

JERSEY / JUDGMENT

Representation of Powell

[2018] JCA 113 (29 June 2018)

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Court of Appeal 29 June 2018 Before : James W. McNeill, Q. C., sitting as a Single Judge IN THE MATTER OF THE REPRESENTATION OF CAROLINE ELIZABETH POWELL NEE CHAMBERS AND IN THE MATTER OF THE LOI (1839) SUR LES REMISES DE BIENS Mrs Powell (on her own behalf) for the Representor. Advocate O. J. Passmore for Acorn Finance Limited. Advocate M. W. Cook for Jersey Home Loans Limited

judgment

McNeill JA: 1. This is an application for leave to appeal, together with an application for stay of proceedings, which come before me sitting as a single judge of the Court of Appeal. The applicant, Mrs. Powell, seeks leave to appeal a judgment of the Royal Court dated 20 April 2018 (Representation of Powel l

[2018] JRC 073 Clyde-Smith, Commissioner with Jurats Olsen and Sparrow). The question of leave had come before the learned Commissioner in May 2018 and, in a judgment dated 21 May (unpublished), he indicated that, to the extent that his leave was required, it was refused for the reasons there given. The matter then came before me, sitting as a single judge of the Court of Appeal, to determine whether or not leave was required and, for the reasons set out in my judgment dated 1 June 2018 (Representation of Powell

[2018] JCA 099), I determined that leave was required. 2. Following the latter judgment, Mrs. Powell and the creditors who have an interest in this matter have made written submissions on the question as to whether or not leave should be granted. The Proposed Appeal 3. As I indicated in my judgment dated 1 June 2018, Mrs. Powell's notice of appeal sets out some nineteen paragraphs of proposed grounds of appeal. In summary, she would contend that she had been misled as to the nature of a hearing on 11 April 2018, that she lacked full capacity to conduct that hearing because of the effects on her of her health and that there had been procedural irregularities. In addition, she wishes to contend that, at that hearing, there had been an arguable case for an extension of her Remise de Biens on the grounds of exceptional circumstances and without there being any need for consent by her creditors. She also wishes to prove that consent from her creditors to such an extension can be shown or imputed. Her purpose in seeking an extension of the Remise was in order to avail herself of the opportunity of responding to the Jurats' report. The

background to her application is set out in the judgment of 1 June 2018. 4. Mrs. Powell also suggests that the learned Commissioner was wrong to refuse to recuse himself. 5. Turning to those parts of Mrs. Powell's present submissions which relate to identifiable grounds of appeal, Mrs. Powell's narration of events at the proceedings which took place on 11 April 2018 are expressed with sufficient clarity, precision and cogency to indicate that she was well aware of the nature of the proceedings and able to participate in them; and this is consistent with the view already expressed by the learned Commissioner. 6. As to creditor consent, Mrs. Powell states in her written submissions that she is "convinced that at a trial she can prove on a balance of probabilities and with evidence an extension of the Remise was agreed or imputed". She wishes to contend, further, that the authorities indicate that a Remise can be extended beyond twelve months and without the consent of the Jurats. 7. In response, Advocate Passmore, for Acorn Holdings Limited, contends, by reference to the test for leave to appeal set out in *Crociani v Crociani* [2014]

- (1) JLR 426 that the proposed appeal has no real prospect of success, does not involve a question of general principle to be decided for the first time and does not involve an important question of law upon which further argument and a decision of the Court of Appeal would be to the public advantage. 8. As to recusal, in Advocate Passmore's submission, neither the grounds of appeal nor the application for permission to appeal set out any basis upon which the learned Commissioner should have recused himself. 9. As to adjournment, the decision below was an exercise of discretion and the Court of Appeal will not interfere with a discretionary decision unless there has been some form of misdirection, a conclusion that was plainly wrong or a material change of circumstances since the decision of the lower court. Reference is made to *United Capital Corporation Limited v Bender and Others*

[2006] JLR 269 . 10. On this matter, Advocate Passmore notes that Mrs. Powell does not appear to challenge the finding below that the Remise had already failed as a matter of law, or if she does, does not set out any clear legal or factual basis for a challenge. Her reference to express or implied agreement as to extension consisted merely of vague and unsubstantiated allegations and runs contrary to the submissions by the advocates for the creditors to the court below. 11. As to general principle or important questions of law, none were to be found here: the principles in relation to recusal, appeals from case management decisions and the decisions in *In Re Barker* 1987 JLR 4 and *Super Seconds Limited v Sparta Investments* 1997 JLR 112 were settled law. 12. Finally, if the court were minded to grant permission to appeal, the court could not grant a stay of enforcement of the *dégrèvement* without some affidavit evidence explaining why the refusal of a stay would render the appeal nugatory. Here, there was no alternative that there had to be a sale of the property whether by a Remise or by a *dégrèvement* in order to satisfy the creditors. 13. Advocate Cook's submissions on behalf of Jersey Home Loans Limited were to similar effect. 14. In reply, Mrs Powell, for the main part, indicated concerns which she had as to the processes which had taken place. In addition, she suggested that I ought to consider whether I should recuse myself because of my own involvement with earlier proceedings and also asserted that the *dégrèvement* process in this jurisdiction was

draconian and in breach of her human rights. Discussion 15. In my judgment Mrs. Powell does not set out any basis upon which leave to appeal could properly be granted. It is, by now, well established that this court will grant leave to appeal only where (a) the appeal has a real prospect of success, (b) there is a question of general principle to be decided for the first time or (c) there is a question of importance upon which discussion before the Court of Appeal would be to public advantage: see, for example, *Crociani v Crociani*

- [2014] (1) JLR 426 at paragraph 50. As regards exercises of discretion, there must be an indication that the Royal Court has (a) misdirected itself as to principles, (b) taken into account irrelevant matters or left out of account relevant matters or (c) reached a decision plainly wrong: see *United Capital Corporation v Bender*
- [2006] JLR 269 , at paragraph 25. 16. I deal first with recusal. For such an application to succeed on appeal, Mrs. Powell would need to show that a fair minded and impartial observer would have concluded that there was a real possibility of bias: see *Syvret v AG & Connetable of Grouville*
- [2011] JCA 130 . Mrs. Powell's notice of appeal gives no indication of such a case based upon objective and appraisal circumstances either in respect of my own involvement or that of the learned Commissioner. 17. As to Mrs Powell's somewhat unspecified contentions in respect of the power of the Royal Court and the way in which it should have exercised its discretion, these fail to address the totality of the jurisprudence which supported the Royal Court's approach. As is clear from the decision of this court in *Super Seconds Limited and Others v Sparta Investments Limited*
- [1997] JLR 112 , especially at pages 121-123, the following points obtain. By making a *Remise de Biens* , the debtor is treated as implicitly making a cession of his or her property. The cession, therefore, is to be taken as having been made voluntarily and will lead to the discharge. But if, at the conclusion of the process, there are still unsatisfied secured liabilities, which there are here, the *Remise* will have failed to achieve the payment of at least the secured debts after the time allowed. If that occurs, the temporary respite from the processes of execution, which would otherwise have been liable to occur at once, comes to an end and those processes automatically follow. Mrs. Powell does not indicate in what respects it can be argued that the views of this court in *Super Seconds Limited* might have been expressed in error. 18. The result of the views expressed in *Super Seconds Limited* is that the secured creditors here are entitled to their processes of execution upon the expiry of the year and they do so insist. Mrs. Powell's suggestion that she might be able to prove that an extension had been agreed or should be implied suggest some entitlement on her part to prove acquiescence by the secured creditors. That suggestion, however, fails to recognise that the process in which she is involved is not a simple adversarial process but, rather, one which is within the control of the court. Here, the court was entitled to rely upon the indications from counsel that consent would not be forthcoming. 19. As regards the *dégrèvement* process in this jurisdiction and the suggestion that it was draconian and in breach of Mrs Powell's human rights, Mrs Powell's

submissions take no account of the rights of creditors, who are entitled to have processes of law which give protection to their economic interests. In a situation such as the present, it is the availability of the Remise which, as has been indicated, allows to the debtor a different form of disposal of property under the control of the court as opposed to the control of the creditors. 20. For these reasons I consider that the proposed appeal has no prospect of success. Furthermore, given the numerous judicial determinations in this area of law this is not a case where it is manifest that further consideration by the Court of Appeal of its views set out in *Super Seconds Limited* would be warranted, given, especially, that those views will have been applied in practice on many occasions in the last twenty years. 21. For all these reasons I refuse leave to appeal. *Authorities Representation of Powell*

[2018] JRC 073 . *Representation of Powell*

[2018] JCA 099 . *Crociani v Crociani*

[2014] (1) JLR 426. *United Capital Corporation Limited v Bender and Others*

[2006] JLR 269 . *In Re Barker* 1987 JLR 4 . *Super Seconds Limited v Sparta Investments* 1997 JLR 112 . *Syvret v AG & Connetable of Grouville*

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