

27th March, 1987

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87/116.

IN THE ROYAL COURT OF JERSEY

Before: P. L. Crill, Esq., C.B.E., Bailiff

Between

BRIAN IAN LE MARQUAND
AND MICHAEL JOHN BACKHURST

Plaintiffs

And

NIGEL JOHN HALL, LIQUIDATOR OF
CHILTMEAD LIMITED

Defendant

Advocate C. Dorey for Plaintiffs

Advocate D. Le Quesne for Defendant

Chiltmead Limited is a Company incorporated in England in 1967. It dealt mainly in electrical equipment. In 1976 it was acquired compulsorily by the Reading Borough Council for £987,081. In July 1981 some money was brought to Jersey, it is said without authority, by one of the beneficial owners of the Company Mr. Dennis Stewart. At that time the Company was liable to Corporation Tax with accrued interest. On the 2nd March, 1983 on the petition of the Inland Revenue, the Chancery Division of the High Court made a winding up order. On the 19th July, 1983 Mr. N. J. Halls was appointed liquidator of the Company. On the 21st October, 1983 the liquidator actioned Mr. Dennis Stewart as the first defendant, and his wife Mrs. Beryl Stewart, as the second defendant, in the Royal Court for the recovery of £600,000, bringing in a number of banks and firms as parties cited. On the 11th November, 1983 the action was placed on the Pending List as regards Mr. Stewart, and judgment obtained by default against Mrs. Stewart. On the 27th January, 1984 the judgment against Mrs. Stewart was set aside and the action against her placed on the Pending List. Other matters not relevant to the instant action were decided at both hearings.

On the 28th day of December, 1983 the Company, through the liquidator, actioned Mr and Mrs. Stewart in the High Court. The statement of claim discloses that the creditors of the Company were as follows:-

Inland Revenue	411,636
Rent arrears	5,250
Advertising charges	1,268
VAT	1,173
Argos	1,776
Southern Gas	305
Rates	<u>2,084</u>
 TOTAL	 <u>£423,492</u>

There was in fact a deficiency of over £120,000. The matter came before Alton J. on the 19th December, 1985. Mr. S. did not appear. Mrs. S. was represented by Counsel. The Court declared that Mr. Stewart had acted in breach of trust and was guilty of misfeasance as a Director of the Company in misappropriating its assets. It ordered Mr. Stewart to pay to the Company, by its Liquidator, the sum of £510,000, together with the sum of £293,490.76, being the interest due at 2% above Barclays base rate from the 16th July, 1981 to the 19th November, 1981.

A second order was made against Mrs. Stewart, the contents of which are not germane to the instant case.

On the 17th January, 1986 Messrs. Le Marquand and Backhurst, the plaintiffs in this action, obtained a judgment against Mr. Stewart in the sum of £12,497.82 (and costs). The judgment remains unsatisfied. On the 7th March, 1986 the Royal Court registered the High Court judgment of the 19th November, 1985 against Mr. Stewart, but no application was made by him to have that order set aside. The plaintiffs, by way of a representation, now seek to set aside that registration to the extent that the arrests which have been effected on a number of assets in the name of Mr. Stewart in Jersey, may be lifted to the amount of the plaintiffs' judgment (and costs). They say that their judgment of the 17th January, 1986 should take priority over that of the Liquidator's act of registration of the 7th March, 1986. The effect of the registration is to place the judgment of the High Court in the same position as a Royal Court judgment.

They further say that the judgment of the Royal Court of the 7th March, 1986, that is to say when it registered the High Court judgment, should be disregarded as the Liquidator, (the Defencant in the instant case), in obtaining registration of the High Court judgment of the 19th November, 1985 was seeking, indirectly, to enforce a revenue law of the United Kingdom, which for the purposes of the instant case, may be defined as that of a "foreign" jurisdiction. By agreement of the parties the Court was asked to decide firstly this latter question.

The Royal Court has normally upheld the principle that it does not enforce Foreign Revenue Laws. That principle is set out in Dicey and Morris' the Conflict of Laws (9th Edition Page 75). It is rule 3: "The Court has no jurisdiction to entertain an action (1) for the enforcement either directly or indirectly of a penal revenue or other public Law of a foreign state (or (2) founded upon an Act of State)."

That principle was followed by the Royal Court in the case of the Estate of S. W. Walmsley, deceased (1983) Jersey Judgments page 35. A claim by the Inland Revenue for Corporation Tax falls within the prohibition under the principle. It should be noted that it is not the request of a foreign Court that I am being asked to consider, but that of a Liquidator answerable to that Court. I have to ask myself whether the Liquidator in common parlance is a front man for the Inland Revenue. Is there anyone behind the application, or is the Liquidator merely acting according to the requirements of the English Law? To put it another way, did the Order of the Court of Protection on the application of the Inland Revenue offend against some overriding principle of Jersey Law, such as the principle that the Royal Court will not enforce foreign Revenue Laws. I conceive that the Liquidator for this purpose is an Officer of the High Court, and not merely an Agent of the Company in liquidation, and cannot, because of the duties, to which I will refer to later, that he owes the English High Court, be said merely to embarking on a revenue obtaining exercise for the Inland Revenue. He has not limited his claim to Tax. Moreover there is some authority for saying that the principle in Dicey is to be construed narrowly (see page 480 at letter G of the judgement of Kerr L. J. in re State of Norway's Application, Court of Appeal (1986) 3 Weekly Law Reports at Page 452.

The first thing I ought to say is that I do not believe I have the power to overrule the judgment of the Royal Court of the 7th March, 1986. I am bound by it and, unless the Court of Appeal overrules it, the judgment must stand, even though the arguments advanced by Advocate Dorey in the instant case were not before the Court. Article 3 of the Judgments (Reciprocal Enforcement (Jersey) Law 1960 provides for the registration of the judgments of Superior Courts of countries with whom substantial reciprocity of treatment is accorded to Judgments of the Royal Court. An exception is made in paragraph (2) (b) for the recovery of money payable in respect of taxes or other charges of a like nature.

The judgment registered on the 7th March was in respect of a claim against Mr. Stewart for moving monies, it was said unlawfully, to Jersey. The fact that, upon repatriation of that money, or such part of it as still remains within this jurisdiction to the United Kingdom, it may be used to satisfy, in part at least, a claim by the Inland Revenue, might be said to be too remote for me to hold that the registration was an attempt to enforce a revenue claim in Jersey. Because of what I have said above, any ruling I might give on the arguments advanced to me will, of necessity, be obiter.

If one considers the position of a claim for the payment of some form of Estate Duty or Inheritance Tax from assets in Jersey to be remitted to the United Kingdom, as in the Walmsley case, where a number of English and Scottish cases were cited, there seems to be a parallel consideration here. If no money is to be remitted, then the other creditors, like beneficiaries under a Will or a Trust, will be deprived of their claims or expectations in toto, even though the Inland Revenue may be entitled to the lion's share of the assets so remitted.

Although I am satisfied that the rule is absolute, the observations of Lord Templeman in *Williams and Humbert - v - W. & H. Trade Marks* 1986 1 All ER 129 Page 133 are interesting. He says -

"There is another international rule whereby one state will not enforce the revenue and penal laws of another state. This rule with regard to revenue laws may in the future be modified by international convention or by the laws of the European Economic Community in order to prevent fraudulent practices which damage all states and benefit no state. But at present the international rule with regard to the non-enforcement of revenue and penal laws is absolute."

That case concerned a Spanish Confiscatory Law and the House of Lords examined the rule in some detail. Particular regard was paid to the Government of India Minister of Defence (Revenue Division) - v - Taylor (1955) 1 All ER 292 which is the leading case on the subject. In his opinion at the bottom of Page 136 Lord Templeman, in the Williams and Humbert case, said this:-

"In Government of India, Ministry of Defence (Revenue Division) v Taylor [1955] 1 All ER 292, [1955] AC 491 an English company carrying on business in India went into voluntary liquidation in England. The government of India claimed in the winding-up for Indian taxes. This House held that the liquidator was neither bound nor entitled to accept the claim. Viscount Simonds cited the observation of Rowlatt J in King of the Hellenes v Brostrom (1923) 16 Ll LL Rep 190 at 193 to the following effect:

(It is perfectly elementary that a foreign government cannot come here - nor will the Courts of other countries allow our Government to go there - and sue a person found in that jurisdiction for taxes levied and which he is declared to be liable to by the country to which he belongs...)

(See [1955] 1 ALL ER 292 at 295, [1955] AC 491 at 503).

In the present proceedings the government of Spain are not parties to any action and no claim for taxes is in issue.

In Peter Buchanan Ltd and Macharg v McVey [1955] AC 516n, a report of a decision by the courts of Eire, Kingsmill Moore J, sustained by the Supreme Court of Eire, declined to allow the liquidator appointed in Scotland of a company incorporated in Scotland to recover in Eire moneys extracted from the company by the sole owner of the shares in the company. The shareholder had paid off all the creditors of the company except the Revenue and in effect closed down the company so that the only persons interested in the assets were the Revenue which procured the company to go into liquidation in Scotland and the shareholder, who had followed the surplus assets to Eire, Kingsmill Moore J said (at 529):

'For the purpose of this case it is sufficient to say that when it appears to the court that the whole object of the suit is to collect tax for a foreign revenue, and that this will be the sole result of a decision in favour of the plaintiff, then a court is entitled to reject the claim by refusing jurisdiction'.

Counsel for the appellants relied heavily on this decision which, he said, applies to the present case because the object of the respondents in the trade marks action and the banks' action is to collect assets which will indirectly enure for the benefit of a foreign government. In my opinion, however, the Buchanan case only concerns a revenue claim."

The inference I draw from all the cases is that Jersey, like England, will not enforce a revenue claim even if it is made indirectly. However, the Buchanan case was concerned with a revenue claim alone. In that case the Judge, Kingsmill Moore J., said this about the defendant:

"He evolved a plan both swift and simple. He would secretly dispose of all the valuable whiskey stocks, scraped together with his private assets to safe hands in Ireland and in due time follow his money to this jurisdiction from where, he was advised, he might safely snap his fingers in the face of a disgruntled Scottish revenue".

The question I have to ask myself, as I have said, was whether in pursuing his claim in Jersey the liquidator was acting as the Agent of the Inland Revenue. I am unable to reach such a conclusion.

Paragraph 1110 of Volume 7 of Halsbury's Laws of England 4th Edition sets out the status of the liquidator as follows:-

"Liquidator's status. Whether he is the official receiver or some other person, the liquidator is an officer of the court, at any rate for some purposes. He is the governing body of the company and also the receiver and manager of its assets, and he fills the character of an accountant to make up the books and accounts so as to ascertain each contributory's or member's share of liability and any surplus. In receiving calls the liquidator receives them as trustee.

Since, in a winding up, the company's assets must be collected and applied in discharge of its liabilities, its property is in the nature of trust property, affected with an obligation to be dealt with by the liquidator in a particular way, and this trust is constituted for the benefit of all the creditors. However, the liquidator is not a trustee, in the strict sense of being a trustee, for each creditor or contributory of the company."

Paragraph 1112 defines his duties as follows:-

"Liquidator's general duty. As an officer of the court, the liquidator must maintain an even and impartial hand between all the individuals whose interests are involved in the winding up. It is his duty to the whole body of creditors, the whole body of shareholders, and to the court to make himself thoroughly acquainted with the company's affairs, and to suppress or conceal nothing coming to his knowledge in the course of his investigation which is material to ascertain the exact truth in every case before the ~~court~~^{Court}; and it is for the judge to see that he does his duty in this respect."

In my opinion the liquidator is under a duty to collect all the Company's assets and, as is clear from the extracts I have quoted, he cannot, by any stretch of the imagination, be regarded as an Agent or tool of the Inland Revenue. The fact that if he does collect money in Jersey, some of it, or even most of it, will when returned to the United Kingdom, be applied towards the satisfaction according to English Law, of a revenue debt, does not by itself where other claims are involved, even if in proportion with the revenue claim, they are very small, render the exercise of tracing the money to Jersey and obtaining it, the indirect enforcement solely for the purpose of paying an Inland Revenue claim. There is an interesting case reported in Volume 7 of the Commonwealth Law Bulletin for 1981 at Page 1256. It is re Ayres Ex Parte Evans (1981) 34 A.L.R. 582. The report reads as follows:-

"The High Court of New Zealand issued two letters of request for the aid of the Federal Court of Australia to enable the Official Assignee of a New Zealand bankrupt's estate to obtain control of the bankrupt's property in Australia and, at the direction of the Federal Court, applications pursuant to s. 29 of the Australian Bankruptcy Act 1966 were filed and served. The majority of the proved debts in the bankrupt's estate were revenue debts due to the Crown."

The Federal Court, in granting the applications, held (inter alia) that -

"(iii) the fact that the New Zealand Inland Revenue Commissioners would benefit from the remission of funds from Australia to New Zealand is the result or consequence of the New Zealand bankruptcy laws and indirectly of the application to the Federal Court but does not import to the application the character of an attempt to enforce the revenue laws of New Zealand.

(iv) this case is distinguishable from Peter Buchanan Ltd v McVey. That was an action to recover moneys from the defendant by the company in liquidation and its liquidator. All the fruits of the litigation would have gone to the Scottish Revenue. It was held that the sole purpose of the action was to collect the Scottish Revenue's debt. But the fact that this case and Peter Buchanan Ltd v McVey are distinguishable does not, to my mind, necessarily answer the contention of the bankrupt that the matter before this court is in substance a claim to recover New Zealand revenue. Trustees in bankruptcy, Official Receivers or Official Assignees, are charged by statute to properly and impartially administer the estates of bankrupts in accordance with law. So it is with liquidators of companies. They should all listen to the views of creditors and sometimes are bound to seek them: but generally they must exercise their own independent judgment on matters concerning the insolvent administration in their hands. It must be a rare case indeed where they sue merely as the puppets of foreign revenue authorities to recover debts due to them by the estate. Peter Buchanan Ltd. v McVey was one such case."

There, of course, there was a letter of request from the High Court of New Zealand to the Federal Court of Australia under the relevant Bankruptcy legislation. The emphasis in that case was that in the Buchanan case the Liquidator was the puppet of the Inland Revenue.

I am not prepared to find that, in this case, the liquidator was merely the puppet of the Inland Revenue Authority. Accordingly, even if I were entitled to do so, I would decline to rule that the registration by the liquidator of his judgment obtained in the High Court against Mr. Stewart infringes the rule that the Royal Court will not enforce foreign revenue laws. It is interesting to consider what would have been the position if the High Court had prayed in aid the help of the Royal Court under Section 22 of the Bankruptcy Act 1914, in which the Royal Court is described as a British Court. In such a case the New Zealand example I have cited would have been very much in point. I do not consider it to be an unfair extension of the principle of the New Zealand case to the present circumstances.

I leave open the question whether Messrs. Le Marquand and Backhurst's judgment takes priority over the liquidator's registration. ~~On this issue, however, I order the representatives to pay the liquidator's costs.~~ *The At the request of Council, the matter of costs is left over.*