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Blenheim Trust Company Ltd v Eric Lynn Morgan

Jurisdiction:	Jersey
Judge:	H.W.B. Page, Jurats de Veulle, Allo
Judgment Date:	14 August 2002
Neutral Citation:	[2002] JRC 150
Reported In:	[2002] JRC 150
Court:	Royal Court
Date:	14 August 2002

vLex Document Id: VLEX-793218593

Link: <https://justis.vlex.com/vid/blenheim-trust-company-ltd-793218593>

Text

[2002] JRC 150

ROYAL COURT

(Samedi Division)

Before:

H.W.B. Page, **Esq., Q.C., Commissioner, and** Jurats de Veulle **and** Allo.

In the matter of the Judgment of 13th August, 2002 [2002/149], relating to a dispute over distribution of profits arising from a joint venture.

Between
Blenheim Trust Company Limited
Plaintiff
and
Eric Lynn Morgan
First Defendant

and

Abacus (Guernsey) Limited
Second Defendant

and

Belgrove Limited
Third Defendant

and

de Monfort Securities Limited
Fourth Defendant

and

Tabtim Holdings Limited
Fifth Defendant

and

Iona Securities Limited
Sixth Defendant

and

Osiris Trustees Limited
First Party Cited

and

Goodways Limited
Second Party Cited

Advocate D. F. Le Quesne for the Plaintiff.

Advocate R. J. Michel for the First Defendant.

Advocate N.M. Santos Costa for the Second and Fifth Defendants and for the First and Second parties cited.

Advocate J.P. Speck for the Third Defendant.

The Fourth Defendant did not appear and was not represented.

Advocate A.D. Hoy for the Sixth Defendant, who was present on this occasion.

No Authorities

Judgment on applications by the Second and Fifth Defendants and the First and Second Parties Cited:

(i) for an extension of time for lodging a notice of appeal from the normal one month to two months, having regard, among other things to the complexity of the matter, the need to consult the beneficiaries of the Tabtim Trusts and the need to make a Beddoes application; and

(ii) for a stay of the various (proposed) orders giving effect to the judgment pending an appeal, on the ground that Blenheim is a Liberian corporation – probably with bearer shares – and that there would be likely to be considerable difficulties in ever recovering any funds paid out to it now, were an appeal to be successful.

THE COMMISSIONER:

- 1 At the hearing on Tuesday 13th August, 2002, we gave judgment in favour of the Plaintiff, Blenheim, on the principal issues of the extent of its entitlement to share in the profits of the Kingsnorth project and its beneficial entitlement to shares in Belgrove (copies of the judgment in draft having been made available to the parties on Monday 5th August 2002 on 'embargo' terms, and certain amendments to the draft text having subsequently been made prior to the formal delivery of judgment).
- 2 In anticipation of formal delivery of the judgment Advocate Le Quesne, on behalf of the Blenheim, had produced and circulated to the parties towards the end of last week a draft form of Order intended to give effect to the Court's judgment and in particular to cause (i) 40 of the 80 shares in Belgrove currently registered in the name of TabTim to be transferred into the name of Blenheim, and (ii) the transfer into the name of Blenheim of the appropriate funds currently held to the order of Belgrove representing Blenheim's share of the profits of the Kingsnorth project. Save as to the basis on which costs were to be paid by the Defendants (which, in the event we ordered to be paid on the standard basis), and save as to matters of drafting, there appeared to be little dispute as to the appropriate terms of the Order. The hearing concluded on the basis that Counsel would seek to agree the wording and that Mr. Le Quesne would draw up a revised draft Order (save in respect of the matter to which we now turn).
- 3 At a late stage in the hearing, however, Advocate Costa, on behalf of Abacus, Tabtim, Osiris, and Goodways ("the Defendant Trustees") applied:

(i) for an extension of time for lodging a notice of appeal from the normal one month to two months, having regard, among other things to the complexity of the matter, the need to consult the beneficiaries of the Tabtim Trusts and the need to make a Beddoes application; and

(ii) for a stay of the various (proposed) orders giving effect to the judgment pending an appeal, on the ground that Blenheim is a Liberian corporation – probably with bearer shares – and that there would be likely to be considerable difficulties in ever recovering any funds paid out to it now, were an appeal to be successful.

- 4 It might well be that the Defendant Trustees would face certain practical difficulties in recovering money from Blenheim, were they to be successful on an appeal. But that is by no means the only, or indeed the determining factor, in the exercise of the Court's discretion, and, in any event, appears to us to be a largely hypothetical possibility. The prospects of a successful appeal in a matter that turns almost entirely on issues of fact cannot, we think, be high. In our view any consideration of the kind advanced on behalf of the Trustee Defendants was and is far outweighed by (i) the fact that Blenheim's claims to profit-share and to shares in Belgrove were and are matters on which we have reached very firm and clear conclusions, and which, to our mind, admit of no doubt; (ii) the conduct of the First Defendant, Mr. Morgan and the Defendant Trustees in refusing to acknowledge those entitlements long since with the result that Blenheim has been denied its due entitlement for almost five years; and (iii) the very considerable expense to which Blenheim has been put in order to vindicate its claim. We accordingly refused to grant the stay sought ("the general stay").
- 5 However, allowing for the possibility that our approach to this application might be wrong, we indicated that we would be prepared to grant a limited stay of sufficient duration to permit the Trustee Defendants to appeal our refusal of a more general stay, if minded to do so ("the limited stay"). It appeared to us to be unrealistic to suppose that any such appeal could be brought on in time for the Court of Appeal's forthcoming sitting in September, but that, subject to other demands on the Court's time, it should be possible for the matter to be heard at the sitting due to take place in the week beginning 11th November 2002, and that a limited stay might accordingly be granted until 30th November 2002 or further order of either this Court or the Court of Appeal. In order for an appeal of the kind contemplated to be listed for hearing by that Court on that occasion it would be necessary for the Appellant's case (the Trustee Defendants') to be lodged by Friday 20th September 2002 and for the Respondent's case (Blenheim's) to be lodged by Friday 18th October 2002. Mr. Costa submitted that this would impose an unfairly tight timetable on his clients. The Court reserved its final ruling on this for further consideration.
- 6 Having now considered the matter further, although it is not, of course, within our power to determine when any such appeal is heard (that is, an appeal against our refusal to order a general stay pending determination of any substantive appeal in the action), we believe that any directions that we give on this matter should be such as will enable the Court of Appeal to hear the matter at its November sitting if its list permits it to do so. We not prepared, of our own motion, to set a timetable geared to any later sitting – which, in practice, would not be until January next year. Justice requires that this matter be dealt with at the earliest reasonable opportunity, and we do not believe that there would in fact be anything unreasonable about requiring the Trustee Defendants to lodge by Friday 20th September 2002:

In practice this means that the Trustee Defendants will have had almost seven weeks from the time when they first received a copy of the draft judgment in which to consider their position and take such steps as may be necessary in order to prepare for any substantive appeal the they may be minded to pursue and almost six weeks in which to prepare their case in relation to this Court's refusal of a general stay. Time for service of each of the notices of appeal referred to in (i) and (iii) above will be extended accordingly to 20th September 2002. The limited stay to be granted by this Court pending appeal against our refusal to grant a more general stay will be conditional on, among other things, strict compliance by the Appellant Defendants with this timetable. Failure to comply with it will result in the stay being lifted and the Order being enforceable according to its terms.

- (i) notice of any appeal that they intend to pursue against the Court's refusal to grant a general stay pending determination of any substantive appeal in the action;
- (ii) their Appellants' Case in respect of any such appeal; and
- (iii) notice of any substantive appeal that they intend to pursue.

- 7 Time for service of any notice of substantive appeal by the First Defendant, Mr. Morgan, will also be extended to 20th September 2002. We do not understand Advocate Michel to have made any application on behalf of Mr. Morgan seeking any stay of execution.
- 8 Given the late stage of Tuesday's hearing at which the application for a stay was made and the Court's indication of a readiness to grant a limited stay was discussed, we are not satisfied that sufficient consideration was given to the appropriate safeguards of Blenheim's position that ought to accompany the grant of any limited stay. We are minded to make the grant of that stay conditional, not only on strict compliance with the timetable set out above, but also on the following:

Points (i) to (iii) are designed to eliminate any delay should the appeal against this Court's refusal of a general stay be unsuccessful.

- (i) procurement by Tabtim forthwith of the documents referred to in paragraph 1(a) (i) and (ii) of the proposed order;
- (ii) execution by Belgrove through its Liquidator of all such documentation as may be necessary to enable the immediate release and transfer to Blenheim of the funds referred to in paragraph 1(b) of the proposed Order in the event of the Court of Appeal refusing to grant a general stay, including any direction of the Isle of Man Courts that may be necessary;
- (iii) delivery of each of the foregoing to Viberts by 3rd September 2002, such documents to be held by them pending determination of the Defendant Trustees' appeal or further order of either this Court or the Court of Appeal;

(iv) full co-operation by Mr. Morgan, Abacus, Osiris, Goodways and Tabtim in relation to the foregoing;

(v) the provision by the Trustee Defendants of security for the costs of an appeal against this Court's refusal of a general stay in an amount of £[30,000] by 3rd September 2002;

(vi) [by 20th September 2002: either payment by the Defendant Trustees to Blenheim of an amount of £250,000 on account of its costs to date of the action, or the release of the charge registered on Gurrow Point];

(vii) no stay in respect of paragraph 4 of the proposed Order

- 9 We are also minded to require a formal undertaking by counsel on behalf of Mr. Morgan and the Defendant Trustees (or if necessary to impose corresponding restraining orders) that, as long as the limited stay is operative, Mr. Morgan and the Defendant Trustees will not cause or permit:

to be changed without the leave of the Court.

Any submissions that any party may wish to make in respect of paragraphs 8 and 9 above should be delivered to the Judicial Greffe by not later than 5.00.p.m., on Friday 16th August 2002.

(i) the trustees or the protector of the Tabtim Trusts, or

(ii) the current shareholdings in or directorships of the Tabtim Trusts