

ENGLAND AND WALES / JUDGMENT

Plant v Service Direct (UK)

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Neutral Citation Number: [2006] EWCA Civ 1259 IN THE SUPREME COURT OF JUDICATURE IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM SOUTHAMPTON COUNTY COURT (RECORDER CLAIRE MISKIN) C6/2006/0027 Royal Courts of Justice Strand London, WC2 Date: Friday, 4th August 2006 B E F O R E: LORD JUSTICE JACOB

- ----- THE HONOURABLE NICHOLAS PLANT CLAIMANT/APPELLANT

- v - SERVICE DIRECT (UK) DEFENDANT/RESPONDENT

- ----- (DAR Transcript of Smith Bernal Wordwave Limited 190 Fleet Street, London EC4A 2AG Tel No: 020 7404 1400 Fax No: 020 7831 8838 Official Shorthand Writers to the Court)

- ----- THE APPELLANT APPEARED IN PERSON. MR D MARSHALL (instructed by Messrs Henmans, 116 St Aldates, Oxford, OX1 1HA) appeared on behalf of the Respondent.

- ----- J U D G M E N T

1. LORD JUSTICE JACOB: This is an application for permission to appeal from a judgment of Recorder Miskin. Much of the details of the dispute between the claimant Mr Plant and the defendant, Service Direct (UK) Plc no longer matters. Attention is focused simply on the claim made under the Torts (Interference with Goods) Act 1977 (“the 1977 Act”). No claim is made in contract or any other basis.
2. Mr Plant had at one point a contract with the defendant whereby they made arrangements with a third party so that he could operate an internet domain name, nicholasplant.com, with an associated e-mail address, and I think another internet domain name but nothing turns on that. Mr Plant told me that he was concerned that the arrangements he made with his service provider, the defendants, should be such that the defendants were offshore. It would seem that the defendants at some point entered into transactions which, in effect, brought their business onshore. He was concerned about that, and also what he regarded as unjustified demands for money for maintenance of the service through, in effect, a new company.
3. He would not pay. He then decided to go to a different service provider in Jersey and asked them to make the arrangements for everything to be transferred so that they were his service provider, that nicholasplant.com was then provided by them to him and he would be

paying them. A request was made, I think, by his new provider to those who operate the domain name, the third party holder of all the relevant information, to effect such a transfer. This required also the consent of the old provider. But the defendants said: no, not unless we are paid. For obvious reasons the third party would not transfer to the new service provider in effect the key to its storage without the consent of the defendants. If third parties could just ask for a transfer without the consent of the original provider, all sorts of mayhem might result on the internet.

4. Mr Plant says that that refusal was unjustified and amounts to an interference with goods. The 1977 Act deals with what it describes as “wrongful interference with goods” and covers what under common law are known as conversion of goods (once called trover) and trespass to goods. So it is confined to goods as understood by the common law. There is a definition in the Act. Section 14(1) provides that “‘goods’ includes all chattels personal, other than things in action and money”.
5. Mr Plant says that the information stored on the third-party computer about his domain name, and the instructions that any traffic to his internet address should be passed onto his computer amounts to a document, that you can have conversion of a document, a piece of paper, and that really what has happened here is just that. Suppose, he said by analogy, that this was a locker and that the locker was originally a locker containing his document but to which the key was held by the defendants so that they had control over the document but pursuant to his directions. If they refused to hand over the key to him or to his new agent, they would in effect be hanging on to his documents through the fact that the third party would not open the locker. That, he said, would amount to an interference of his immediate right to possession of the goods in that locker. It makes no difference whatever that there is no physical piece of paper but merely an intangible or electronic form of document held on the third party’s computer.
6. The way he has put it to me today does not actually turn on the fact that his particular complaint is about his internet e-mail address. It would be the same if a third party were holding any other document. He drew the analogy of an e-airline ticket. Photographs held by a third party for a consumer would be another analogy.
7. All of these, he says, are documents. If his right of access to those documents is wrongfully impeded then there is an unlawful interference with the goods. At one point, as I understand it, Nominet, who maintain the co.uk domain name system, were minded to intervene, and would be minded to intervene in the appeal if permission were granted. Apparently, it is said to have enormous implications though, as Mr Plant said to me, it does not seem to have done any harm in the United States. 8. I do not know the details of that or whether the position is exactly the same in the US. I am not moved by the fact that it might have enormous implications. However, I have come to the firm conclusion that there is no reasonable prospect of success in this particular tort of interference with goods. My reason is simply this: that the copies of documents maintained in the register by the third party are not physically at any time the property of anybody other than the third party whose

computer the documents are maintained on. They are copies of documents. Copies may exist elsewhere; they may not. But no right of property exists in the computer or its memory of the computer of the third party. The third party would be under contractual obligations of all sorts not to release or to release copies of what it maintains on its computer. But they are the third party's copies.

9. When I send to a photograph to a third party provider he keeps copies on his computer. No doubt I expect to have contractual rights against them if they fail to give me copies, but I do not think it realistic to regard the copies which they maintain as my documents. They are copies of my documents on their computer. So I do not think Mr Plant is in a position realistically to say that the refusal of access to the copies of his documents amounts to an interference with any of his goods.
10. The argument at one point focused on "things in action" and whether or not an internet domain name was a thing in action. As it was presented to me, nothing really turned on that. An internet domain name or the rights in it may be a thing in action. Such authorities as there are in this country have all been concerned with the goodwill in internet domain names and internet addresses. Equally, so far as I can see it, the cases about telephone numbers are apposite. All those cases are about goodwill and actions in passing off, which is an action to protect what is a thing in action in goodwill.
11. But Mr Plant's case as developed before me ingenuously bypassed all that. His case is simply, as I have said, that his document was in the third-party locker. The defendants wrongfully prevented him from getting access to that third-party locker by not providing the key. As I have said, I do not think it right to regard the copies of his document in the third-party locker as his goods. I do not think there is any realistic prospect of rebutting that argument, and therefore I must refuse permission to appeal. Order: Application refused.

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