

JERSEY / JUDGMENT

Viscount -v- Booth [2017]

JRC 215 (19 December 2017)

[2017] JRC 215

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

judgment

the commissioner: 1. The property of the Respondent ("Mr Booth") was declared en désastre by order of the Court dated 16 th October, 2015. Mr Booth's property included two immovable properties, one known as King's Oak in the Parish of St Peter ("the property" or "King's Oak"); and the second called Beaumont Hill House. 2. This is an application by the Viscount seeking authority to sell the property for the sum of £1.85m. Mr Booth argues that £1.85m is well below the true value of the property and that accordingly the Court should not approve of a sale at that price. 3. At the conclusion of the hearing, the Court granted the Viscount's application. We now give our reasons for coming to that conclusion.

Background

4. There has been considerable litigation in connection with Mr Booth's désastre . A convenient summary of the assets and liabilities is to be found at para 63 - 72 of the judgment of the Court of Appeal at Investec Bank (Channel Islands) Limited-v-Booth

[2016] (1) JLR 101 to which reference may be made. Investec Bank (Channel Islands) Limited ("Investec") held a first hypothèque over King's Oak. Mr and Mrs Le Cornu held a second hypothèque over King's Oak and a first hypothèque over Beaumont Hill House. 5. Despite objection from Mr Booth (see Booth v The Viscount

[2016] JRC 049), the Viscount has sold Beaumont Hill House for £800,000. The net proceeds were applied in reducing the debt owed to Mr and Mrs Le Cornu. However, their debt greatly exceeded the sale proceeds of Beaumont Hill House and, as a result, they are still owed some £1.68m. Investec was owed just over £3m at the date of the désastre and we were informed that with accruing interest it is now owed some £3.4m, although Mr Booth says that he objects to some of the interest calculations. Assuming for the moment that they are correct, the claims secured over King's Oak therefore total £5.08m. Even taking the Investec claim as at the date of the désastre , the secured claims come to £4.68m. 6. There are unsecured creditors who have claimed approximately £323,000. Apart from potential recoveries from three pieces of litigation which, following the decision of the Court of Appeal at Booth-v-Viscount

[2016] JCA 218 have been assigned back to Mr Booth by the Viscount, the other movable assets are of minimal value and, after payment of the Viscount's expenses etc. there is unlikely to be a dividend for unsecured creditors in the absence of recoveries from one or more of those three pieces of litigation. The value of the Property 7. When Investec granted its loan to Mr Booth in 2011 in the sum of £2.8m, a valuation was provided from a firm of surveyors which valued the Property at £4m. 8. In July 2015, following Investec having obtained judgment against him on 20 th February, 2015, for (in round terms) £2.9m together with continuing contractual interest, Mr Booth applied for a remise de biens . The two Jurats appointed to investigate and report obtained two valuations of the property, one from Le Gallais, who indicated a value of £2.6m and the other from Gaudin and Co, who indicated a value of £2.75m. Based on these valuations, the Jurats assessed the value of the property as £2.67m. When considered together with the value attributed to Beaumont Hill House, the value of the two properties was insufficient to clear the secured claims and accordingly the application for a remise was rejected. As previously stated, a désastre was subsequently declared on 16 th October, 2015. 9. Following the désastre , the Viscount and Investec jointly obtained a valuation from independent chartered surveyors, namely Wills Associates. They were apparently not given details of the previous valuations. They issued their report on 21 st March, 2016, and advised that the market value of the Property with vacant possession in its then condition was £2.4m. 10. The Viscount then asked two firms of estate agents to advise further on the valuation of the Property and to propose a marketing price. These were Le Gallais and Thompson Estates. Le Gallais (who had advised for the purposes of the proposed remise) advised on 5 th April, 2016, that King's Oak should be marketed at £2.85m with the aim of achieving a price of perhaps £2.6m. Thompson Estates advised on 6 th April, 2016, that the Property should be marketed at £3m with a view to achieving a price as close to that figure as possible. Both firms were subsequently instructed by the Viscount to market the Property at a price of £2.95m and the Property has been on the market for sale since 14 th April, 2016. 11. A third agent Broadlands was appointed in November 2016 at the request of Investec. Having examined the Property, Broadlands considered that the asking price of £2.95m was on the high side. They thought that a sale of in the region of £2m could be obtained and that the asking price should be £2.495m. After consultation with all the estate agents, the asking price was reduced to £2.65m and on th April, 2017, it was reduced again to £2.3m, where it has remained. 12. In July 2016, an offer of £2.3m was received but this was subsequently withdrawn, although there seems to be some uncertainty as to the exact reason that the purchasers withdrew. An offer of £1.6m was received in September 2016 but rejected and an offer of £1.8m was made in August 2017 but also rejected. The offerors who made the offer of £1.8m thereafter increased their offer to £1.85m and that is the offer which the Viscount wishes to accept. The offer has come through Broadlands. They have advised that the Property is an unusual house as it was designed specifically as a three generation property. It is their view that £1.85m is probably the best offer that the Viscount is likely to receive and advise that it should be accepted. The approach of the Court 13. The Viscount has power to sell property in a désastre under Article 27(1) of the

Bankruptcy (Désastre)(Jersey) Law 1990 ("the Law") and does not need the approval of the Court. She states that the reason she is seeking approval in this case is because of the history of litigation in connection with this désastre; Mr Booth has regularly challenged decisions which she has taken. She does not wish to find that she loses a sale of the Property because her decision is challenged with consequent delay. She has therefore sought the Court's approval in advance of a decision to accept an offer. 14. We do not wish to encourage the Viscount to seek directions from the Court unless necessary. The Law gives her the right to sell property and generally to manage the désastre and in normal circumstances she should do so without recourse to the Court. Nevertheless the Court is able to give directions where there is a need to do so. We would endorse what was said by Clyde-Smith Commissioner at paragraph 14 of the judgment in *Booth v The Viscount*

[2016] JRC 049 :- "The Viscount is the Chief Executive Officer of the Court and, as Dessain and Wilkins say at paragraph 5.12 Note 103 of *Jersey Insolvency and Asset Tracking*, the Court clearly had a supervisory jurisdiction as to the activities of its Chief Executive Officer in a désastre. There are many examples of the Court giving directions to the Viscount on matters arising in the course of a désastre (see paragraph 5.12 of Dessain and Wilkins)." 15. The legal test to be applied by the Royal Court when considering decisions of the Viscount in a désastre was summarised by the Court of Appeal in *Eves v The Viscount*

[1998] JLR N2; 24 th September, 1998, Jersey Unreported 192 where Calcutt JA said this:- "In my view the Viscount has a complete discretion to carry out his statutory functions as he sees fit, having regard to all the various interests which he must both have in mind and seek to balance; and proven fraud and bad faith apart, the Court will only interfere if the Viscount, as liquidator, has done something so utterly unreasonable and absurd that no reasonable man would have done it ..." 16. This formulation was adjusted by the Court of Appeal recently in *Booth v The Viscount*

[2016] JCA 218 where at paragraph 8, Anderson JA said this:- "The formulation of Calcutt JA is an expression of the traditional approach to the review of discretionary decisions by public authorities on rationality grounds. More recent formulations of the principle, though broadly to the same effect, use different and we think preferable language: we have in mind what has been described on good authority as the increasingly common formulation of whether the decision falls "within the range of reasonable responses" open to the decision-maker: see *De Smith's Judicial Review*, 7th edn. (2015), 11.024." We shall adopt the approach articulated by Anderson JA and consider whether the Viscount's decision in this case falls within the range of reasonable responses open to her on the facts of this case. Discussion 17. Mr Booth submitted that, given the valuation of £4m obtained in 2011, it was inconceivable that the Property was now worth only £1.85m. The Property had been well looked after by him and his wife, who were still living there. It had substantial grounds and was well built. He considered that there was also scope for obtaining permission for development including the creation of further units of accommodation. The Property would therefore be of interest to a developer. 18. He objected strongly to the

implication in the material put forward by the Viscount that he and his wife had been in any way difficult about viewings or were likely to be difficult about vacating the Property when the time came. At the insistence of the Viscount, they had rented another property which was available for them to move into immediately. He considered that the reliance by the Viscount on the advice of estate agents was misplaced. They were not professionally qualified and were only interested in obtaining a fee upon a sale. He was a Fellow of the Royal Institution of Chartered Surveyors with 49 years of experience in the building trade. He was of the opinion that the Property would not deteriorate over the winter months and considered the Viscount was being over hasty in seeking to sell at this stage. 19. Finally, he drew attention to a Representation which he had presented before the Samedi Court on the Friday before the hearing before us. That Representation noted that Investec was apparently proposing to bring an action for negligence against the firm which had provided the £4m valuation. The Representation asserts that Mr Booth had only agreed to take the loan and Investec had only agreed to grant the loan because of their mutual mistake that the Property was worth £4m. If this was incorrect, the contract and the accompanying judicial hypothec was void on the ground of erreur . The same was true in relation to Beaumont Hill House where a valuation of £1.375m had been provided by a different firm of surveyors in April 2012. In summary, it was contended that the hypothèques over both properties should be declared void. 20. He accepted both in the Representation and during the course of the hearing before us that, even if he were successful in his Representation, he would still owe Investec and Mr and Mrs Le Cornu the sums he had borrowed but they would become unsecured creditors rather than secured creditors. 21. In response to Mr Booth's suggestion that planning permission for development could be obtained, the Viscount informed the Court in reply that she had made enquiries of the Planning Department during the course of the désastre in order to see if there was development potential. Permission would be needed for a change of use as well as for any specific development if the intention was to create more units of accommodation. She informed the Court that officers at the Planning Department had made it clear that there was no real prospect of obtaining such permission. The Viscount herself was not in a position to have plans drawn up in order to make an application because of the lack of funds within the désastre . Decision 22. In our judgment, the Viscount is acting reasonably in wishing to accept the offer of £1.85m for the Property. We would summarise our reasons for so concluding as follows:- (i) The Property has been marketed for sale (initially with two estate agents and since October 2016 with three) since April 2016 i.e. some 18 months. Although an offer of £2.3m was received at one stage, that offer was withdrawn. Subject only to that, the present offer is the best that has been achieved. (ii) After marketing for such a period by three estate agents, we agree that there are reasonable grounds for believing that this is the best price which can be achieved at present. As the Court of Appeal said in *Investec Bank (Channel Islands) Limited v Booth* (supra) at paragraph 76(iv), the Viscount is under a duty to sell for the best price reasonably obtainable. We would emphasise the word 'reasonably'. In our judgment marketing a property for this period with more than one estate agent is strongly suggestive

of this being the best price reasonably obtainable. It is to be recalled that, for as long as assets in a *désastre* are unsold, there is delay in reimbursing creditors who are kept out of their money for a longer period. (iii) Mr Booth is concerned that the Property is being substantially undersold by reference to the 2011 valuation of £4m. However, the history of the matter since then strongly suggests that that valuation was simply incorrect. It is of note that all the valuations since then have been for far less. Wills and Co valued the Property at £2.4m in March 2016. The three estate agents advised a sale value of £2.6m, close to £3m and approximately £2m respectively. Although these opinions vary, none of them has begun to approach the figure of £4m. (iv) Broadlands has advised that the current offer be accepted. Mr Booth asserts that estate agents will advise acceptance of a low offer in order to earn their commission, but the fact is that their commission is expressed as a percentage of the price so that they have an incentive to obtain the best price. Most people sell their houses through estate agents and rely upon their advice as to which offers to accept. Nothing has been produced to us to suggest that Broadlands are doing anything other than giving their professional judgment as to whether the current offer should be accepted. (v) Mr Booth submitted that sale for the current offer price took no account of the Property's development potential. However the fact remains that the Property has been marketed for a considerable period. If, as Mr Booth suggests, there is development potential, one would expect developers to have been sniffing around and investigating the possibilities. This has not happened. The Viscount is only aware of one developer who has expressed interest and he was only willing to offer £1.6m.

Furthermore, the Viscount has investigated the possibilities of development and has been advised by the Planning Department that the prospects of permission for a significant development are remote. (vi) Mr Booth accepted that, assuming the hypothèques to be valid, it will make no difference to him or to the unsecured creditors whether the current offer is accepted or the Viscount holds out for an increased offer. This is because the debt owed to Investec is £3.4m. Accordingly, unless a sale price in excess of this sum is achieved, all the sale proceeds will go towards the Investec debt regardless of their amount. Given that the amount owed to Investec and Mr and Mrs Le Cornu is just over £5m in aggregate, a sale price in excess of £5m would be required before the unsecured creditors would receive anything. On the evidence available to us, we do not see any realistic prospect of achieving a price in excess of £3.4m with the consequence that the only person affected at present by the Viscount's proposed decision is Investec. (a) Advocate Garrood has confirmed that, whilst disappointed that a higher price has not proved possible, Investec supports the Viscount's decision to accept the offer of £1.85m. (vii) A last minute development has been the Representation presented by Mr Booth on the Friday before the hearing of the present application. However, we have to say that, based simply on a reading of the Representation, we foresee considerable difficulties in the way of success for Mr Booth. But even if he were to be successful, he accepts that Investec and Mr and Mrs Le Cornu would still be entitled to be repaid. On the present values (although the interest factor might be less in the event of the Representation being successful) the claims of Investec and Mr and Mrs Le Cornu come to over £5m which,

taking into account the unsecured claims of £323,500, amounts to some 93.9% of the total claims. It follows that the claims of the other unsecured creditors would always be swamped by those of Investec and Mr and Mrs Le Cornu and that they would therefore gain comparatively little by any likely increase in the sale price. (viii) In any event, we consider that we must proceed on the basis of the current legal position, which is that Investec and Mr and Mrs Le Cornu are secured creditors and that accordingly Investec is the only entity that will be affected if the Property is being undersold unless it is being undersold to the extent that the proper price is more than £3.4m, in which event there would still be no effect on unsecured creditors unless the correct price was over £5m. As already stated, we consider the Viscount to be acting wholly reasonably in forming the view that the prospects of a price in excess of £3.4m (let alone £5m) being achieved are close to non-existent. 23. For these reasons, the Court gave its approval to the Viscount's intention to sell the Property for £1.85m. We should add that the Viscount's representation also asked that Mr Booth and any other person living at the Property be ordered to vacate the Property following receipt of not less than 21 days' notice to do so from the Viscount. During the course of the hearing, Mr Booth objected to the implication that he would not vacate the Property when required and pointed out, as mentioned above, that he and his wife had an alternative property to go to. In the light of his objections and given the lack of any evidence that he or his wife would not vacate the Property when requested, the Court accepted his undertaking on behalf of himself and any other person living at the Property to vacate following receipt of not less than 21 days' notice to do so from the Viscount and noted the Viscount's assurance that such notice would not be given in the week following the hearing, during which week Mr Booth expected to be involved in one of the three pieces of litigation referred to at para 6 above. Authorities Investec Bank (Channel Islands) Limited-v-Booth

[2016] (1) JLR 101. Booth v The Viscount

[2016] JRC 049 . Booth-v-Viscount

[2016] JCA 218 . Bankruptcy (Désastre)(Jersey) Law 1990. Eves v The Viscount

[1998] JLR N2. Page Last Updated: 18 Jan 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/2017/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/viscount-v-booth-2017-jrc-215-19-december-2017>

Prepared on 26 October 2026 · Esheria