

JERSEY / JUDGMENT

# In the matter of Restore Builders Limited En Desastre [2024] JRC 290 (20 December 2024)

[2024] JRC 290

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## judgment

the deputy bailiff:

### Introduction

1. On 25 November 2024, we heard an application by the Viscount that Thomas McLaughlin ("Mr McLaughlin") be disqualified as a company director and that he be personally responsible for the debts of Restore Builders Limited ("the Company"). 2. Mr McLaughlin was born in England and is now aged 29. The Company was incorporated in July 2022 and Mr McLaughlin was the sole director and sole shareholder. Prior to the incorporation of the Company, from March 2021, Mr McLaughlin was trading as a sole trader, "RestoreBuilders". The désastre 3. Not long after incorporation, the Company indicated that it was in financial difficulty and unable to pay its debts as they fell due and that, accordingly, it was insolvent. By this time, proceedings had been successfully pursued against the Company by a creditor in the Petty Debts Court. On 30 September 2022, Mr McLaughlin issued letters to the creditors of the Company indicated that it was ceasing trading due to insolvency. On its own application, the Company was declared en désastre on 25 November 2022. In the affidavit sworn on behalf of that application, Mr McLaughlin said that the Company had ceased trading on 7 October 2022. Mr McLaughlin was also declared en désastre on 25 November 2022. 4. Mr McLaughlin has failed to cooperate with the Viscount personally and in his capacity as a director of the Company contrary to Article 18(1) of the Bankruptcy ( Désastre ) (Jersey) Law 1990 ("the Désastre Law"). The history of his non-compliance we will briefly summarise. 5. On 25 November 2022, Mr McLaughlin attended the offices of the Viscount to collect correspondence and a director's questionnaire. The correspondence explained to him why it was necessary to complete the questionnaire. He was required to do so by 9 December 2022. On this day he emailed Mrs Allo and said that he was waiting for Barclays to send through paper copies of old bank accounts. Repeated requests were made by Mrs Allo on behalf of the Viscount, requesting that Mr McLaughlin, inter alia , complete the director's questionnaire and contact her. On 23 December 2022, Mrs Allo said to Mr McLaughlin by

email " It is essential that you remain in contact with me. If you have genuine reasons for not being able to deliver to me the completed questionnaire and other paperwork you assured me you were bringing in, [you] must let me know by return" . Mr McLaughlin failed to engage with these requests. Mrs Allo emailed Mr McLaughlin again on 9 January 2023 saying that it was " imperative " that he respond to the questionnaire and that she needed to " understand whether there are debts due to the company that I should be trying to collect in.... ". She also reminded him of his agreement to " contribute into bankruptcy from your earnings. We need to agree the amount..." . He claimed that he would attend upon the Viscount's Department on 13 January 2023 to provide the relevant paperwork, but he failed to do so. 6. Mr McLaughlin produced what was described as a " sparsely completed " questionnaire on 19 January 2023. Some of his replies did not actually make any sense at all. 7. Having provided this form, Mrs Allo met Mr McLaughlin on 25 January 2023. In that meeting, he agreed to deliver paperwork to the Viscount the following day. He failed to do so. 8. On 9 February 2023, he provided some email correspondence to Mrs Allo which she wanted to discuss with him. He failed to attend the meeting to discuss this material on 14 February 2024. 9. In response to a threat to issue a summons under Article 20 of the Désastre Law, Mr McLaughlin attended an appointment on 1 March 2023. He helped identify spreadsheets containing certain costs analyses for certain particular sites. These were to be used by him to put together accounts to send to debtors. He failed to attend various other meetings after this date, including meetings required in order that the Viscount could invoice debtors of the Company. Mr McLaughlin usually said he was too busy to attend these meetings. 10. In June, Mr McLaughlin provided to the Viscount some, but not all, information in relation to debts owed to the Company. Other deadlines were set by the Viscount which Mr McLaughlin either failed to meet or simply ignored. He failed to contribute the monthly payment that he had agreed to make towards the costs of his bankruptcy. 11. Further failures led the Viscount to issue a summons on him on 10 August 2023 under Article 20 of the Désastre Law. This was served on the address that the Viscount had for correspondence in St Helier. An email was received from a person who the Viscount believed was Mr McLaughlin's partner, to the effect that she was not a point of contact. Mr McLaughlin's failure to provide the Viscount with his new address was a breach of Article 18(2)(a) of the Désastre Law. Mr McLaughlin sent an email to Mrs Allo on 10 August saying that his mother had passed away and he would be away from the Island for a month. She responded expressing her condolences and subsequently on 31 August 2023 served on him a Notice under Article 9 of the Désastre Law requiring him to specify any entitlement he had as a beneficiary under this mother's estate. Such an entitlement would vest in the Viscount. He ignored this Notice. It then appears that Mr McLaughlin left the Island permanently. In 2024, he was warned that he would be referred to the Law Officers' Department for Enforcement Proceedings. He ignored this correspondence. The Viscount said: "As a consequence of Mr McLaughlin not communicating with the Viscount, as regards his personal bankruptcy, we have no visibility of his income and expenditure and whether he has an ability to pay any surplus funds into his bankruptcy for the benefit of his creditors. There may also be other after-acquired assets such as an inheritance. In addition, Mr

McLaughlin has failed to provide adequate documentary evidence to enable the Viscount to pursue possible debts due to the bankruptcy of [the Company]... At the expiration of four years from the date of the declaration of Mr McLaughlin's bankruptcy, if Mr McLaughlin fails to make meaningful contact to the Viscount, the Viscount will recommend to the Court that Mr McLaughlin remains from his bankruptcy for an indefinite period. After-acquired assets will continue to vest in the Viscount for benefit of the creditors." 12. Further, Mr McLaughlin in his capacity as director of the Company misrepresented the value of the assets owned by the Company in his affidavit when making an application to declare the Company as en désastre . The exhibited value of assets was over £26,000, the value realised was £700. He said the Company's debts amounted to £282,632, whereas claims have been filed in the sum of £28,577. There is evidence that Mr McLaughlin may have mixed the Company's assets with his own and it was unclear where the assets and the liabilities truly lay. The Viscount says that Mr McLaughlin has demonstrated contempt to the Court and his creditors. 13. There is also evidence that Mr McLaughlin knew or ought to have known that there was no prospect that the Company would avoid bankruptcy and accumulated approximately £1 million in debt in his personal capacity prior to incorporating the Company. It appears that Mr McLaughlin incorporated the Company in order to improve his position with creditors. Mrs Allo's " working assumption " is that Mr McLaughlin was in a perilous financial situation at the time that he incorporated the Company, and he did so in order to limit his personal liability in respect of the debts he had incurred. By then it was too late, and the Company soon collapsed into insolvency. 14. It was necessary for the Viscount to instruct a tracing agent to locate Mr McLaughlin. In October 2024, his home was located in a rural area near a small town called Wigton in Cumbria. He was living in a farmhouse enclosed by an area containing goats and a camping area. Two Jersey registered vehicles were located in the area - a black Range Rover and a grey Mercedes van. Mr McLaughlin was served with these proceedings, both at this residential address in Cumbria and by email. He failed to acknowledge the proceedings until just before the hearing. 15. On 19 November 2024, Mr McLaughlin provided by email an unsworn document which he described as a letter expressing his wish " to be heard in the Jersey Court, Désastre Division ". Mr McLaughlin said that he gave the Viscount all the material required and there was not much more he could have done. He said that the business failed because the jobs were underpriced, and he was often not paid for the work that the Company had done. He also said that his mother had left nothing to him of any value as she, in effect, had no assets. He went on to complain about the Petty Debts Court list and said that it should not be a public document as it can lead to lines of credit being closed down overnight, preventing completion of construction and then payment. He particularised other building and construction companies that have recently closed. In his letter, he apologised to the Court, his clients and trade suppliers who have lost money, but said that he too has lost out as a consequence of the failure of his business. He does not wish to be struck off as a director and said the problem was that the actions taken by the Viscount's Department, in sequestering his business vans and tools as a consequence of the first Petty Debts Court's judgment issued against the Company, prevented him from trading his way out of the

difficulty the Company was in. His criticism that the Petty Debts Court list is public, that its hearings are in public and that its judgments are public documents appears to be misplaced. In our view, it is in the public interest that those who are contracting or considering contracting with persons such as Mr McLaughlin are fully aware of the fact that the persons with whom they are considering contracting are or may be unable to pay their debts as they fall due. In many respects, Mr McLaughlin's letter to the Court was an extraordinary document as in it he admits that "I was using customer pre-payments to fund the company's debts. I had received payments for materials such as windows from clients but did not order those windows instead using the cash to pay wages". This is tantamount to an admission that he was acting dishonestly in using customers' deposits not for the purpose for which he received them, but for other purposes entirely. The relevant legal principles 16. Article 24(7) of the Désastre Law states that: "Where the debtor is a company, the Court may, on the application of the Viscount, make any order in respect of a person who is or was a director of the company that it would be permitted to make under Article 78 of the Companies Law in respect of such a person." 17. In turn, Article 78 of the Companies (Jersey) Law 1991 (the "Companies Law") provides in respect to disqualification orders: "(1) If it appears to the Minister, the Commission, or the Attorney General, that it is expedient in the public interest that a person should not without the leave of the court - (a) be a director of or in any way whether directly or indirectly be concerned or take part in the management of a company; (b) be a member of the council of a foundation incorporated under the Foundations (Jersey) Law 2009 or in any other way directly or indirectly be concerned or take part in the management of such a foundation; or (c) in Jersey in any way whether directly or indirectly be concerned or take part in the management of a body incorporated outside Jersey, the Minister, the Commission, or the Attorney General may apply to the court for an order to that effect against the person.

- (2) The court may, on such an application, make the order applied for if it is satisfied that the person's conduct in relation to a body corporate makes the person unfit to be concerned in the management of a body corporate.
- (3) An order under paragraph (2) shall be for such period, not exceeding 15 years, as the court directs.
- (4) A person who acts in contravention of an order made under this Article is guilty of an offence.
- (5) On the making of an order against a person under this Article, the registrar may the person's disqualification in a form approved by the Commission." Wrongful trading 18. Article 44(1)-(3) of the Désastre Law states: "(1) Subject to paragraph (3), if in the course of a "désastre" in respect of a company or limited liability company it appears that paragraph (2) applies in relation to a person who is or has been a director of the company or manager of the limited liability company, the court on the application of the Viscount may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company or the limited liability company

arising after the time referred to in paragraph (2).

- (2) This paragraph applies in relation to a person if at a time before the date of the declaration that person as a director of the company or manager of the limited liability company- (a) knew that there was no reasonable prospect that the company or limited liability company would avoid a declaration or a creditors' winding up; or (b) on the facts known to him or her was reckless as to whether the company or limited liability company would avoid a declaration or such a winding-up.
- (3) The court shall not make an order under paragraph (1) with respect to a person if it is satisfied that after either condition specified in paragraph (2) was first satisfied in relation to him or her the person took reasonable steps with a view to minimising the potential loss to the company's or limited liability company's creditors." 19. Notwithstanding that Mr McLaughlin may well be a man of straw, the Viscount says that the Court should consider making an order under Article 44 of the Désastre Law to the effect that he should be personally responsible for the debts of the Company. The Viscount informed us that he has no record of the Royal Court making a wrongful trading order hitherto. Decision 20. Mr McLaughlin and, through him, the Company failed to comply with Article 18 of the Désastre Law, and in particular the obligation upon a debtor to, " to the utmost of the debtor's power, aid the Viscount in a realisation of the debtor's property and the distribution of the proceeds among the debtor's creditor...." . 21. Mr McLaughlin gives no reason or excuse for leaving the island in the way that he did and failing to respond to correspondence. It was only following the service of these proceedings that Mr McLaughlin has re-engaged with the Viscount. We note that he has done so via the same email account that Mrs Allo attempted to connect with him without success on many occasions. We accept all the Viscount's criticisms of Mr McLaughlin and had he attended the hearing (which he did not) then he would have been cross-examined on his statement (which in any event was not given on oath). 22. In the case of SPARC Group Limited

[2022] (2) JLR 65 ("SPARC Group"), the Court made a disqualification order against Andrew Mills, sole director of the SPARC Group Limited, finding that he had flagrantly breached his obligations under the Désastre Law for a period of ten years. The Court noted that it was the first case to be determined by the Royal Court since the maximum period for disqualification under the Companies Law was increased from five to fifteen years in September 2002. This was the same period of disqualification under the equivalent legislation, namely the Company Directors Disqualification Act 1986. The Court's attention was drawn to the English Court of Appeal case in *Re Sevenoaks Stationers (Retail) Limited*

[1991] Ch 173. In that case, Dillon LJ, giving the judgment of the Court, observed: "Where it falls to a court to determine whether a person's conduct as a director of any particular company or companies makes him unfit to be concerned in the management of a company, the court shall have regard in particular to the matters mentioned in Schedule 1 to the Act." 23. Dillon LJ went on to say: "I would for my part endorse the division of the potential 15-year disqualification period into three brackets, which was put forward by Mr. Keenan for the

official receiver to Harman J. in the present case and has been put forward by Mr. Charles for the official receiver in other cases, viz.: ( i ) the top bracket of disqualification for periods over 10 years should be reserved for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified yet again. (ii) The minimum bracket of two to five years' disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious. (iii) The middle bracket of disqualification for from six to 10 years should apply for serious cases which do not merit the top bracket." In SPARC Group , the Royal Court said: "6. Plainly this case is not binding upon us but aspects of the Sevenoaks decision have already been referred to and indeed adopted by the courts of Jersey. The case of *In re Dimsey* is one such case. The Dimsey case was decided prior to the incorporation of the European Convention on Human Rights as a matter of domestic law but the Court of Appeal noted nonetheless that the objective of the relevant provisions of the 1991 Law is not punishment but protection of the public, and accordingly the disqualification provisions do not constitute a "penalty" within the meaning of the Convention but a protective step. In *Dimsey* , Smith, J. A ., giving the judgment of the Court of Appeal, said this (2000 JLR at 409): " ... we refer to and adopt the remarks of Dillon, L. J. in *Re Sevenoaks Stationers (Retail) Ltd.* ... on the similarly-worded portion of s.6 of the Company Directors Disqualification Act 1986 ([1991] Ch. at 176): "The test laid down ... is whether the person's conduct ... "makes him unfit to be concerned in the management of a company." These are ordinary words of the English language and they should be simple to apply in most cases. It is important to hold to those words in each case."" 24. In our view, this is also a case of a flagrant breach of the obligations owed by a debtor under the Désastre Law, affecting the Viscount's ability to discharge his functions pursuant to the terms of the Désastre Law. We note in the case of SPARC Group the Royal Court observed: "Bearing in mind that an order for disqualification is designed to protect the public and bearing in mind the position of Jersey as a finance centre and the need to ensure that directors in the place of Mr. Mills comply with their obligations under statute a lengthy period of disqualification is warranted." 25. We have reached a similar conclusion in this case. Mr McLaughlin failed to keep in contact with the Viscount; he failed to attend appointments; he failed to make the payments he promised; he failed to provide genuine assistance to the Viscount. His conduct made it very difficult, if not impossible, for the Viscount to pursue the debtors of the Company. Mrs Allo told us that she did receive paperwork from Mr McLaughlin but that was largely meaningless in the absence of help from Mr McLaughlin which was not forthcoming. It was never clear what, if any, monies were properly due to the Company. Creditors whom she was asked to pursue by Mr McLaughlin told her that the work by the Company had not been done at all or had been done badly, or debtors had paid deposits but received no service from Mr McLaughlin / the Company in return. 26. In the circumstances, we disqualified Mr McLaughlin from acting as director of a Jersey company for ten years and made orders in the terms required by Article 78 of the Companies Law. 27. As to the application for a wrongful trading order, in Mr McLaughlin's personal bankruptcy the claims against him total £964,057. Included

within this sum are claims for outstanding employee social security contributions and ITIS totalling £87,588 and £193,280 respectively, against assets of just over £2,000. Mr McLaughlin knew, or ought to have known, that there was no reasonable prospect that the Company which he incorporated would avoid bankruptcy when he, its sole shareholder, had accumulated debts of nearly £1 million in his personal capacity before incorporating the Company. 28. The incorporation of the Company was simply a tool to avoid his personal bankruptcy. Mr McLaughlin incorporated the Company knowing that there was no reasonable prospect that the Company would avoid a declaration of en désastre . 29. Mrs Allo says that individuals " should not be able to play fast and loose with the rules and the [ Désastre Law]" . We agree, and order that Mr McLaughlin should be personally responsible for the debts of the Company, being satisfied that the statutory test under Article 44(2) of the Désastre Law is met. We find that prior to the declaration of en désastre , Mr McLaughlin knew there was no reasonable prospect that the Company would avoid such a declaration and, in any event, on the facts known to him, was reckless as to whether the Company would avoid such a declaration. At no time did he take any reasonable steps in order to minimise the potential losses to the Company's creditors. Authorities Bankruptcy ( Désastre ) (Jersey) Law 1990. Companies (Jersey) Law 1991. SPARC Group Limited

[2022] (2) JLR 65. Re Sevenoaks Stationers (Retail) Limited [1991] Ch 173. Page Last Updated: 21 Jan 2025 Back to top About JLIB Accessibility Contacts Copyright Disclaimer Feedback Privacy policy Site map BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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