

JERSEY / JUDGMENT

Montrow v Tacon [2007]

JCA 144 (19 July 2007)

[2007] JCA 144

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COURT OF APPEAL 19th July 2007 Before : The Hon Michael Beloff, Q. C. sitting as a single judge. In the matter of the Representation of William Tacon in respect of Montrow International Limited and Likouala SA Between Montrow International Limited Applicant And William Tacon Respondent Application for leave to appeal a judgment of the Samedi Division of the Royal Court dated 1st June, 2007 whereby the Court refused the application by the Applicant for a stay of the exercise of the powers of the Respondent pursuant to the Acts of the Royal Court of 13th and 14th March, 2007. Advocate A. D. Robinson for the Applicant. Advocate M. H. Thompson for the Respondent.

JUDGMENT

Beloff JA: 1. This is an application for leave to appeal by all three Respondents against a refusal by the Royal Court on 16th May of this year to stay part of an order made by the same Court on 14th March, 2007, whereby it recognised the appointment, by the High Court of the British Virgin Islands, of the Representor as the Provisional Liquidator of Montrow International Limited and Likouala SA, and authorised him to exercise various powers as Provisional Liquidator of those companies, in particular exposing a Mr Grimshaw, the second Respondent and Director of the third Respondent, to interview by the Representor. There is also, on the premise that this Court today gives leave, a subsidiary application for a stay pending any appeal. 2. The application for leave to appeal was first made to the Royal Court on the day it handed down a reasoned judgment on 1st June of this year and was refused. A stay pending service of a notice of appeal for 14 days was given - but expired before such service. 3. Kensington International Limited is an investment fund, pejoratively a vulture fund, incorporated in the Cayman Islands. It has acquired, at a discount, the benefit of various sums owed by the Republic of Congo including four judgments in the English High Court of sums totalling in excess of \$93 million, on which interest continues to accrue. Congo has a history of avoiding its liabilities and seeking to render its assets judgment proof. There has been strong criticism in a number of judgments in the English commercial court and elsewhere. The Royal Court referred in particular to the judgment to that effect of Mr Justice Cooke in *Kensington International Limited v The Republic of Congo* [2005] EWCH 2684 (Comm). 4. Until 2003 Total Oil through its subsidiary in the Congo held 65% of a concession issued in 1978 for 50 years in oil producing fields in Congo known as Likouala. As part of the overall settlement between Congo and Total, Total relinquished its interest in the Likouala oil

field to Congo in 2003 for the price of one franc. Congo apparently then sold this interest in the Likouala oil field to a newly established company incorporated in Congo called Likouala SA. The purchase was apparently funded by a loan from BNP to Likouala SA in the region of \$70 million, which was presumably secured on the oil assets of Likouala SA. 5. Likouala SA for its part is wholly owned by Montrow International Limited, the third Respondent, a company incorporated in the British Virgin Islands in 2003. Its sole asset is its share holding in Likouala SA and it in turn is owned by a Jersey charitable trust of which Nautilus Trust Company Limited, (Nautilus the first Respondent,) is a trustee. Nautilus is a Jersey trust company. Four employees of Nautilus serve as Directors of Montrow, including Mr Grimshaw, the second Respondent. 6. Kensington asserts that the Likouala SA/Montrow structure is a sham and another example of Congo seeking to distance itself from its oil producing assets in order to impede Kensington and other creditors from enforcing their claims. It asserts, too, that the prime mover on Congo's side in relation to the Likouala/Montrow structure was Mr Gokana, who was the subject of criticism for his dishonesty and breach of court orders by Mr Justice Cooke in the judgment to which I have already made reference, and was found, by the same judge in the same judgment to be central to Congo's attempts to conceal its assets by means of sham companies. 7. The Respondents for their part strenuously dispute Kensington's assertions. They assert that the structure is part of a legitimate project finance deal set up to finance payments of monies payable to Congo by Total and further that Mr Gokana is not involved in any manner in its establishment. 8. On 7th March of this year, by originating application, Kensington applied to the High Court in the British Virgin Islands (BVI) for an order that Montrow and Likouala SA "the two companies" be placed in liquidation on the grounds that it was just and equitable to do so, namely that the Likouala/Montrow structure was a sham and that the underlying economic interest in the oil field, ultimately owned by the structure, was in reality an asset of Congo and was therefore available to creditors such as Kensington. 9. At the same time Kensington applied for the appointment of Mr Tacon, the Representor, an insolvency practitioner in the BVI as Provisional Liquidator of the two companies pursuant to sections 170(1) and 170(4)(b)(i) of the Insolvency Act of the BVI for the particular purpose of maintaining the value of the assets owned and managed by them. On 9th March, following an ex parte hearing, the BVI Court, presided over for this purpose by Mr Justice Charles, granted that application with a result that Mr Tacon became the duly appointed Provisional Liquidator of the two companies with wide ranging powers envisaged by section 282 (1) of the same Act as are set out in paragraph 2 of the order of that date: materially as follows "2 That William Richard Tacon as provisional liquidator be permitted within the jurisdiction of Jersey to take the following steps: (g) to examine by interview any director or officer of Montrow and/or Likouala in particular Mr Grimshaw and/or any other employee of Nautilus who is reasonably believed to have in his or her possession any property of Montrow and/or Likouala or any information concerning the promotion, business dealings or affairs of Montrow and/or Likouala 3. That service of this representation upon Mr Grimshaw and Nautilus shall operate as an immediate interim order:- a. (b). ordering them forthwith to produce any and all books, papers or other records in their possession or under their control in whatever capacity which contain information about or in any way relating to Montrow and/or Likouala and the assets of Montrow and/or Likouala including, but not limited to the identity of their client of

record and of the beneficial owner(s) of Montrow and/or Likouala; (c). ordering them to co-operate fully with Mr Tacon or in the exercise of any powers vested in him pursuant to paragraph

- (2) above, in particular to answer any questions about the location of any assets or books, papers or other records of Montrow and/or Likouala. 5. That Mr Tacon be permitted to use, for the purposes of fulfilling the statutory and other functions and duties relating to the provisional liquidation and pursuing such causes of action as he may consider appropriate in accordance with the powers granted to him by this Court, any books, papers and other records (as defined in paragraph
- (3) above) or evidence provided by way of examination of any person in accordance with an order made by the Jersey Court by reason of this Letter of Request." 10. Whether or not such an appointment was unusual, as has been suggested from the Bar, it was clearly thought to be necessary, and, subject to a pending application to remove Mr Tacon as Provisional Liquidator, that remains the apparent view of the Caribbean Courts. 11. On the 13 th March pursuant to an ex parte application and the letter of request from the BVI Court, the Royal Court in Jersey made an order recognising Mr Tacon as Provisional Liquidator and on 14 th March granted relief in the terms of the order of the BVI Court to which I have already made reference. The order was served on Nautilus which complied with the order promptly and handed its files over to Mr Tacon on 16 th March, which, it appears, he handed over equally promptly to various persons including Kensington, without, it is suggested, sufficient care or forethought. Mr Tacon, for his part says that such disclosure was required in order to see whether Kensington could identify from that material what I may describe as the hall marks of a Congo scam. 12. Drawing on the information that was contained in those files Mr Tacon duly prepared a report to the BVI Court dated 10 th April 2007 summarising what he had established so far. On 13 th April the BVI Court refused the application by Montrow for a stay of the provisional liquidation and indeed directed that it should continue. The reasons for that decision were delivered later on 9 th May and it is instructive to note that paragraph 23 of the judgment of Charles J concludes with the words " on the basis of submissions made by Queens Counsel based upon that report the object of the structure appears to have been principally to conceal, through the facades of Likouala and Montrow, the oil back loan by BNP to the Congo, with the Congo in reality owning the oil fields throughout". 13. Following submissions as to the use to which Mr Tacon had already made of the documents obtained in Jersey the BVI Court did make an order on 13 th April concerning the use to which Mr Tacon could put the information he obtained as Provisional Liquidator in the following terms. "Unless the Court gives permission to do otherwise; (a) The Provisional Liquidator shall be entitled to use documents or information obtained by him during the course of the proceedings only for the purposes of furthering the provisional liquidation or any liquidation subsequently ordered on this petition (which purposes shall include (a) taking proceedings on behalf of Montrow whether to obtain information or enforce its rights and (b) the performance of other duties or responsibilities). (b) No other person (including [Kensington]) to whom any such documents or information might be given shall use such documents or information which has not entered the public domain otherwise than for

these proceedings or assisting in the furtherance of the provisional liquidation or any liquidation which follows". I draw attention to the fact that it was accordingly envisaged that Kensington might be a recipient of relevant documents or information acquired by Mr Tacon in his capacity as Provisional Liquidator. 14. Subsequently Montrow applied in the BVI for a stay of the Provisional Liquidation pending the appeal. The BVI Court, on 16 th May refused such a stay and further refused to limit Mr Tacon's powers. On 5 th and 6 th June the Eastern Caribbean Court of Appeal also refused leave to appeal and refused a stay pending appeal in relation to the refusal of the BVI Court to stay or limit the powers Mr Tacon enjoyed. 15. I repeat therefore that the position is that Mr Tacon remains the Provisional Liquidator pending, I should add, a further application that is pending to remove him based on matters subsequent to the original application and, as I understand it, on alleged misuse of his powers. The hearing for the liquidation itself is now scheduled for early in 2008 with as 15 day time estimate. 16. Because all the documents in Jersey had already been disclosed to Mr Tacon before the matter came back before the Royal Court, the only outstanding matter with which the Royal Court had to deal and it remains the only matter with which this Court has to deal within the context of this application is the possible exercise of the power conferred by paragraph 2(g) of the order, namely that Mr Tacon be entitled to examine a director of Montrow, in particular Mr Grimshaw. 17. Montrow and Mr Grimshaw contest Mr Tacon's power to do so on the basis that he has made himself, in Mr Robinson's evocative phrase, part of the Kensington team and is seeking to or will obtain, premature disclosure of evidence that would be required in the liquidation proceedings to the benefit of Kensington as party to these proceedings, and to potential unique adverse influence upon the trial judge. Mr Tacon, for his part, will say, and has said through Counsel and in affidavit, that it is necessary for him to obtain the information in proper pursuit of his specific functions as Provisional Liquidator. 18. Before the Royal Court it was submitted on behalf of Montrow that the Court should stay all the order that it had made other than that part which recognised Mr Tacon's appointment and that the documents that were in Jersey should be preserved, that is to say that the Court should stay any interview of Mr Grimshaw by Mr Tacon pursuant to paragraph 2(g) of the order. Several grounds were apparently ventilated in support of that application. Firstly that the directors of Montrow had intended to apply to set aside the orders of the Royal Court made on 13 th and 14 th March, on the footing that Mr Tacon had failed to make a full and frank disclosure of a kind conventionally required for an ex parte hearing; secondly that there were, in contemplation, a number of challenges to the various orders in the BVI and reasons accordingly for thinking that Mr Tacon's appointment would be short lived and thirdly that Mr Tacon had gone beyond the proper powers conferred upon a Provisional Liquidator, fourthly in particular that there was an entire absence of evidence that the companies were shams and assets of Congo, and it was therefore inappropriate for him to be in his post or indeed to enjoy such powers. 19. The Royal Court, while paying tribute to Mr Robinson's submissions, which I repeat in this Court, rejected the application in the following terms: "35. We have carefully considered Mr Robinson's submissions, but we have no doubt that we should not stay our order for the following reasons. 36. As to any challenge in Jersey to the ex parte order of this Court on the

basis of a failure to make full and frank disclosure, no such application has in fact yet been brought. If we had been satisfied that there were very strong grounds for thinking that there had been material non disclosure, we might have taken this into account even in the absence of a formal application to set aside the ex parte order. But, having heard the points which Mr Robinson proposes to raise, they come nowhere near reaching the level which would be necessary if we were to make an allowance for the proposed challenge even in the absence of a formal application. 37. As to challenges in the BVI, we accept that the directors intend to challenge the various orders made or applied for as described by Mr Robinson. However, the fact remains that, at present, the appointment of Mr Tacon remains in force and has not been stayed. The BVI Court has maintained the appointment of Mr Tacon and has not withdrawn its Letter of Request to this Court. Montrow is a BVI company. Decisions relating to matters such as whether there should be a liquidation, whether a provisional liquidator should be appointed, the powers which should be conferred on such provisional liquidator and the nature of his role are therefore matters of BVI law for determination by the BVI Court. Whilst of course this Court retains a discretion as to whether it should assist an overseas court in such matters and, if so, the nature and degree of such assistance, the fact remains that this Court is playing a secondary role and it is merely assisting the BVI court insofar as concerns matters within Jersey. We should therefore pay considerable regard to any relevant decisions of the BVI Court. 38. As already mentioned, the directors have sought on two occasions to persuade the BVI Court to stay the provisional liquidation. On 13 th April the BVI Court refused to stay its order. A further application for a stay pending appeal was made on 23 rd April. The decision on that application was not known at the time of the hearing before this Court on 2 nd and 3 rd May but we have been informed by letter from Advocate Thompson dated 10 th May that that application for a stay has also been refused. If the BVI Court, following application, has decided that it would not be right to stay the powers of the provisional liquidator, it seems to us that some fairly compelling reason would be required before we should reach a different decision. 39. At the heart of Mr Robinson's submissions lay the proposition that Mr Tacon had gone beyond the proper role of a provisional liquidator. We have already accepted Mr Robinson's argument that the powers of a provisional liquidator can only be exercised for the purpose of maintaining the value of the assets of the company. Mr Tacon asserts that it is necessary for him to understand the underlying structure and its purpose in order to fulfil his duty of maintaining the value of the company's assets. 40. Ultimately, whether a provisional liquidator of a BVI company has exceeded his powers is a question of BVI law and is therefore most suitable for resolution by a BVI court. In this respect, we note that the Report - which is relied upon by Mr Robinson as showing that Mr Tacon had gone beyond his proper role - was a report to the BVI Court and was produced to that court for the hearing on 13 th April. Yet there is no suggestion that the BVI Court considered that the Report showed that Mr Tacon had exceeded his proper role. On the contrary, the BVI Court refused a stay on that occasion and at para 65 of her judgment Hariprashad-Charles J said "It is vital that Mr Tacon establishes as soon as possible the true nature of the scheme so that he may take all steps as may be available to him to preserve the underlying assets." 41. In our judgment,

it would be a strong thing for this Court, in the face of such an approach by the BVI Court, to find that Mr Tacon had in fact exceeded his proper role. In any event, as a matter of general principle we would, for our own part, agree that it is reasonable for a provisional liquidator to wish fully to understand the underlying purpose behind a structure such as that of which Montrow formed part in order to ensure that he is able to do all that is necessary to maintain the value of the company's assets. Furthermore, as provisional liquidator of Montrow, it would be entirely proper for him to wish to establish the full and detailed position in relation to the assets of its wholly owned subsidiary Likouala SA. Thus it would be entirely proper for him to wish to establish in detail the exact nature of the rights to the oilfield held by Likouala. Where does the ultimate economic benefit lie? Is there an option or other arrangement whereby Total, after a period, can call for transfer of the oil rights from Likouala for a nominal consideration? What rights in the oilfield does Likouala have in the meantime? What is the financial position of Likouala? What is its income stream? What is happening to any surplus of the amount required to pay the debt to BNP? There are no doubt many other questions. In our judgment most of the proposed questions to be asked of Mr Grimshaw do fall within the scope of a provisional liquidator's duties but we do agree that questions 3, 6, 12 and 16 go beyond what is required and Mr Grimshaw need not answer them. We place no weight on Mr Robinson's submission that it was very odd that Mr Tacon had not yet applied to have his appointment recognised and enforced in Congo itself. We can well understand the difficulties involved in such a course of action. 42. Mr Robinson placed great weight on the disclosures made by Mr Tacon to Kensington and argued strongly that they were improper. The reason given by Mr Tacon for the disclosures is to be found at para 1.8 of the Report where he said:- "A considerable amount of detailed information, including draft contracts, security documentation and a trust deed, together with correspondence, has been received from Nautilus. Much of this documentation is English translation of agreements prepared in French. In view of my lack of any previous involvement in this matter, I sought Mr Schwarzkopf's assistance as to the significance of the documents and made them available to him. He has been able to assist me in understanding the material provided and also better interpret what appears to be a complex structure involving Montrow, Likouala, the Congo, BNP Paribas, Total and TEP, from which I have drawn my own conclusions." This issue of disclosure has been considered by the BVI Court on two occasions and it has built in the protection referred to at para 13 above by controlling the use to which Kensington may put any information so obtained. Mr Robinson is critical of this protection and submits that it amounts to very little. In particular it does not prevent Kensington from using information obtained by the provisional liquidator to make its case on winding up Montrow on just and equitable grounds. However, the fact remains that Mr Tacon is an office holder appointed by the BVI Court and owes duties to the BVI Court. The directors of Montrow have applied to the BVI Court for an order that Mr Tacon swear an affidavit explaining exactly what information and documents he has disclosed to Kensington and generally the nature of his contacts with Kensington. At the date of the hearing before us, the outcome of that application was not known but, since then, the BVI Court has roundly dismissed that application for the reasons set out in a judgment which has been

supplied to us. There is no suggestion in the judgment that the BVI Court considered that Mr Tacon had in any way exceeded his proper role by reason of the various disclosures which he had made to Kensington. Subject to what is said at para 53 below, it must be a matter primarily for the BVI Court as to the extent to which the provisional liquidator should be able to disclose to others information and documents which he has obtained. Whilst this Court undoubtedly retains a discretion to control the use of information obtained by an office holder by compulsion in Jersey, we should pay considerable regard to the approach of the court which has primary responsibility for supervising and controlling the office holder in question. 43. As to the question of prejudice, we accept that information, once released, cannot be recovered. Nevertheless we are here concerned primarily with the release of information to a provisional liquidator (who effectively becomes the company) of information concerning the affairs of that company and its wholly owned subsidiary. There can be little prejudice from releasing information to such a person. A more significant prejudice arises, says Mr Robinson, because the information has been released to Kensington, which is an adverse party. However, that has to be balanced against the fact that the provisional liquidator needs to ascertain and, so far as possible secure the assets of Montrow and its wholly owned subsidiary. There is clear evidence of Congo being willing to go to extraordinary lengths to deprive its creditors of their entitlement and, like the BVI Court, we accept that there is an urgent need for Mr Tacon to ascertain the true nature of the scheme and the full and detailed financial position of the companies. Mr Robinson argued that there was no urgency. We do not agree. If Congo is behind this scheme, experience shows that it is likely to take advantage of any delay to try and put its assets beyond the reach of its creditors. 44. Moreover, this again is an issue where due weight must be given to the approach of the BVI Court. In deciding whether or not to stay the appointment of the provisional liquidator, the BVI Court has to balance similar consideration to those which were urged before us. If, having done so, the BVI Court decides that the balance comes down in favour of maintaining the provisional liquidation, the interests of comity would suggest that this Court should generally not take action which is contrary to that approach, although we accept that the matter is ultimately one of discretion for this Court. 45. For all of the above reasons we refuse this application for a stay of the powers of the provisional liquidator in Jersey. 20. The Royal Court did however accede to a second application made on behalf of the Respondents, namely that Mr Tacon should swear an affidavit giving details of documents and information obtained from Nautilus which had been disclosed other than to his legal advisors. This he has duly done revealing the fact that he gave the disclosure to persons other than the legal advisors as I have already described, giving rise to the complaint that the evidence that he gave to this Court on 16 th May about such disclosure, while it was undoubtedly the truth might be thought not to have been the whole truth. 21. This application is based upon the principles set out by this Court in *Glazebrook v Housing Committee*

- [2002] JLR N43 case which I will refer to as the Glazebrook trilogy and which are as follows. (i) Where there is a clear case of something having gone wrong. (ii) Where the question is one of general principle decided for the first time. (iii) Where the case involves a question of importance upon which further argument and a decision of the Court of appeal will be to the public advantage. 22. It may be that in due course the formulation of the first of those grounds will require revisiting and explanation but this is certainly not an occasion for such an exercise. 23. What has to be born in mind in the context of this application is that the decision of the Royal Court was an interlocutory decision made in the exercise of discretion with which an appellate court could only interfere on well known grounds and not only because it itself might have drawn different conclusions from the relevant material or exercised its discretion in a different way. 24. The test that is applied in this Island and its Courts can be taken from Macon and Queree
- [2001] JLR 80 a decision of Mr Commissioner Page summarising the principles in the House of Lords in Abidon Daver
- [1984] AC 421 namely that the Court of Appeal does not interfere save in three cases; first where the judge has misdirected himself with regard to principles in accordance with which his discretion was exercised; secondly where the judge in exercising his discretion has taken into account matters which he ought not to have done or has failed to take into account which he ought to have done and thirdly where his decision is plainly wrong. 25. Mr Robinson submitted that all the Glazebrook grounds were applicable in the present case and was not deflected from that submission by reference to the other principles to which I have just referred. He submitted that there was a clear case that something had gone wrong, I recite initially what is said at para 39 of his skeleton argument: "a. The court found there was an urgent need for Mr Tacon to ascertain the financial position of Montrow and Likouala in order to guard against the potential risk that Congo would put Montrow's assets beyond the reach of its creditors b. This was a crucial finding of fact because the Royal Court used it to support its refusal of a stay of the order recognising Mr Tacon's appointment. Had such finding not been made the result would have been different c. Mr Tacon adduced no positive evidence before the Royal Court in support of such finding d. The only relevant evidence before the court on this issue was that adduced by Montrow. Montrow's evidence was that any further delay created no prejudice given facts which included (i) Kensington had been litigating against Congo for many years (ii) In any event there was no real risk of Congo putting assets beyond the reach of creditors as a result of the continuance of the structure since Congo is not involved in it and there was no proper evidence of any such involvement before the Royal Court of Appeal (iii) the establishment of this structure had been public knowledge from as long ago as (iv) moreover Mr Tacon produced no evidence of prejudice to the estate of Montrow if the order recognising his appointment was stayed. The only evidence before the court was if a stay was not granted further disclosure of Montrow's confidential information would result and if this was potentially damaging the Royal Court took no proper account of Montrow's evidence of prejudice to itself. 26. I do not, with respect, agree. Not only was

there, before the Royal Court firstly Congo's track record of seeking to avoid its liabilities; secondly the fact that Mr Tacon's report on the basis of information that he had obtained by reference of the compulsory disclosure of Nautilus files, had reached a similar conclusion and thirdly the further fact that the BVI court, having heard submissions and continued that report, appears to have endorsed the view at any rate that there was strong suspicion that this structure was another example of the same pattern of behaviour by Congo. 27. If and insofar as it is asserted that the Royal Court took no account of the potential prejudice to Montrow in disclosure of confidential information that submission is gainsaid by the actual text of the judgment itself, to which express reference is made (at paragraphs 42 and 43) to that particular factor. 28. Mr Robinson enhanced his skeleton argument a submission that the Royal Court had never resolved to what extent it had an obligation itself to control the exercise of powers by a provisional liquidator appointed overseas but recognised in this jurisdiction, insofar as the exercise of such powers impacted on the jurisdiction of the Jersey Court. Again with respect I do not agree. The judgment of the Royal Court, in my view, sets out fairly and fully the position of the Court recognising both the existence of a discretion under Article 49 of the Bankruptcy (Desastré) (Jersey) Law 1990 and that such discretion was to be exercised in the context of what had to be assumed to be a proper request absent any obvious countervailing indication from an overseas Court. 29. Mr Robinson suggests in his skeleton argument, and repeats orally, "to the extent that any independent discretion was applied in this matter it was not applied with enough weight or conviction. The Royal Court merely rubber stamped the orders made by the British Virgin Islands Court." This is clearly not the case. The Royal Court considered whether it was or was not appropriate to exercise its discretion and the absence of a mere rubber stamping is shown by the fact that it exacted certain undertakings from Mr Tacon and would of course be in a position to police any breach of those undertakings. 30. When the Deputy Bailiff for the Court said, and I quote from paragraph 42 of the judgment cited above, "whilst of course this Court retains a discretion as to whether it should assist an overseas Court in such matters, and if so the nature and degree of such assistance, the fact remains that the Royal Court is playing a secondary role and is merely assisting the British Virgin Island Court insofar as concerns matters within Jersey. We should therefore pay considerable regard to any relevant decisions of the British Virgin Island Court". In my respectful view this is an impeccable statement of principle and the assault that Mr Robinson made is, in truth, an assault on the application of the principle and dissolves into questions of weight and degree which are insufficient to justify the grant of leave to appeal. 31. Mr Robinson's second and third arguments referring to the second and third Glazebrook tests, to an extent overlapped. In my view there is no question of general principle raised here other than that there is a discretion to be exercised under the domestic legislation taking account of all material factors and that is not accordingly of itself a ground upon which leave should be granted. 32. As to the third of the Glazebrook trilogy which I quote again for convenience "where the case involves a question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage" I see again no sufficient force in that

given that I am here concerned with an exercise of discretion. To the extent that practitioners in this jurisdiction are concerned with the kind of factors which may ordinarily be taken into account in the exercise of such discretion they will find assistance analogically in the decision of the English Court of Appeal in *Hughes and Hanover*

[1997] 1BCLC 497 relating to section 426 of the English Insolvency Act and in particular in the judgment of Lord Justice Morritt at pages 518 and 521. "In some cases the assistance sought is, in accordance with the system of law under which it is available, discretionary. Obviously the fact of the request for assistance is a weighty factor to be taken into account. Further the court of England may be expected to accept without further investigation the views of the requesting court as to what was required for the proper conduct of the bankruptcy or winding up. But I do not think that the request can ever be conclusive as to the manner in which the discretion of the court should be exercised. It would be incompatible with the principle of the law which was being applied that the decision was one for the discretion of the court if the fact of the request was anything more than a factor however weighty [518] In considering whether and if so how this court should exercise the jurisdiction to restrain proceedings abroad it is also necessary to consider matters occurring since the letter of request was signed. Normally it would not be appropriate for the court in England to inquire into the basis for the views expressed by the court of the country making the request. But there is no reason of comity or justice to prevent it from considering subsequent events. [521] 33. I should note in conclusion that the BVI court has twice refused an application to stay Mr Tacon's powers that that stance has been endorsed by the Eastern Caribbean Court of Appeal and that therefore the position is that he remains in post with those particular powers. Against that background to grant a stay would appear to be wholly inconsistent with the position presently taken by the overseas court and it would, in my judgment, require strong reasons for a domestic court here to take such a stance which would be contrary to comity. There is nothing to show that the Royal Court were oblivious to these considerations; indeed, to the contrary, they appear to me to have given proper weight to them. 34. If anything the desirability of the exercise of Mr Tacon's powers has been increased by a revelation which has come to light since the hearing before the Royal Court that there is now evidence of an underlying insolvency of Likouala and that the assets of Montrow are at any rate pro tem worthless. Mr Tacon wishes to explore the material circumstances in which this has apparently occurred in proper pursuit of the objects of his appointment as Provisional Liquidator. 35. It may be simplistic to observe that if Mr Grimshaw is neither a party nor privy to a fraudulent scheme he should have no objection at all to confirming this in interview with Mr Tacon, but even weighing in the balance the concerns that he expresses in the context of the forthcoming hearing in the British Virgin Island Court in February 2008, (directions for which were supplied to the Court,) this cannot outweigh the risk which, if it exists, must increase with every day that passes, that if Congo are intimately involved in the structure the path to tracing any assets of Montrow may turn into a cul de sac. 36. The application for leave to appeal is accordingly dismissed. Since I have determined not to

grant leave the issue of a stay pending a further appeal does not arise and I shall say nothing further about it. 37. I should add that concerns that have been expressed that Mr Tacon has exceeded his powers and might be in breach of orders made by, or undertakings given to the Royal Court or the BVI court, were they to have any substance appropriate sanctions are available and well known. I say no more as to the arguments as to that particular issue other than to note what would be likely to be said on either side. 38. Mr Tacon has also volunteered either to agree or, if agreement cannot be reached, to remit to the consideration of the Royal Court what any procedural safeguards that Mr Grimshaw might be entitled to enjoy. He is, of course, already subject to the discipline of the BVI courts as to the use that he can make of any information obtained from Mr Grimshaw. 39. I am grateful to both counsel who argued the case with moderation and economy. Authorities Kensington and Republic of Congo Insolvency Act 2003. Glazebrook v Housing Committee

[2002] JLR N43 Macon and Queree

[2001] JLR 80 . Abidon Daver [1984] AC 421. Bankruptcy (Desastré) (Jersey) Law 1990. Hughes and Hanover [1997] 1BCLC 497. Insolvency Act. Page Last Updated: 20 Jul 2016 BAILII:
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