

ROYAL COURT  
(Samedi Division) 42.

29th February, 1996

Before: The Deputy Bailiff, and  
Jurats Bonn and Le Ruez

In the matter of Leslie Rufus Crapp as Liquidator of  
Sidoil Services (Jersey) Limited.

Between:	Leslie Rufus Crapp as Liquidator of Sidoil Services (Jersey) Limited	Representor
And:	Marie Jose de Souza Wife of Freddy Sidi	Respondent

Representation by the Representor, applying (1) for a declaratory Order, directing that the sum of £150,000, for the reasons set out in the Representation, belongs to Sidoil Services (Jersey) Ltd; and (2) for an Order that the Representor be at liberty to utilise the said £150,000 together with all interest accrued thereon, after payment of all proper costs and charges incurred in respect of and in and about this Representation, for the discharge of all and other claims of Sidoil's creditors (excluding the claims of Mrs. de Souza) to Mr. Sidi's trustee in bankruptcy.

Advocate T.J. Le Cocq for the Representor.

**JUDGMENT**

**THE DEPUTY BAILIFF:** This is an application by Mr. Leslie Rufus Crapp who is the liquidator of a company called Sidoil Services (Jersey) Limited incorporated under the laws of this Island.

Sidoil was incorporated in March, 1982, by the then firm of Troy and Michel and ten shares were issued. Nine shares were held by nominees and there were declarations of trust in favour of Mr. Freddie Sidi, who was the beneficial owner of the company, but one share was in the name of a gentleman called Mr. Estanislau Zarembo, whose address was given as being somewhere in Brazil. Mr. Zarembo was originally one of the directors but we were told

by Advocate Le Cocq that within a day or two of his appointment he had resigned.

Sidoil, during the course of its activities, received considerable sums of money from Mr. Sidi and in May, 1982, the beneficial ownership of the company was apparently and purportedly transferred by Mr. Sidi to his wife and the trustees were changed to Roanne Trust Company.

On 17th November, 1993, Mr. Sidi was declared bankrupt in the United Kingdom. He had apparently made an act of bankruptcy in February, 1982. He was in fact apparently already bankrupt in the United Kingdom prior to his purported transfer of the ownership of the company to his wife.

In November, 1982, Mr. Sidi faced criminal charges in the United Kingdom. He was later acquitted of those charges but he needed to find £150,000 bail. That was procured by his wife, Mrs. de Souza, apparently from the funds of Sidoil and when he was acquitted she asked for repayment of that sum but a claim was also made, of course, by the trustee in bankruptcy because he said that that money in fact belonged to the company.

The questions were resolved by Scott L.J., on 15th July, 1988, in a hearing at which everyone appeared apart from Mr. Zaremba and the Judge established the ownership of the money and the ownership of the shares. That judgment is apparently binding on Mr. Zaremba, the fifth defendant in the English proceedings as all the parties were ordered to appear and all of them did appear apart from Mr. Zaremba.

Mrs. de Souza renewed her claim in Jersey after the English order by bringing an action in Jersey claiming that she was the sole beneficial owner of Sidoil. That action, which might have caused some difficulty in this jurisdiction, has now been compromised and Mr. Crapp is freed from any claim against him by Mrs. de Souza.

It is quite apparent that, since Mr. Crapp came on the scene as liquidator, Mr. Zaremba has made no contact whatsoever and that may, of course, only mean that he does not know that the company is in liquidation. He did not appear in the English proceedings. His status is entirely unknown and the liquidator now comes before us today to ask whether it is necessary for him to take any further steps. It is interesting for us to note that in the action in Jersey Mrs. de Souza claimed that the company was entirely owned by her and that the shares were hers alone. That is not precisely what she claimed on affidavit in the High Court action. There she acknowledged that Mr. Zaremba held one share absolutely and that the other nine were held on trust for her absolutely.

Again from correspondence which we have not seen but about which we were told by Mr. Crapp, Mr. Zaremba was asked originally when the company was formed by Troy and Michel to execute a stock transfer form, but no trace of any return of that form or what happened to it can be found.

We have a situation where a judgment has been given in England; Mr. Zaremba was convened but did not appear, and it may well be that the doctrine of *res judicata* applies to this Court in Jersey because of the judgment delivered in England.

Mr. Le Cocq before us today cites two cases: that of Showlag -v- Mansour (15th March, 1994) Jersey Unreported, which was finally adjudicated by the Judicial Committee of the Privy Council. Of course, in that case Mr. Mansour submitted to the jurisdiction of the English Court (albeit by affidavit) so it is not quite the same as the present circumstances where Mr. Zaremba has made no acknowledgement whatsoever that the case against him has been called.

Perhaps more useful to us is the case of Cooper -v- Resch (1987-88) JLR 428, where the Court decided that the concept of estoppel applied not only to what was argued before it but to what might have been argued had reasonable diligence been displayed. We will not cite from that judgment, we only need to refer to p.431 of it.

Finally, Mr. Le Cocq cited to us the case of Yat Tung Investment Co. Ltd -v- Dao Heng Bank Ltd (1975) AC 581, which is a decision of the Privy Council from the Supreme Court of Hong Kong. In that case the Privy Council said at p.590:

*"The shutting out of a "subject of litigation" - a power which no court should exercise but after a scrupulous examination of all the circumstances - is limited to cases where reasonable diligence would have caused a matter to be earlier raised; moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless "special circumstances" are reserved in case justice should be found to require the non-application of the rule. For example, if it had been suggested that when the counterclaim in no. 969 came to be answered Mr. Lai was unaware, and could not reasonably have been expected to be aware, of the circumstances attending the sale to Choi Kee, it may be that the present plea against him would not have been maintainable. But no such averment has been made.*

*The Vice-Chancellor's phrase "every point which properly belonged to the subject of litigation" was expanded in Greenhalgh v. Mallard [1947] 2 All ER 255, 257, by Somervell L.J.:*

*"... res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but...it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them".*

In the spirit of even handedness we cannot even be certain that Mr. Zaremba ever received any documentation but what we have been told is sufficient in our view for us to make a ruling. Mr. Zaremba has taken no steps whatsoever in relation to this company for 15 years; he did not appear to argue the case in the High Court; and the shares in the Jersey company were apportioned by the English Court where all the parties submitted to the jurisdiction except Mr. Zaremba. Particularly in the light of his speedy resignation from the company in its early days; and particularly in the light of the fact that a form of transfer was apparently sent to him, but was never returned, we feel completely confident that Mr. Zaremba has and never did have any material interest in this company at all. Therefore we are quite happy to follow the claim of the representation at paragraph (2) and to direct that the £150,000 which Mr. Crapp is administering, together with all interest accrued thereon, belongs to Sidoil and we are prepared to give Mr. Crapp any liberty that he requires to utilise that £150,000 together with the interest in order to pay all proper costs and charges in respect of and in and about this representation and then to discharge all other claims such as they may be of Sidoil's creditors (excluding the claims of Mrs. de Souza) to the trustee in bankruptcy.

Authorities.

Showlag -v- Mansour (15th March, 1994) Jersey Unreported (Priv. Council).

Cooper -v- Resch (1987-88) JLR 428.

Yat Tung Investment Co. Ltd. -v- Dao Heng Bank Ltd. (1975) AC 581.