

Insolvency Law in the Channel Islands:
Modern Themes and Reform Perspectives Friday 14 October 2011



Practical Aspects of Dealing with a Dégrèvement

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STATISTICS

Year	Dégrèvements	Désastres
2006	2	5
2007	1	1
2008	1	7
2009	1	4
2010	5	1
2011 so far...	3 (3 more scheduled)	4

Source: Viscount's Department website and Judicial Greffe

WHAT IS DEGREVEMENT?

- Debt recovery procedure
- Debtor's property is freed from all security and thereby "disencumbered"
- Aim is not to settle the debtor's debts equitably amongst all creditors
- Potential for a secured creditor to retain a windfall of surplus equity

GOVERNING LEGISLATION

- Loi (1832) sur les décrets
- Loi (1880) sur la Propriété Foncière
- Loi (1904) (Amendment No. 2) sur la Propriété Foncière
- Loi (1915) sur la Propriété Foncière (Garanties)
- Civil Proceedings (Jersey) Law 1956
- Royal Court Rules 2004, as amended

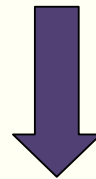
OUR CASE STUDY

- **Client** : Local Bank Plc
- **Debtor**: Mr Bertie de Jersey Picot
- **Security**: first-ranking charge/*hypothèque* over “Le Petit Sable”
- Acknowledgement of debt made to the Bank by property’s owner, Mr Picot, for a £500,000 loan
- This was registered, creating a *hypothèque judiciaire* over the property
- Mr Picot has defaulted on his loan agreement
- Bank has been unable to contact him for several months
- It believes he may have left the Island
- **Instructions**: proceed to a *dégrèvement*...

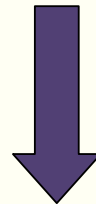


TIMELINE

STEP 1
Obtain judgment against debtor
(by summons)



STEP 2
Obtain an Acte Vicomte chargé d'écrire
(by *ex parte* Representation)



Wait 1 Month

Wait 2 or 3
months from
service by
Viscount

Problems
notifying
the debtor

STEP 3
**Apply for an Adjudication of Renunciation of
the Debtor's property
(by *ex parte* Demande)**



STEP 4
**Obtain an order for the dégrèvement, décret
and/or réalisation
(by *ex parte* Demande and relevé)**



STEP 5
Appoint the attournés

**Need for an
oral
hearing?**

**Request for
réalisation**

Relevé

**Who should
the
attourné(s)
be?**

Immediately

STEP 6 **The attournés' roles and duties**

Fix a date for the hearing with the Judicial
Greffé: in 4 – 6 weeks' time

**What is
the scope
of the
attournés
role?**

First Saturday Gazette Public Notice



**At least 8 days
before DH**

Second Saturday Gazette Public Notice



- Liaise with debtor
- Insure the premises
- Produce an *état* of the immovables of the debtor within 15 days of appointment

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**At least 8 days
before DH**

Unsecured creditors must file a claim with the
Judicial Greffe



**At least 8 days
before DH**

List Nominative to be sent to the Judicial Greffe
including details of all persons summoned and
status of their claims



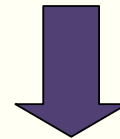
**4 days before
DH**

Secured creditors and original vendor of the
property to be summoned



**Notices
Summoning
creditors and
vendor**

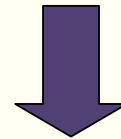
**Eviction
Orders**



STEP 7

Dealing with a last-minute remise application

- Application for *remise de biens* can be made right up until the *dégrèvement* hearing
BECAUSE
- Debtor's title to property remains vested in him until conclusion of the *dégrèvement*



Effect of
remise on
dégrèvement
proceedings

STEP 8 The Dégrèvement Hearing

4 - 6 weeks'
after order for
dégrèvement

The Judicial Greffe calls the creditors in the
specified order;

FIRST: unsecured creditors (as a collective body)

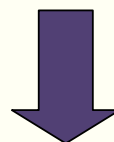
SECOND: Secured creditors called individually in
reverse date order of the creation of their
contract or security.

CREDITOR'S CHOICE:

TAKE the debtor's immovable property (subject
to discharging all prior obligations)

or

FORFEIT interest.



Fees

Representation
at the hearing

Friday following
the
dégrèvement

STEP 9: Confirm the tenant après dégrèvement

- *Tenant après dégrèvement* takes free of all charges later in date than his own but takes subject to all charges of prior date
- Liable for 3 years' interest on arrears of rentes and *hypothèques*.
- Liable for 3 years' interest on arrears of privileged claims where a *protêt* has been lodged with the Judicial Greffe
- On the sale of the property the creditor will retain any leftover equity

Paying off
the other
creditors
When? How
much?

Subrogation

PROBLEMS NOTIFYING THE DEBTOR

- Court order may not specify **how** Viscount serves notification in Court order
- Not included in list of matters requiring personal service in rules of Court
- Viscount has expressed a preference for personal service
- Problematic when debtors whereabouts unknown
- May need to return to court for order that notification is by way of ordinary service using last known address. Anticipate that need if possible.

NEED FOR AN ORAL HEARING

- Does this really require court attendance?
- Purely mechanical result of the passage of time with no exercise of the court's discretion
- Could possibly be dealt with on the papers instead

REQUEST FOR REALISATION

- ***Representation of Mickhael*** [2010] JRC 166A
 - seek order that *réalisation* only take place *after dégrèvement*;
- and
- to only take place *if necessary*
 - Wording is important to provide *attournés* with ability to forego the *réalisation*

RELEVE

- *Relevé* must be attached to the *Demande*
- List of all the hereditary transactions concerning the property of the debtor
- Full title check back to 1880
- Time consuming
- Prepare well in advance!

WHO SHOULD THE ATTOURNE(S) BE?

- Attournés conduct the *dégrèvement* process
- Only one attourné required by law
- Practice is now to appoint two attournés, usually from the creditor's lawyer's firm
- Two solicitors from the firm's property team

WHAT IS THE SCOPE OF THE ATTOURNES ROLE?

- Various procedural duties under the **1880 Loi**
- Act on behalf of the creditor instigating the *dégrèvement* but may owe wider duties to creditors as a whole
- Appointed by the Court and owes duties to the Court itself
- In our most recent *dégrèvement*: separated out the roles of legal adviser to the creditor bank and the role of the attournés

NOTICES SUMMONSING CREDITORS AND VENDOR

- Need only be done 4 days before the *dégrèvement* hearing
- However easier to do so at time of issuing the Jersey Gazette notices
- Often other creditors' lawyers will accept service on behalf of their client
- Records of Service from Viscount must be produced at *dégrèvement* hearing
- Creditors do not have to attend the *dégrèvement* hearing
- Consequences if they don't

EVICTIION ORDERS

- Debtor still residing at property after it has been renounced
- Obtain an Eviction Order by way of an Order of Justice before the Royal Court
- May be better for creditor to wait until *dégrèvement* hearing has taken place
- Once taken as *tenant*, their will be little or no defence to the Eviction Order

EFFECT OF REMISE ON DEGREVEMENT PROCEEDINGS

- May derail and delay *dégrèvement* process which is stayed pending *remise* application outcome
- No clear guidance on procedure that follows a failed application for a *remise de biens*
- Cost concerns over rescheduled *dégrèvement* hearing
- Preferable route: simple notification to the parties in writing of the adjourned date

FEES

- Attournés fees are usually paid by the secured creditor which instigated the *dégrèvement* and subsequently elects to take as *tenant après dégrèvement*
- Prudent for Attournés to lodge *protêt* for their fees
- Remise application: advised to lodge a *protêt* through Viscount's department for Jurats costs and fees
- Status of *protêt*?

REPRESENTATION AT THE HEARING

- Prior to the *dégrèvement* hearing it is prudent for all creditors to arrange to be represented at the hearing

PAYING OFF THE OTHER CREDITORS: WHEN AND HOW MUCH?

- *tenant après dégrèvement* must honour all contracts and pay all rentes and hypothecs of an earlier date together with any protêts
- General approach: *tenant* makes arrangements with his advocate to put him in sufficient funds to do this prior to the hearing at which his *teneure* is confirmed.
- *Tenant* will have to agree with earlier ranking creditors as to amount to be paid
- 1880 law limits obligation to repay to three years' interest

SUBROGATION

- Creditor who 'takes' has option of subrogating ownership to a third party
- Must elect to do so at hearing confirming record of *teneure*
- Possible stamp duty benefits

CONCLUDING COMMENTS

- Creditor-led procedure
- Process centred on one property rather than entirety of debtor's estate
- Possibility of being left with surplus equity in the property
- Generally works well for first ranking creditor
- However process is time consuming and convoluted
- Governed by a number of different very old laws

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