v Pickersgill

[1999] JLR 284 . Re Nolan

[2014] JRC 078A . Page Last Updated: 27 Sep 2016 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/2015/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/hughes-v-minister-for-economic-development-2015-jrc-058a-20-march-2015>

Prepared on 28 October 2026 · Esheria