

JERSEY / JUDGMENT

Viscount v Shirley [2000]

JRC 255 (20 December 2000)

[2000] JRC 255

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JUDGMENT

THE BAILIFF: 1. This is an application by the Viscount pursuant to an Order of the Court of Appeal on 30 th September, 1999. That decision has not been appealed. The leading judgment was given by Southwell JA who stated: "The matter should now go back to the Royal Court for the merits of the Viscount's decisions on the claims to be considered. For this purpose the Royal Court will need to give directions. Such directions should in my judgment include the following: (1) One of the claims should be selected as a test case, since the issues in relation to the claims appear to be the same. There is no good reason why the proceedings before the Royal Court should be made longer and more expensive by having all the claims and all the claimants before the Court. (2) The Viscount, the selected claimant and Mr Shirley should be required to set out their respective cases in brief pleadings. (3)

Orders

should be made for the filing of evidence by affidavit by each of the three parties (the Viscount, the selected claimant and Mr Shirley). Mr Shirley will naturally run the risk of having to pay the costs of the Viscount and the selected claimant of the proceedings before the Royal Court. That is the usual risk which any opponent of a proof of claim in a *désastre* must run. But he will have the opportunity as the matter proceeds towards a hearing in the Royal Court to assess the likelihood of his success in the light of, first, the brief pleadings, and secondly, the evidence filed by each of the parties." 2. There is a long history to this litigation between Philip William Sewallis Shirley and the Viscount but we need do no more than adumbrate it for the purpose of this

ruling.

Jerseycard Ltd was incorporated on 16 th January, 1989. Its business failed and it was declared en *désastre* on 9 th August, 1996. Claims were filed in the *désastre* as follows: "(1) Mr Shirley [the first respondent] (a) a priority claim for the net amount due under his judgment of £18,043.74. (b) ordinary claims totalling £24,353. (2) Roberts, an ordinary claim of £70,421. (3) Ann Street, an ordinary claim for £233,908. (4) Mr Voisin, an ordinary claim for £91,409. (5) Vibert and Valpy, an ordinary claim for £7,397.12. (6) Ernst and Young, an ordinary claim for an unknown amount." 3. In June, 1997, the Viscount allowed the first respondent's priority claim, part of his ordinary

claim and all the ordinary claims set out in paragraphs 2-6 above. It is that adjudication which is referred to as the "Viscount's decision" in the extract from the judgment of Southwell JA and which is the subject of complaint by the first respondent. Although he expressed himself in guarded terms, the first respondent has accepted in his skeleton argument that the underlying issue is whether the Viscount's adjudication to admit these claims was or was not correct. 4. The first respondent has now accepted that some of claims in the *désastre* were properly admitted; he has withdrawn his objections to the claims numbered 3, 4 and 6. There remains, however, claims 2 (F. P. Roberts & Son Limited) and 5 (Viberts) to which his objections remain. 5. What the Court of Appeal clearly envisaged in its order of 30 th September, 1999, was that the dispute should be contested between the first respondent, the Viscount, and a selected claimant. However, at the beginning of this hearing counsel for F. P. Roberts & Son Limited and for Viberts indicated that neither of these creditors wished to be heard and would submit to the wisdom of the Court. Without objection from the first respondent they sought and obtained leave to withdraw. There is, therefore, no claimant who wishes to join issue with the first respondent. Their reason for withdrawing was that, after deduction of the costs of administering the *désastre*, there was in fact no money available for distribution to the creditors. They did not wish to incur the costs of arguing issues before the Court which could have no practical result. 6. This state of affairs indeed underpins the first application of the Viscount which is to invite the Court to dismiss, in effect, his own representation and the first respondent's application in the context of that representation. The Viscount has submitted a statement of receipts and expenses which shows that a priority claim in the sum of £18,456 has been admitted and that the ordinary claims admitted total £463,203. As against that, cash receipts total nearly £15,000, but legal fees to 1 st August, 2000, totalled nearly £38,000. Additional legal fees have of course been incurred since 1 st August, 2000. There is, therefore a deficit in the *désastre* which will have to be met out of public funds available to the Viscount. The Viscount's position can be very shortly put. Whatever the Court may find in relation to his decision to admit the claims of the ordinary creditors to which exception is still taken, there is nothing left to distribute. Argument over the merits of his decision to admit the claims would, therefore, be entirely futile and would achieve nothing except the consumption of additional public money to meet the costs, or part of the costs of the litigation. 7. Mr Shirley endeavoured to counter this argument by submitting that the statement of receipts and expenses was flawed. Essentially he contended that the legal costs incurred by the Viscount should not be charged to the *désastre* and should be met by the Viscount himself. As the Viscount is a public officer, if that contention were right, such costs would necessarily have to be met out of public funds. 8. The position in law is that the first charge upon the money received by the Viscount by the realisation of the debtor's property is the "payment of the Viscount's fees and emoluments over all costs, charges, allowances and expenses properly incurred by or payable by the Viscount in the *désastre*." 9. The first argument is therefore whether the legal costs incurred by the Viscount were "properly incurred". 10. Mr Shirley in his evidence on affidavit stated that the Viscount had not observed a number of conventions and accounting policies in preparing his statement of receipts and expenses. In response to that evidence counsel for the Viscount called Mr Paul Wojeiechowski, a chartered accountant of 21 years' experience who has been employed in a number of leading accountancy firms. His last post but one was as senior audit manager at

Deloitte & Touche. He worked in the forensic accounts department and advised the Viscount in relation to a number of different bankruptcies. It is unnecessary to set out in detail the evidence of either witness. Suffice it to say that we accept the evidence of Mr Wojeiechowski that the statement of receipts and expenses prepared by the Viscount is not misleading and is in accordance with accepted conventions and accounting policies. 11. We have given consideration to the question whether the legal costs were "properly incurred". The Viscount's adjudication was made on or about 6 th June, 1997. Thereafter correspondence ensued between the Viscount's department and Advocate Begg who was then acting for Mr Shirley. This correspondence did not assuage Mr Shirley's dissatisfaction and in November 1997 Advocate Wheeler was instructed by the Viscount and, in accordance with the statutory procedure laid out in Article 31(4) of the Bankruptcy (Désastre) (Jersey) Law, 1990 , applied to the Court for a date for the hearing of Mr Shirley's notice of dissatisfaction. 12. The matter came before the Court on 14 th November, 1997, and was adjourned to th November, 1997, when it was adjourned sine die . On 4 th December, 1997, Mr Shirley issued a summons seeking that the Viscount show cause why he should not be ordered to give reasons or better reasons for his adjudication. That application by Mr Shirley was dismissed, as was his appeal to the Court of Appeal which delivered its judgment on 30 th September, 1999, to which we referred at the beginning of this judgment. 13. In the meantime a further issue had arisen in the context of a claim against Supercard Limited which the Viscount was minded to compromise for a payment of £14,000. Mr Shirley objected to this compromise and the Viscount accordingly referred the matter to the Court. By a judgment delivered on th May, 1999, the Royal Court authorised the Viscount to compromise the claim in that amount. 14. Mr Shirley did not in fact contend that any of the actions of the Viscount in referring these issues to the Court were improper or otherwise than in accordance with his statutory duty. The fact is that, but for the dissatisfaction expressed by Mr Shirley, none of these matters would have been referred to the Court and none of these legal costs would have been incurred. In our judgment the Viscount has acted perfectly properly throughout the administration of this désastre and all the legal fees incurred by him have been "properly incurred". 15. Although it is not relevant to our determination we suspect that the real cause of Mr Shirley's dissatisfaction goes further back and relates to events leading up to the failure of Jerseycard Limited. We say that because we do not doubt that Mr Shirley genuinely feels dissatisfied with the outcome of events. We find, however, that he has no legitimate ground for feeling dissatisfied with the conduct of the Viscount. 16. Where does that conclusion lead? We consider that, if the Court of Appeal had been aware of the state of affairs which is revealed in this judgment, it would not have decided that the merits of the Viscount's decisions on the claims should now be considered. Nothing now turns upon the merits of the Viscount's decisions. Argument on the merits would be futile and an abuse of the process of this Court. 17. In our judgment it is time that this litigation be brought to an end and the administration of the désastre concluded. We accordingly grant the Viscount's application that the representation made pursuant to Article 31(4) of the law, and all the first respondent's objections in relation thereto, be dismissed. Authorities . Shirley -v- Deputy Viscount (30 th September, 1999) Jersey Unreported CofA. Page Last Updated: 19 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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