

COURT OF APPEAL

19th March, 1996. 54,

Before: The Bailiff, Single Judge.

Between: David Eves Plaintiff
And: Hambros Bank (Jersey) Limited First Defendant
And: The Viscount Second Defendant

Application by the Plaintiff: (1) for leave to appeal against the Order of the Royal Court of 15th March, 1996, dismissing his *ex parte* representation, asking the Royal Court to set aside so much of its Order of 18th August, 1995, as authorized the Viscount to evict the Plaintiff from his property; and (2) for a stay of execution of the said Order pending determination of the appeal.

The Plaintiff on his own behalf.
 Advocate A.P.Roscouet for the First Defendant.
 The Viscount.

JUDGMENT

THE BAILIFF: This is an application by Mr. Eves for leave to appeal against the refusal by the Royal Court to grant the prayer of a representation presented by him to the Court on 15th March, 1996. The final paragraph of that representation reads as follows:

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"THAT accordingly the Royal Court erred in its judgment on the afternoon of 7th July, 1995, in confirming that Hambros were entitled to the property as "tenant après dégrèvement" as ownership had been illegally granted.

THAT in the premises the representor humbly prays that the Court will set aside the order of the Viscount and respect the judgment of the Royal Court of 27th October, 1993, and that the Viscount be ordered to await the completion of

the action between Eves and the States of Jersey Tourism Committee".

5 In essence the basis of Mr. Eves' complaint is that there was a flaw in the *dégrévement* procedure which led to the confirmation of Hambros as *tenant après dégrévement* of Mr. Eves' property on 7th July, 1995. The suggested flaw related to a judgment given on 27th October, 1993, when the Royal Court sat to consider an appeal
10 against a summary judgment given against him (*inter alia*) by the Judicial Greffier on 15th December, 1992, in the sum of £35,000. The Order of the Royal Court was that execution of that judgment should be stayed. I shall return to that Order in due course.

15 In the meantime, on 23rd July, 1993, the Judicial Greffier had given another summary judgment against Mr. Eves and Mrs. Eves in the sum of £100,000. On 11th January, 1994, the Judicial Greffier gave summary judgment against Mr. and Mrs. Eves *inter alia* in the sum of £28,121.06.

20 It is unnecessary to re-capitulate all the various proceedings which have taken place since those last two judgments were given. It is sufficient to say that the judgments have been appealed unsuccessfully in the case of Mr. Eves as far as the Privy Council.
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Hambros then turned its attention to enforcement of those judgment debts. It is again unnecessary to re-capitulate all the various arguments which have occupied the attention of the Courts on numerous occasions.
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35 However, on 6th July, 1995, the Court of Appeal refused leave to appeal to Mr. Eves against a decision of the Royal Court of 9th June, 1995, raising an injunction staying the *dégrévement* proceedings which the bank had begun. During the course of its judgment the Court of Appeal recognised that an incidental effect of the *dégrévement* procedure would be a collateral advantage to Hambros in that the bank would be allowed in effect to execute the judgment of 27th October, 1993, notwithstanding the fact that there had been an order staying execution of that judgment.
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45 On 7th July, 1995, as I have said, the Royal Court confirmed the tenure of Hambros following the completion of the *dégrévement* proceedings before the Deputy Judicial Greffier. Mr. Eves had appeared in Court on that day and was heard. The Record of the Greffier shows that upon the creditors being called in accordance with the order of the *hypothèques* established in the Public Registry, Hambros renounced its right to become *tenant après dégrévement* on the footing of the unsecured debts.

50 Barclays Bank plc, next in order, then also renounced its right to become *tenant*.

Hambros subsequently accepted the tenure on the basis of an Act of 2nd June, 1989, which created a *hypothèque* in the sum of £35,000. It was that same *hypothèque* which had led to the order of the Royal Court of 27th October, 1993, ordering a stay.

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Mr. Eves submitted that there was therefore a fundamental flaw in the *dégrévement* proceedings in that Hambros Bank had accepted the tenure on the basis of a debt, the enforcement of which had been stayed by the Court.

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To return to the chronology, on 8th September, 1995, the Court of Appeal adjudicated upon a further application of Mr. Eves for a stay pending appeal of execution of an order made by the Royal Court on 18th August, 1995. This order confirmed an Order of Justice issued by Hambros against Mr. Eves and ordered Mr. Eves to vacate within two weeks the house called "The Rest" in Green Street which had been the subject of the *dégrévement* proceedings.

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The judgment of the Court of Appeal dealt *inter alia* with alleged irregularities in the *dégrévement* process. The judgment of the Court of Appeal was appealed with special leave to the Privy Council which on 18th December, 1995, dismissed the appeal. During the course of his judgment Lord Hoffmann stated:

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"So when Mr. Eves appeared in Court on 7th July, 1995, he was not making any application in proceedings which he had initiated to arrest the dégrévement. He had already tried every conceivable method of doing so and failed. He was appearing to oppose the confirmation of the bank's tenure under Article 96. In their Lordships' view, this was a question on which he had no locus standi to be heard. It must follow that he has no right to challenge the order on the ground that it was vitiated by bias or on any other ground internal to the making of the order. In order for a litigant to be able to complain that a member of the tribunal has made himself a judge in his own cause, there must be a question which has to be decided as between the litigant and another party. In this case there was none".

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In my judgment that is the short answer to this application. Mr. Eves has no *locus standi* to complain about the confirmation of the bank's tenure. The Royal Court was quite correct to refuse the prayer of the representation. The applications for leave to appeal and for a stay pending appeal are accordingly refused.

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There will be an order for taxed costs in favour of the bank.

Authorities.

Eves -v- Hambros Bank (Jersey) Ltd. (6th July, 1995) Jersey
Unreported CofA.

Eves -v- Hambros Bank (Jersey) Ltd. (8th September, 1995) Jersey
Unreported CofA.

Eves -v- Hambros Bank (Jersey) Ltd. (18th December, 1995) Jersey
Unreported (Privy Council).