

JERSEY / JUDGMENT

Representation of Powell

[2018] JRC 073 (20 April 2018)

[2018] JRC 073

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

judgment

the COMMISSIONER: 1. The Viscount convened the parties before the Court on 11th April, 2018, in order for the Court to receive the second report of Jurats Grime and Pitman in respect of the remise de biens granted by the Court on the application of the representor ("Mrs Powell"). 2. The remise operated as a stay of the dégrèvement proceedings that had been initiated by Acorn Finance Limited ("Acorn"). The loan made by Acorn to Mrs Powell fell due in September 2013. After a period of indulgence, judgment was taken against her on 18th September, 2015. Dégrèvement proceedings followed in relation to her property in Jersey and on 22nd April, 2016, her immovable and movable property was adjudged renounced. 3. Mrs Powell applied for a remise by way of representation dated 1st June, 2016. The report of the Jurats appointed to investigate the application recommended against it being granted, one of the complexities being the existence of another property owned by her in Winchester, and therefore outside the jurisdiction. 4. Following three hearings at two of which Mrs Powell was legally represented, the remise was, nevertheless, granted on the 1st January, 2017, for a period of six months and Jurats Grime and Pitman were appointed to conduct the same. The property in Winchester was excluded from the remise. 5. Within a few months of the grant of the remise, the Jurats applied to the Court through the Viscount for directions as a consequence of Mrs Powell's lack of co-operation in the sale of the Jersey property, in particular in her not allowing potential purchasers to view the property. The Viscount, on behalf of the Jurats, sought orders to compel her co-operation. 6. Those orders were made by the Court on 14th June 2017 in these terms:- "(a) That, pursuant to the act of Court dated 31 January 2017, granting Mrs Powell's application for a remise de biens, Mrs Powell is ordered to co-operate and comply with the requests of Jurat Geoffrey Grime and Jurat Pamela Pitman (the Jurats) in exercise of their duties under the Loi (1839) sur Les Remises de Biens, in particular, in relation to the sale of her property known as ... (the Property) and that Mrs Powell is ordered: (i) To permit the Property to be viewed by (i) potential purchasers and (ii) estate agents instructed by the Jurats for the purposes of the sale of the Property, as notified to Mrs Powell by the Viscount from time to time, and (ii) To vacate the Property and to procure that any other person residing in the Property so vacates, within 21 days of a request by the Jurats (or by the Viscount on their behalf) to allow the property to be marketed for sale and/or to allow vacant possession to be provided to a purchaser of the

Property." 7. In their first report of 28 th July, 2017, the Jurats informed the Court that whilst it was feasible to sell the Jersey property for a price that could enable the remise to succeed, they could see no way of making the remise work because of Mrs Powell's continued lack of co-operation and failure to comply with the orders made against her. In the period from the granting of the remise they said she had not allowed any interested party to view the Jersey property. They could not see how further orders could be framed to guarantee a successful outcome. 8. Notwithstanding this advice, the Court extended the remise on 31 st July, 2017, for a further period of six months, in part because of unequivocal assurances given by Mrs Powell to the Court that she would allow potential purchasers to view the Jersey property. 9. The reasons for the granting of that further extension are set out in the judgment of the Bailiff dated 8 th August 2017 (unpublished), which goes into the background comprehensively and deals with a number of issues raised by Mrs Powell, namely the issue of her capacity, her rights under Article 8 of the Human Rights Convention and the reasons put forward for her failing to permit access, none of which found favour with the Court. In particular, the Court found that despite the stress she was under and her health generally, she had capacity. Quoting from paragraph 16 of the judgment:- "There is no doubt that before us she was desperately concerned to save her home, anxious that she would have nowhere to live, and anxious that she would have let down her children by failing to protect the family home, whether as a result of the divorce from her husband, or from any other steps taken in respect of other pressures in her life. In her submissions to us, she was very anxious to find reasons for all the difficulties which had occurred, and reasons for any step to be taken which might save the family home for her. None of this however suggests any lack of capacity on her part. We were completely satisfied that not only was there no medical evidence of lack of capacity, but that by her own submissions in court she demonstrated that she knew what she wanted to say and understood what was being said to her. Although therefore she asserted that she did not have capacity, we rejected that submission." 10. That extension of the remise expired on 31 st January, 2018, a year after it was first granted, without the Jersey property being sold. We now have the second report of the Jurats dated 16 th February, 2018, that sets out the whole history of the conduct of the remise and then concludes in this way at paragraphs 26 and 27:- "26 In the light of these facts, it is difficult to come to any conclusion other than that the remise should not be extended further. For the greater part of the remise period, Mrs Powell has not complied with her obligations under Article 5 of the Loi (1839) sur Les Remises de Biens (the Law) which requires her to act only with the counsel and advice of the appointed Jurats. ("Celui qui aura obtenu la permission de remettre ses biens entre les mains de la Justice ne pourra agir que d'après le conseil et avis des personnes autorisées de Justice pour l'examen dudit bien"). Mrs Powell has also not fully observed the orders of the Court dated 14 June 2017 and 8 August 2017. In our view, in large part, the failure of the remise is as a result of Mrs Powell's unwillingness to engage with the process and her resistance to the marketing efforts undertaken by us with the assistance of the Viscount's Department." The report also stated at paragraph 7 that as at 31 st January, 2018, a year after the remise was first granted, no potential purchasers had been allowed by Mrs Powell to view the Jersey property. 11. A copy of the second report was sent by the Viscount to Mrs Powell by hand on 23 rd February, 2018. The Viscount procured a date fix on 15 th March, 2018, at which the 11 th April, 2018, was fixed for the Court to

receive the second report of the Jurats. Although we did not hear evidence, it is not in dispute that at the date fix, Mrs Powell expressed concerns about a possible relapse of an illness she had suffered from earlier, and it was agreed by the Viscount that if she could produce evidence that she had a medical appointment on 11 th April, or a certificate that she was too unwell to attend the hearing, then the Viscount would look to re-scheduling the hearing, although that would, of course, require the consent of the secured creditors. 12. There followed considerable e-mail correspondence between Mrs Powell, the Bailiff's Judicial Secretary and the Viscount, over her ability to attend the hearing, and she produced two letters:- (i) The first, dated 7 th April 2018, was from her GP saying that she had an appointment with at the Jersey General Hospital on 11 th April, 2018. The letter gave no indication as to the purpose of the referral, or the time and duration of the appointment, or indeed, why that appointment had been fixed for the same day as the hearing. (ii) The second, dated 10 th April, 2018, was from another GP of the same practice, saying this:- "I certify on soul and conscience that she is not currently fit to attend court due to a number of health issues. In addition, she needs to attend ... at Jersey General Hospital tomorrow ... and it is not clinically appropriate to delay or reschedule this appointment." 13. There is no explanation as to the health issues that rendered her unfit to attend Court at all, and although the letter informed the Court about her appointment at Jersey General Hospital, again it gave no time or duration for the appointment. 14. Mrs Powell appeared to believe that the production of these letters would lead to the adjournment of the hearing without further ado, but when informed that this was not the case, she procured an e-mail from a consultant psychologist, Dr Sarah Heke, shortly before the hearing on the 11 th April 2018. Dr Heke had been consulted by Mrs Powell in 2009 in relation to Mrs Powell's divorce proceedings. She had met again with Mrs Powell on 3 rd April, 2018, and had agreed to complete a full psychological report regarding her capacity to engage as a litigant in the current proceedings. That report had not yet been prepared because Mrs Powell had thought that the hearing planned for 11 th April could be postponed. However, Dr Heke expressed the opinion that Mrs Powell was not currently capable of coping as a litigant in person with complex legal proceedings and the stress associated with this. Without identified legal support, she would consider Mrs Powell a vulnerable litigant. 15. In another e-mail sent shortly before the hearing, Mrs Powell asked the Commissioner to recuse himself, because he had presided over previous cases involving her in which she said he had displayed a low opinion of her and "deplored" some of her actions. The Commissioner was aware that he had presided over cases some years ago involving Mrs Powell, but if critical comments had been made in judgments about her, they constituted of course the judgment of the Court. As far as the Commissioner was concerned, he had merely carried out his judicial function to the best of his ability and in his view no fair-minded and informed observer would conclude that there was a real possibility of bias on his part. He therefore declined to recuse himself. 16. Mrs Powell attended the hearing at 10am on 11 th April, 2018, and sought an adjournment so that a new date could be fixed; there was no formal application on her part before the Court. It transpired that her appointment at the hospital was at 2pm that day. She informed the Court that the purpose of the adjourned hearing would be to enable her to challenge aspects of the Jurats' second report and expose irregularities in the conduct by the Jurats of the remise and in the conduct of the Viscount. It would, she said, be her chance to put the facts before the Court. That process, she

said, would demonstrate that there were exceptional circumstances justifying an extension of the remise for a further period, she suggested, of three months. She accepted that if there was such an extension granted, the Jersey property would have to be sold, but subject to her caveat that it must be for the right price. Despite expressing concern over her ability to deal with legal issues, she indicated that this further hearing would essentially be factual, and that she would be able to represent herself. 17. The Court rejected her application for an adjournment, but before we set out our reasons, it is helpful to consider the position in law. The Law 18. The Loi

[1839] sur Les Remises de Biens ("the 1839 Loi ") sets out no time limit for the remise procedure, but the general position is explained in Jersey Insolvency and Asset Tracking (4 th Edition) by Dessain and Wilkins at paragraph 5.30.6:- "The 1839 Loi specified no time limit for the remise procedure. However, traditionally, a remise normally has an initial duration of six months. In appropriate circumstances, it may be extended for an additional six months and in practice this is not unusual. But it may only be further extended thereafter with the agreement of the creditors. See *Re Barker* 1987-88 at p.16 in which Tomes DB said '... a remise which has not been successfully concluded within a year operates, as a matter of law, as the personal cession and renunciation by the debtor of all his property to his creditors and a *dégrévement* ensues.'" 19. It is helpful to set out a fuller extract from the case of *In re Barker*

[1987] JLR 4 to that cited above:- "(c) The prayer of the representation requests the court to grant such extension as may be deemed fit to the remise. In fact Mr. Begg urged us to stay the remise because the extension would go beyond March 21 st 1987, when the remise will have lasted a year. Because we cannot go beyond or supplement the prayer of a party (see (b) above), we cannot grant a stay of the remise. But we should not grant an extension of the remise beyond March 21 st , 1987, against the will of the creditors, because a remise which has not been successfully concluded within a year operates, as a matter of law, as the personal cession and renunciation by the debtor of all his property to his creditors and a *dégrévement* ensues (see *Le Maistre v de Feu* (4))." 20. Where a remise fails, Dessain and Wilkins explain at paragraph 5.20.7 :- 'Where a remise is granted but is unsuccessful the outcome is an automatic cession générale by virtue of the act of the debtor placing the debtor's assets into the hands of the Court being deemed a voluntary cession. *Re Barker* 1987-88 JLR 23; *Re the Representation of Santer* 1996 JLR 233 " 21. The position was authoritatively explained by the Court of Appeal in the case of *Super Seconds Limited v Sparta*

[1997] JLR 112 . Having set out the relevant extracts from the case of *Le Maistre v Du Feu* Royal Court June 22 nd 1850 unreported, Sumption J. A., giving the judgment of the Court, concluded:- "From this reasoning, it is clear that a remise de biens is viewed as a temporary respite from the processes of execution against the debtor's property which would otherwise be liable to occur at once. If it fails to achieve the payment of at least the secured debts after the time allowed (assumed to be a year and a day), then those processes will automatically follow. The juridical basis on which this happens is that by

making a remise de biens, the debtor is treated as implicitly making a conditional cession of his property. The condition is that there are still unsatisfied secured liabilities at the conclusion of the process. Because the cession is implicit in the voluntary act of the debtor in making the remise, he is taken to have made it voluntarily ('personnellement'), and he gets his discharge under art 10 of the Loi (1832) sur les décrets." 22. For completeness, we set out Article 10 of the Loi (1832) sur les Décrets :- "10 Celui qui aura personnellement fait cession générale de tous ses biens-meubles et héritages, et qui aura rempli les conditions exigées par la présente Loi, sera libéré de toutes dettes et redevances auxquelles il était assujetti avant ladite cession." 23. There is a reference in In re Barker at page 11 to the Court having commented obiter in an earlier short ex tempore judgment of the 23rd September, 1986, (in which the remise granted for six months was extended by four months) that the Court could extend a remise beyond a year without the consent of the creditors if there were "very exceptional reasons". However those comments were not endorsed in the later written judgment of Tames, Deputy Bailiff, set out above, when the Court was concerned with extending the remise beyond a year and where he explains that a remise which has not been successfully concluded within a year operates, as a matter of law, as a personal cession générale; accordingly any extension beyond the period of a year requires the consent of the creditors. 24. As Tames, Deputy Bailiff, said in Re Barker at page 16, a remise "is a privilege or indulgence" and we conclude from these authorities that if granted:- (i) It is normally made for an initial period of six months; (ii) It can be extended for an additional period of six months; (iii) It can only be extended beyond a year with the consent of the creditors; (iv) If it is not successful, by which we mean the payment of at least the secured creditors, then on the date the remise expires, there is an automatic "cession générale" whereby all of the debtor's property, both movable and immovable, is renounced for the benefit of the creditors and following the ensuing dégrèvement the debtor gets his or her discharge. 25. In correspondence, Advocate Passmore, on behalf of Acorn, had asked the Court to lift the stay on the dégrèvement process initiated by Acorn. The Act of the Court of 31st January, 2017, granting the remise does not expressly impose a stay, because by necessary implication the granting of the remise acts as a stay for the duration of the remise. It follows that once the remise expires, then there is nothing to prevent the dégrèvement proceedings, interrupted by the remise, from continuing. Decision 26. Applying these well established and settled principles of law to the facts of this case:- (i) The remise ended on 31st January, 2018, a year after it had first been imposed. It was unsuccessful. (ii) Immediately thereafter Mrs Powell is deemed as a matter of law to have made cession générale of all of her property, both movable and immovable for the benefit of her creditors. (iii) The stay of the dégrèvement proceedings imposed by the granting of the remise was automatically lifted. 27. The temporary respite, therefore, given by way of indulgence on the granting of the remise is now over, and the process of execution against Mrs Powell's property continues. 28. This matter had been brought back to the Court by the Viscount purportedly under the representation of Mrs Powell, but that representation simply sought a remise. That application was granted, and Mrs Powell is treated as having made a conditional cession générale, now rendered

unconditional by the failure of the remise. The representation is therefore spent. 29. There is nothing before us capable of being adjourned. The remise has failed, and Mrs Powell has made cession générale . Any extension of the remise would require the consent of the creditors, and Advocate Passmore and Advocate Cook, for Jersey Home Loans Limited, made it clear that consent was not forthcoming and would not be forthcoming. Furthermore in our view any extension would have to have been granted before the 31 st January, 2018, in order to avoid the cession générale becoming unconditional. 30. If Mrs Powell has complaints about the way the Jurats conducted the remise , or about the conduct of the Viscount, then these can be pursued through the ordinary channels, but it would be an abuse of process for this Court to take it upon itself to order what would in effect be an inquiry into these allegations, particularly if it entailed the Court imposing a further stay (presuming it has the power to do so) on the long delayed dégrèvement proceedings. 31. We accept that Mrs Powell has suffered health issues for many years, that she is under considerable stress, and facing the loss of her home, but she is able to communicate well in writing, as evidenced by her many e-mails, and orally as she did when making her application for an adjournment before the Court. Whilst accepting that we are not experts in the field of capacity, she did seem perfectly able to participate in the hearing, but the simple fact is that the law had taken its course and there can be no further interruption in the process of execution against her. As a necessary consequence of the remise which she sought and which has been unsuccessful, she has already made cession générale in favour of her creditors. 32. For the avoidance of any doubt, we can confirm that the stay against the existing dégrèvement proceedings is lifted and those proceedings can now continue. Authorities Loi (1839) sur Les Remises de Biens. Jersey Insolvency and Asset Tracking (4th Edition). In re Barker

[1987] JLR 4 . Super Seconds Limited v Sparta

[1997] JLR 112 . Le Maistre v Du Feu Royal Court June 22nd 1850 unreported. Loi (1832) sur les Décrets. Page Last Updated: 03 May 2018 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/2018/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/representation-of-powell-2018-jrc-073-20-april-2018>

Prepared on 27 October 2026 · Esheria