

## [1980–87 Gib LR 310]

## IN THE MATTER OF TREVOR

SUPREME COURT (Alcantara, A.J.): July 22nd, 1985

*Bankruptcy—assistance to foreign court—discretion of court—court's discretion to act in aid of foreign court under Bankruptcy Ordinance (cap. 9), s.98, to be exercised judicially and in favour of giving aid and assistance unless clear reason not to*

*Bankruptcy—assistance to foreign court—discretion of court—court not to make order requested if procedurally unfair without notice to party affected, e.g. order for arrest of bankrupt, or compulsory examination of Gibraltar bank as to dealings with bankrupt—order only made without notice if serious mischief would result from delay in proceeding in normal way*

The applicant trustee in bankruptcy sought a number of orders against T pursuant to the Bankruptcy Act 1914, s.122.

T had been adjudicated bankrupt in England and his trustee in bankruptcy obtained a number of orders in the county court, including an order for the recovery of T's assets overseas, an order for his arrest, and an order for the examination of a Gibraltar bank in relation to its dealings with T. Amongst the orders made by the county court, there was also an order that the Gibraltar court, pursuant to the Bankruptcy Act 1914, s.122, should act in aid of and be auxiliary to the county court. In reliance on this order, the trustee in bankruptcy sought a number of orders in the Gibraltar court, under s.98 of the Bankruptcy Ordinance (*cap.* 9), which were similar to those made by the county court.

**Held**, dismissing the application:

The Gibraltar court would not exercise its discretion under the Bankruptcy Ordinance (*cap.* 9), s.98, to make orders similar to those which had been made in the county court. The applicant would therefore have to proceed in the ordinary way. Notwithstanding the mandatory wording of s.98, the section granted the Gibraltar court a discretion to act in aid of another British court if it considered it necessary to do so. Since the Gibraltar court was always expected to exercise this discretion judicially, and in favour of giving aid and assistance, it would not make the orders in the present case. The severity of the orders requested, in particular those for T's arrest and the compulsory examination of a Gibraltar bank in respect of its dealings with T, precluded their being made in the absence of

notice. The court could only make *ex parte* orders if it was satisfied that serious mischief could result from the delay caused by proceeding in the ordinary way. Here, as T's assets had already been frozen under a *Mareva* injunction, the court could not satisfy itself that serious mischief would result from the applicant having to proceed in the ordinary way (paras. 4–7).

**Legislation construed:**

Bankruptcy Ordinance (Laws of Gibraltar, *cap.* 9), s.98: The relevant terms of this section are set out at para. 3.

Bankruptcy Act 1914 (4 & 5 Geo. V, c.59), s.122:

“The High Court . . . and every British court elsewhere having jurisdiction in bankruptcy or insolvency . . . shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.”

*J.E. Triay, Q.C.* for the trustee in bankruptcy.

1 **ALCANTARA, A.J.:** This is a motion, *ex parte*, seeking that this court should make a number of orders similar to orders made on July 19th, 1985, in bankruptcy proceedings in Middlesbrough County Court. In those proceedings that court enjoined this court to act in aid of and be auxiliary to that court pursuant to the Bankruptcy Act, 1914, s.122.

2 The Middlesbrough order reads:

“1. Pursuant to the provisions of s.122 of Bankruptcy Act 1914, F.W. Trevor, the bankrupt, do forthwith disclose in writing to the Official Receiver in Bankruptcy attached to this Honourable Court, the nature, value and present whereabouts in the United Kingdom, Spain, Switzerland, Gibraltar and elsewhere, of each and all of his assets both real and personal and all property real and personal in and over which he has any interest or rights or privileges.

2. That Vientos Chiribiri Ltd. acting by its directors, F.W. Trevor, L. Chipolina, E. Ellul and the Gibraltar & Iberian Bank Ltd., be examined under the provisions of the Bankruptcy Act 1914, s.25 and for an order that each of the aforesaid proposed examinees do forthwith produce to the Official Receiver attached to this Honourable Court complete and legible photocopies of each and every document or writing in their possession, custody or control which in anyway relate to F.W. Trevor, his dealings, property and affairs.

3. A warrant for the arrest of F.W. Trevor, the bankrupt, under s.23(1)(a) of the Bankruptcy Act 1914 be issued.

4. Pursuant to the provisions of the Bankruptcy Act 1914, s.22, F.W. Trevor, the bankrupt, do forthwith deliver up to the Official Receiver each and all of his personal property and the deeds and all other documents of title to each and all of his real property, on the grounds set out in the report of the Assistant Official Receiver filed herewith.

5. The Supreme Court of Gibraltar be sought to act in aid of and be auxiliary to this court pursuant to the Bankruptcy Act 1914, s.122 for the purpose of enforcing the aforesaid orders and warrant of arrest and for the purpose of holding the said examinations.”

3 Section 122 of the 1914 Act has its counterpart in Gibraltar in s.98 of the Bankruptcy Ordinance (*cap.* 9), which states that courts should be auxiliary to each other. Section 98 reads:

“The Supreme Court . . . shall act in aid of and be auxiliary in all matters of bankruptcy, to every court in the United Kingdom or in any British possession having jurisdiction in bankruptcy or insolvency, and an order of such court seeking aid, with a request to the Supreme Court, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the Supreme Court, could exercise in regard to similar matters within their respective jurisdictions.”

4 *Williams’ Law & Practice in Bankruptcy*, 18th ed., at 531 (1968) states that orders under this section, known as orders in aid, are discretionary. I am of the same opinion, but discretionary in the sense that the discretion must be exercised judicially and always in favour of giving aid and assistance.

5 Two of the orders sought under the Middlesborough order are (1) a warrant of arrest against a bankrupt who is not within the jurisdiction of this court, and (2) an order against a local bank that it be examined in relation to the bankrupt. I am not particularly in favour of granting those two orders without notice having first been given. In fact, I am of the opinion that notice should be given to all persons who are going to be affected by the orders sought from this court.

6 I refer myself to the Bankruptcy Rules 1952, rr. 31 and 32, which direct that all applications should be made by motion, and that no order should be made *ex parte* unless the court is satisfied that serious mischief may result from delay caused by proceeding in the ordinary way. I am not satisfied that there can be any serious mischief in this case, if the court in

SUPREME CT.

FURNITURE CENTRE V. STIP. MAG.

another jurisdiction has already frozen the assets of the bankrupt as the result of a *Mareva* injunction.

7 I dismiss this *ex parte* motion and leave the applicant to proceed in the ordinary way by motion. I would have liked to have reserved my decision to give a more reasoned ruling, but I consider it necessary that the applicant knows where he stands without further delay.

*Application dismissed.*

---

[1980–87 Gib LR 313]

**FURNITURE CENTRE LIMITED v. STIPENDIARY  
MAGISTRATE**

SUPREME COURT (Alcantara, A.J.): September 23rd, 1985

*Administrative Law—judicial review—alternative remedies—court may entertain application for judicial review even if applicant has not exhausted all available remedies if failure could previously have been raised but was not*

*Trade and Industry—trading licence—refusal of licence—Trade Licensing Authority only to refuse extension of licence on grounds listed under Trade Licensing Ordinance 1978, s.16—no refusal of licence merely because applicant already in possession of one adequate licence*

*Trade and Industry—trading licence—refusal of licence—needs of community—to assess whether needs of community already adequately provided for; Trade Licensing Authority to consider number of licence holders, not simply number of licences issued*

The applicant company sought judicial review of an order made by the Stipendiary Magistrate which refused to extend one of its existing licences.

The applicant, a company owned and controlled by Spanish nationals, had two shops in Gibraltar. Each shop had a separate licence, only one of which entitled it to sell building and construction materials. The applicant sought an extension of its other licence from the Trade Licensing Authority so as to enable it to sell these materials in its other shop. The application was advertised but two traders raised objections and the Trade Licensing Authority required a hearing. Around the same time, there was