6 pages.

ROYAL COURT
(Samedi Division) 220.

8th December, 1997

Before: F. C. Hamon Esq., Deputy Bailiff

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| Between: | Morgan & Chase Bank Corporation Inc. (a Liberian company) | Representor |
| And: | The Finance and Economics Committee of the States of Jersey | First Respondent |
| And: | Peter Howard Beamish | Second Respondent |

Advocate D. J. Petit for the Representor
Paul Matthews Esq., Crown Advocate, for the First and Second Respondents

## JUDGMENT

THE DEPUTY BAILIFF: This case raises a novel point of law, in this jurisdiction.

A notice dated 20th January 1997 signed by Mr. J.C.M. Pallot, a Deputy Director of the Investments and Securities Division of the Financial Services Department of the States of Jersey, acting on behalf of the Finance and Economics Committee, purported (the appointment is disputed) to appoint Peter Howard Beamish of Deloitte & Touche to act as inspector to investigate the affairs of an external company.

By way of background, on 21st May 1993, the company, Morgan & Chase Financial Corporation Inc. ("the Liberian company") was incorporated in Liberia. The company was incorporated through a registered agent (The International Trust Company of Liberia) by Mr. Stuart Creggy. Mr. Creggy is the senior partner of a firm of London solicitors known as Talbot Creggy. According to David St. Clair Morgan, who has sworn two affidavits in this matter, the firm of Talbot Creggy is long established and has done business with Mr. Morgan for twenty years while he has been practising in Jersey and again another twenty years before that, when he was a solicitor in London before he came to Jersey. When I say "business" with Mr. Morgan, that is professional business with his firm or his trust company. Mr. Morgan was, of course, a former Commercial Relations Officer to the States of Jersey. Mr. Morgan has an office trust company, Channel Islands and International Law Trust Company Limited ("the trust company"). On 26th July 1993, the trust company was asked by Talbot Creggy to provided officers for the company. The trust company was asked to act as director and secretary of the Liberian company and a cheque for £500 was enclosed with the request to cover any fees. The £500 was presented by way of "client account cheque". There was also copied to Mr. Morgan a letter to Talbot Creggy from Barclays Bank in Grand Cayman, Cayman Islands enclosing mandate forms pursuant to a fax dated 17th June 1993 which had been sent to the Bank by Talbot Creggy. Officers to the Liberian company were provided. They were Westaway Managers Limited and C.I. Law Managers Limited (two companies registered by Mr. Morgan's firm to provide corporate services). The companies were registered in Liberia. The secretary

was C.I. Law Services Limited, a Jersey secretarial company. The two Liberian companies and the Jersey company are controlled by Mr. Morgan.

Mr. Morgan was informed by Talbot Creggy that the Liberian company was to be used for the purpose of receiving commissions or other monies earned by the beneficial owners from investment business introduced by such owners to brokers and fund managers in Europe and America. The Liberian company had bank accounts opened in Cayman, Jersey and Guernsey and all this was done on the instructions of Talbot Creggy.

During the course of the hearing, Advocate Petit, with the help of Mr. Morgan, kindly placed before me whatever documents I asked to see and it must be said that Mr. Morgan has behaved most candidly throughout the hearing. The articles of association of the Liberian company pursuant to the terms of the Liberian Business Corporation Act state that *"the purpose of the corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the Liberian Business Corporation Act."* According to the articles of incorporation, there is one incorporator, Mr. Spurlock of 80 Broad Street, Monravia, Liberia, holding one share and one director, namely Mr. H. Stephens of the same address.

Mr. Spurlock executed the articles of association at the Embassy of the Republic of Liberia in Washington D.C. on 21st May 1993. From investigations carried out by the Police Force of the Cayman Islands and the States Police in Jersey, it became clear that, unbeknown to Mr. Morgan, the Liberian company had been set up as a staging post for a fraud. A company formed in the Cayman Islands bearing the same name as the Liberian company ("the Cayman company") began to promote a fund known as "Heritage Capital Growth Fund" ("the fund"). The fund was issuing what it called a pre-public offering certificate and those invited to invest were encouraged to sign the certificate and return it by courier either to the address in the Cayman Islands of this similarly named company or to effect a wire transfer to Hill Samuel Bank (Jersey) Limited in Jersey, again with an account name being the name of the Liberian company. Eight or so investors who were duped did just that, but Mr. Morgan had by then received instructions from Talbot Creggy to pay the money over to the bank in Guernsey where the company had an account. Advocate Petit told me that they now understood the reason why they had received those instructions was because the Jersey account could not have any of its funds withdrawn by telephone or fax but the bank in Guernsey could. Eight drafts from various parts of the world were received over a two week period and were passed on to be deposited in Guernsey.

I have an affidavit of John Charles Marett Pallot, Deputy Director with the Financial Services Department. To his affidavit he attaches a letter sent to him by Mr. Nicholas Morgan, (son of Mr. David Morgan) and a director of the trust company. In the terms of his letter he says this:-

> *"The Administrator assigned within our office to provide any administrative services to this Company and to liaise with Talbot Creggy obtained various bank information as to receipts of commission into the Company's bank accounts and conveyed this immediately to Talbot Creggy. Again at this stage we were not made aware by Talbot Creggy or any other party of the existence of the Heritage Capital Growth Fund or any connection between the Company and any such fund. Periodically the Administrator carried out various banking transactions upon the direct instructions of Talbot Creggy or their client and there was no suggestion that the company was involved in any illegal or improper activity. Late during 1993 we were requested to open a further bank account to be operated by certain individuals whose passport details were provided by Talbot Creggy. We expected Accounts to be prepared by the clients for approval by the Director in the usual way.*

> *At this point in time our Administrator had been requested by Talbot Creggy to forward bank statements and other information to the clients or their representatives in the Cayman Islands."*

Mr. Nicholas Morgan's letter is again very frank and helpful and it is necessary for me to set out further a long extract from it:-

> *"We were then contacted by Lawyers in Cyprus to advise that one of their clients had sent money to the Company in the Cayman Islands and that there had been no confirmation that such funds had been received. All future communications were directed by my father to Talbot Creggy who advised us by letter dated 14th December 1993 that their client had assured them that there was nothing illegal or wrong or any fraud connection with the company administered. Subsequently, we were contacted by Talbot Creggy's client direct with regard to the appointment of replacement officers and we received instructions to appoint three individuals as Directors and Officers in our place.*
>
> *By faxed letter dated 23rd December 1993 to the client we advised that we were instructing local Advocates to make a Representation to the Court for directions having regard to our position as Administrators before transferring administration and any funds which we currently held. We recommended that the client should arrange for separate representation in relation to such Court Representation. After careful consideration my father decided that it was not then appropriate or possible to make a Representation to the Jersey Court in relation to a Liberian Company and subsequently my father was advised that the new administrators to be appointed had declined to accept their appointment. My father then reverted to Talbot Creggy's clients requesting details of alternative officers to be appointed. My father also made further enquiries of former Cayman Shareholders in our Trust Company as to any local developments in this matter and was advised that four individuals had been charged with conspiracy to defraud in Cayman. During the same period we received several communications from investors who had apparently sent monies for the purchase of shares in the Heritage Capital Growth Fund and ultimately my father advised the same that we were no longer administering the Company and that they should communicate directly with the client or the Canadian Lawyer who we had been advised was dealing with these matters. Again my father continued to liaise with Talbot Creggy in relation to any correspondence received in relation to this matter. My father indicated to Talbot Creggy that he was extremely concerned about the unsatisfactory position that we had been placed in and that we had quite properly relied on Talbot Creggy to carry out proper due diligence procedures before asking us to provide administrative services to the Company. Talbot Creggy confirmed that the request to incorporate the Company and to provide officers had been received from a Canadian Investment client with whom they had had a working relationship for some years and they agreed that in the event that we were to receive any further correspondence or enquiries we should copy this to them and they would take it up with their original Canadian client. During the latter part of 1994 where we received any communications in relation to the Company we asked the correspondents to communicate with Talbot Creggy as we were unable to assist them. Subsequently Talbot Creggy confirmed the name, address and other details of their original instructing client so that all correspondence and enquiries received in relation to the Company could be directed to him. The client identified by Talbot Creggy as beneficial owner contacted my father in April 1995 and it was clear from this communication that he was a Canadian Barrister and Solicitor. He advised that he knew nothing about this particular company and*

*recommended that we should direct all correspondence to another Lawyer in Canada who had previously been in communication with my father.*

*My father made it very clear to Talbot Creggy that we were most concerned at the apparent confusion over beneficial ownership and the fact that no-one was appearing to take responsibility for the Company or its affairs. My father made it very clear to Talbot Creggy that with regard to future instances where we were asked to provide officers or administrators we would be relying upon their Firm to carry out comprehensive due diligence in accordance with Law Society Regulations and Guidelines and to provide us with proper information with regard to the beneficial owner, the activities of the Company and the source of introduction and any assets to be dealt with by the particular Company."*

It is clear that the Liberian company and those administering it in Jersey have been hoodwinked in an audacious fraud where perhaps as little as $80,000 and perhaps no more than $300,000 has been spirited away.

The Cayman Island company is in liquidation. Both Cayman Islands Police and the States of Jersey Police are attempting to investigate the fraud. In March, 1994 the Cayman company pleaded guilty to conspiracy to defraud.

The Attorney General, quite rightly in my view, has stated in writing that as this was not, on the information available to him, a serious or complex fraud, he does not feel able to use his powers under the Investigation of Fraud (Jersey) Law 1991. I have to say, in order for the picture to be as complete as possible, that Mr. Morgan and the directors of the trust company were prepared to submit to an investigation under that law.

As I have said, on 20th January, 1997, the second Respondent was appointed by the Finance and Economics Committee to act as inspector to investigate the affairs of the Liberian company under Part XIX of the Companies (Jersey) Law 1991.

In his affidavits Mr. Morgan says:

*"I am not unwilling to assist the Financial Services Department but am constrained by rules of professional privilege as regards the providing of confidential information and I understand that the department's action is influenced by complaints from investors who clearly received promotional material with regard to the fund from the Cayman company, Morgan & Chase, to whom, or to whose liquidator, any claims should have been submitted."*

It has been said before, and the Crown Advocate Mr Matthews repeated it before us: *"Jersey is jealous of its financial reputation"*. The appointment of an inspector is a statutory appointment and no amount of jealousy will establish the standing of the inspector in this case unless his appointment falls within the statutory meaning.

The appointment of an inspector is made under part XIX and Article 128 of the Companies (Jersey) Law 1991 as amended. Article 128 of the Law applies to Jersey registered companies and has effect in relation to external companies by virtue of the provisions of Article 140.

The question that I have to decide on the limited facts available to me is whether the Liberian company is an external company (Article 140).

An external company is defined by Article 1 of the law as *"**a body corporate which is incorporated outside the island and which carries on business in the***

***island or which has an address in the island which is used regularly for the purposes of its business."***

The Liberian company is clearly a company incorporated outside the island. The representor maintains that:-

1. it did not carry on business in the island, and

2. it did not have an address in the island which was used regularly for the purposes of its business.

There is no coordinating conjunction in the definition between the two alleged issues. The word used is "**or**" and not "**and**". In ordinary draftsman's usage, and as the Crown Advocate has argued before me, "**and**" is conjunctive and "**or**" disjunctive. There can obviously be a necessity in certain cases in carrying out the intention of the legislature to substitute "and" for "or" and vice versa. I do not conceive that to be the case here.

What falls to be interpreted are the words "***which has an address in the island which is used regularly for the purposes of its business***".

It is clear to me that the Jersey statute was primarily based on the Companies Act 1985 which was a consolidating Act. In that Act the words "external company" are not used. The words there used are "***oversea company***" which is defined in Section 744 in this way:

*"oversea company" means*

***(a)*** ***a company incorporated elsewhere than in Great Britain which, after the commencement of this Act, establishes a place of business and***

***(b)*** ***a company so incorporated which has, before that commencement established a place of business and continues to have an established place of business in Great Britain at that commencement".***

The representor accepts that the corporate directors were at all times managed and controlled by Mr. Morgan and that the Liberian company is resident in Jersey. It seems to me necessary to establish whether or not the company carried on a "business" in Jersey at all. If I conclude that the Liberian company was carrying on a business then, as it is managed and controlled and resident in Jersey, it would be carrying on a business in the island. This would enable the Committee to appoint an inspector under Article 128 of the Law.

As Lindley LJ said in Rolls v. Miller (1884) 27 ChD 71 at 88:

> ***"When we look into the dictionaries as to the meaning of the word "business" I do not think they throw much light upon it. The word means almost anything which is an occupation as distinguished from a pleasure - anything which is an occupation or duty which requires attention is a business - I do not think we can get much aid from the dictionary."***

There is some helpful guidance in the judgment of the Privy Council in American Leaf Blending Co. Sdn Bhd v. Director-General of Inland Revenue (1978) 3 All ER 1185 PC but I will refer only to part of the headnote which says:-

*"Although not every isolated act authorised by its memorandum of association necessarily constituted the carrying on of a business by a company, if a company was incorporated for the purpose of making profits for its shareholders then prima facie any gainful use to which it puts its assets amounted to the carrying on of a business."*

Again that is not directly in point but it is, in my view, a pointer in the right direction. What Advocate Petit argues is that it cannot be a valid argument that the business of the company was to defraud investors who responded to the invitation to deposit funds with the Liberian company or the (then unknown) Cayman company. That is not the point. Whoever the Jersey employee was who acted on instructions to open the Guernsey bank account, to receive monies, and to pass those monies on to Guernsey believed that the company was carrying on its lawful business. It seems to me that the deposit period was only curtailed because the Cayman Island police intervened in the Cayman Islands and the Cayman company was put into liquidation.

In its representation there is an open warning from the representor:

*"There will be far reaching consequences in the event that the Court concludes that the mere operation of a bank account in Jersey amounts to carrying out a business here. The legislation grants wide powers to the Committee to appoint inspectors and beneficial owners may be loath to be exposed to such powers, for quite legitimate reasons clients may be reluctant therefore to transfer or to maintain the administration of foreign incorporated companies in Jersey and the placing of moneys within the island's banks may also be affected."*

I can draw little assistance from the large number of cases that both Counsel have very assiduously and properly drawn to my attention.

Advocate Petit argues strongly that a company cannot be in business if its business is not authorized by the company but I am not concerned with the activities of the villains who activated the fraud through the Cayman company. The business of the Liberian company cannot include the business of a similarly named Cayman company. I take the view that the officers of the Liberian company were completely duped (and I do not criticize them in any way) but in setting up the Guernsey bank accounts, in confirming instructions on the telephone, in receiving the eight cheques and in passing them on to Guernsey then, in my view, they were carrying on a business, they were doing so regularly and I decline to order that the appointment of the inspector by notice dated 20th January 1997 was invalid and in so doing I confirm his appointment.

## Authorities

Companies (Jersey) Law 1991: Article 128.

Companies Act 1985: s.744.

Rolls -v- Miller (1884) 27 Ch. D.71.

American Leaf Blending Company Sdn Bhd -v- Director General of Inland Revenue (1978) 3 All ER 1185 P.C.

In re London United Investments p.l.c. [1992] Ch. 578.

Actiesselkabet Dampskib "Hercules" -v- Grand Trunk Pacific Railway Company [1912] 1 K.B. 222.