

**ROYAL COURT**  
(Samedi Division)

199

17th November, 1992

Before: F.C. Hamon, Esq., Commissioner,  
and Jurats Vint and Herbert

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Representation of David Henry Chapman, asking the Court to set aside its Order of 3rd September, 1992, determining the lease of No. 30, Sand Street, St. Helier and refusing to raise the *désastre* declared by Mrs. Chapman on 26th June, 1992. (See Jersey Unreported Judgment of 3rd September, 1992: Representation of Seale Street Developments and Guys of Georgetown, Ltd.).

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Advocate F. J. Benest for Mr. D. H. Chapman  
Advocate R. J. Renouf for the Viscount  
Advocate C. R. de J. Renouf for Mrs. M. A. Chapman  
Advocate S. C. Nicolle for the Social Security Committee and the  
Comptroller of Income Tax  
Mr. James Barker representing himself  
Advocate J. A. Clyde-Smith for La Collette Cold Store Ltd. and  
Sheet Metal Fabrication (Jersey) Ltd.  
Advocate P. C. Harris for Allied Traders Ltd. and  
Wilkinsons of Jersey Ltd.  
Advocate C. J. Dorey for Bristol & West Building Society  
Advocate M. E. Whittaker for Fortuna Ltd.  
Advocate F. J. Benest for Guys of Georgetown Ltd. and Lucas Brothers  
Advocate G. Le V. Fiott for Seale Street Development Ltd.  
Advocate A. P. Roscouet for the Jersey New Waterworks Co. Ltd.  
Mr. Cottrell appeared on behalf of B.D.O. Carnaby Barrett Ltd.

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**JUDGMENT**

**COMMISSIONER HAMON:** This is a representation brought by David Henry Chapman the husband of Marguerite Ann Chapman (née Godel) whose property was declared *en désastre* upon her on application on the 26th June, 1992.

It is to be noted that on the 3rd September, 1992, the Royal Court ordered that the contract lease of 30 Sand Street, St. Helier, (which is a twenty-one year lease running from the 5th October, 1984) between Mr. and Mrs. Chapman and John Harold Shepherd (the then owner of the property) be cancelled upon the application of the present owner Seale Street Developments Limited.

This judgment went to appeal and on the 1st October, 1992, the Court of Appeal granted a stay of execution of the Act of the

Royal Court. The reasons for the Court's decision have not yet been delivered.

We were told that last Wednesday a creditors' meeting was convened. There are 55 creditors of the company. 13 creditors attended the meeting. 8 voted to support a creditors' fund to be administered by Messrs. I.C.N. Toole & Co. a firm of Chartered Accountants. This subject to certain terms and undertakings.

The claims filed total £210,787.39 of which £84,201.43 relate to charges secured on a property owned by Mr. & Mrs. Chapman which is their home. The landlord company is owed £5,952.44 to date in rental arrears. The other realisable asset held by the Viscount is a BMW car which has an estimated value of £3,000, and some trade fittings.

All the known creditors were summonsed to appear before Court this afternoon. Because the representation was marked as a *cause de brévité* (we prefer the time-honoured phrase *cause de brièveté*) the representation was set down for 4.00 p.m. last Friday once the public business of this Court had been disposed of. Not all the creditors summonsed appeared. Some who did appear supported the application to raise the *désastre*. Three most strongly opposed it.

The Viscount appeared and entered an answer to the representation whereby he asked that the Court order that the disbursements incurred by the Viscount totalling in excess of £8,000 be paid or reimbursed forthwith "or in such other manner as the Court shall direct". Those disbursements are costs properly incurred by the Viscount and apart from an, as yet, undetermined amount of his own direct costs, comprise accountants, lawyers, and valuers fees.

We heard from Advocate C. Renouf (acting for Mrs. Chapman) and from Mr. James Barker who represented himself that Mr. Barker had paid cleared funds of £8,000 to Advocate Renouf to secure the lease of the Midvale Road property. This was subject only to the consent of the landlord. This £8,000 would be used in part to pay off Seale Street Developments Limited and the balance would be available to pay off part of the Viscount's disbursements. The Midvale Road property would then no longer be available to Mrs. Chapman if the *désastre* were raised. We were told that there is an old outstanding debt of £1,500 due to J. H. Oliver that pre-dates the *désastre* and which, if the *désastre* were raised, would become immediately enforceable.

Although we heard from creditors in support of the application, we have to note that Advocate Nicolle appearing for the Social Security Committee and the Comptroller of Income Tax told us that although she had no wish to oppose the claim, if future liabilities were to accrue then the Social Security Committee would proceed as they thought fit.

Although much of what the learned Bailiff said in his judgment of the 3rd September, 1992, is obiter, it is none the less of considerable assistance to us. At page 8 of the judgment he said this:-

*"There are many cases in the table, where a creditor has applied to have the désastre lifted, and it seems to us that the 1990 Law does not prevent that. Where such an application has been made, the consent of all the creditors has been obtained; that much is clear from the cases. Yet it is interesting to note the provisions in the Loi (1867) au sujet des débiteurs et créanciers, which was repealed by the 1990 Law, which allowed for a proportion of the total creditors to suffice. The repeal of that Law, taken with Article 7(3) of the 1990 Law, could be taken to mean that the legislature intended to remove the power of a majority of creditors to persuade the Court to lift a désastre against the will of a minority. In the case of Mrs. Chapman, not only is there a substantial majority of creditors in favour of lifting the désastre, subject to professional guidance (as we have said) but the total amount of the debts - even if held by a minority of the creditors, which is not the case - is substantially in excess of those debts due to the objecting creditors."*

There appears to be no authority (and we had no law cited to us other than this judgment) to give an indication to us as to how we can exercise a discretion if even one creditor strongly opposes the raising of a désastre. With no authority to guide us we have formed the clear impression that such an objection is fatal.

It is interesting to note that Article 7 (3) of the Bankruptcy (Désastre) Law, 1990 states at sub-paragraph (3) :-

*"The Court shall refuse an application made under paragraph (1) where it is not satisfied that property of the debtor vested in the Viscount pursuant to Article 8 or Article 9 is at the time of such application sufficient to pay in full claims filed with the Viscount or claims which the Viscount has been advised will be filed within the prescribed time."*

So that it would not have been possible for Mrs. Chapman to have applied to "recall the declaration". Hence the application by Mr. Chapman.

We can see endless complexities if we raise the désastre. There would be nothing to prevent any creditor from applying for another désastre and indeed such a course of action was openly canvassed by two of the objecting creditors during the course of the hearing.

It is true that the Court is given a discretion by the law to grant a *désastre* but if the debtor is hopelessly insolvent and able to operate at all only with the consensus of her creditors and closely controlled by a firm of accountants it is difficult to see how in the face of the opposition we have heard that the Court could allow the balance of its discretion to favour the debtor.

It seems to us that without the co-operation of those creditors who opposed the recall (we are not concerned with those who took a neutral view) we cannot allow the application. It is accordingly dismissed.

It is always open to Mr. Chapman to persuade the three creditors who have now identified themselves to change their minds. If he could achieve that object then a further application could be brought.

Authorities

Bankruptcy (Désastre) (Jersey) Law, 1990: Article 7(3).

Representations of Seale Street Developments and Guys of  
Georgetown, Ltd. re: Mr. and Mrs. D.H. Chapman (3rd  
September, 1992) Jersey Unreported.