

JERSEY / JUDGMENT

Bates -v- Weston [2017]

JRC 092 (15 June 2017)

[2017] JRC 092

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judgment

the master:

Introduction

1. This judgment contains my decision in respect of an application for security for costs by Mr Weston against Mr Bates. 2. What has led to the application for security for costs by Mr Weston is registration in Jersey of a judgment in certain proceedings in England obtained by Mr Bates against Mr Weston and described in more detail below. I refer to these proceedings as the English libel proceedings and the judgment as the English judgment. Mr Bates therefore claims to be a judgment creditor of Mr Weston. The security for costs asked for by Mr Weston are pursuant to an intended challenge by him to Mr Bates' registration of the English judgment before the Royal Court recorded in an Act of Court dated 10 th March, 2017, as permitted by the Act of Court. The time limit to make that challenge was extended by six weeks by Sir Michael Birt on 10 th May, 2017, and expires on 21 st June, 2017. 3. This judgment also contains my decision in respect of applications by Mr Weston that Mr Bates produce various documents by way of discovery. 4. Finally, Mr Weston sought an extension of time to issue his challenge to the registration of the English judgment until such time as any security ordered or documents required were produced.

Background

5. The English judgment registered by the Royal Court on 10 th March, 2017, that Mr Weston wished to challenge related to libel proceedings he commenced against Mr Bates and Leeds United Football Club Limited ("Leeds") in 2010. The history of the English libel proceedings is set out in a judgment of Sir Michael Tugendhat dated 11 th November, 2015, reported at *Bates v Weston*

[2015] EWHC 3070 . The procedural history of the English libel proceedings is set out at paragraphs 11 to 21 of that judgment. 6. The argument before Sir Michael Tugendhat led to the English libel proceedings being struck out. Paragraph 48 of the judgment firstly stated as follows:- "48. Thus, looking at these matters afresh, as an appellate court must do in

these circumstances, I take the view that there is very little that Mr Weston could achieve by way of vindication, if he were to obtain judgment in his favour at a trial which would take place, if at all, only some seven or more years after the publications complained of. The costs already incurred in all the proceedings relating to the disputed sum of £190,400 are already very large indeed (many times the sum of £190,400), and there can be no doubt that an investigation of the dispute, and Mr Weston's conduct both in relation to the disposal of that sum, and in relation to the litigation about that, would be very substantial indeed, and very time consuming." 7. Secondly in relation to the fact that the English libel proceedings were issued at the last possible moment, described in the judgment as "first period of delay", the judgment at paragraph 54 concluded as follows:- "54. But in my judgment she erred in failing to give to the delay in the first period of delay the weight that it deserved. In this case (as in the case of Grovit) that delay, and the absence of any explanation, gives rise to a strong inference, in my judgment, that Mr Weston was abusing the process of the court, whether or not he might also have had it in mind to seek vindication of his reputation. His subsequent conduct of the libel action and of the proceedings in Jersey might, if it had been different, have led the court to draw a different inference. But the conduct by Mr Weston of Admatch's defence of the proceedings in Jersey is consistent with the inference that I find must be drawn." 8. The other relevant background to the English libel proceedings concerns the ongoing dispute between Leeds United Association Football Club Limited and Leeds United Football Club Limited and The Phone-In Trading Post Limited (t/a Admatch) to which Mr Weston was a party convened. The history of this litigation which has produced a number of judgments was summarised at paragraphs 2 to 13 of a judgment of Sir Michael Birt reported at Leeds United v Admatch and Weston

[2014] JRC 167 and handed down on 5 th September, 2014. 9. The 5 th September judgment was in respect of an application requiring Mr Weston to pay the costs of the second plaintiff, Leeds United Football Club Limited (whom I shall refer to as "Leeds"). This is the same entity that was the second defendant to the English libel proceedings. 10. The overall approach of Sir Michael Birt in relation to what costs were covered by his order was set out in paragraph 19 of his judgment

[2014] JRC 167 as follows:- "19. In referring to the costs of the proceedings, all parties agree that there must be excluded any part of the proceedings where the Court has already made an order to contrary effect. Thus in relation to some of the interlocutory hearings, Leeds were ordered to pay costs. Any such order will remain unaffected by any order made in the present proceedings. In other instances, the Court specifically ordered 'no order as to costs', so that each side would bear their own costs. Again, such an order will be unaffected. On other occasions, costs were specifically reserved. I have heard no argument on reserved matters in the present case and accordingly the costs order I am making today does not include any occasion where costs were reserved. In other cases, costs orders have already been made against Admatch. Those orders are also unaffected. In summary therefore, so far as Admatch is concerned, the costs will include all the

remaining costs. To the extent that orders are sought that Mr Weston personally should pay the costs of the proceedings, they are sought in respect of any costs which Admatch are ordered to pay, whether at this hearing or on previous occasions." 11. For the reasons set out in the judgment Mr Weston was ordered to pay two thirds of the costs of Admatch not "reserved" or covered by orders already made to the contrary, the whole to be subject to taxation if not agreed between the parties. 12. The amount claimed by Leeds against Mr Weston pursuant to the decision of Sir Michael Birt (in JRC 167) has however not yet been quantified by Leeds nor pursued on a taxation by Leeds. Nor has Mr Weston submitted a claim for costs orders in his favour to be taxed. The only claims for costs to date filed by Leeds in these proceedings are £7,695 in respect of an order of the Court of Appeal made on 23 rd April, 2014, representing costs of Leeds in respect of an unsuccessful application for a stay and costs of £1,636.50 representing a costs order pursuant to an act of the Royal Court dated 3 rd October, 2014, where Mr Weston refused to agree to a sum paid into Court being returned to Leeds until after the outcome of his appeal against the award of non-party costs. 13. By a judgment also dated 5 th September, 2014, in proceedings brought by Leeds against Mr Weston and a Mr Levi, reported at Leeds United Football Club Ltd-v-Weston and Levi

[2014] JRC 166 , the court gave detailed reasons why Leeds should pay the costs of Mr Weston and Mr Levi on the standard basis. A claim for costs in the sum of £92,241.24 has been made on behalf of Mr Weston and Mr Levi by Baker & Partners against Leeds but has not to date been taxed. 14. Finally, in respect of the litigation between Leeds and Admatch where Mr Weston was ordered to pay two-thirds of the costs of Leeds, Sir Michael Birt at paragraph 62 to 65 stated as follows:- "62. As already stated, in December 2010, Leeds commenced separate proceedings in this Court against Mr Weston and Mr Levi seeking payment of the £190,400 from them ("the Jersey Levi and Weston proceedings"). On 28 th September, 2011, this Court stayed those proceedings on the grounds that England was the more appropriate forum. A subsequent appeal by Leeds against that decision was dismissed. Leeds was ordered to pay the costs of the forum hearing both at first instance and on appeal. 63. Leeds duly brought proceedings in the English High Court against Mr Weston and Mr Levi but these came to an end on 27 th March, 2014, when Leeds failed to comply with an unless order requiring Leeds to provide security for costs. The English Court made an order that Leeds should pay the costs of Mr Weston and Mr Levi in connection with the English proceedings. 64. On 1 st July, 2014, I ordered Leeds to pay the remainder of the costs of Mr Weston and Mr Levi in connection with the Jersey Levi and Weston proceedings (i.e. so far as not already dealt with in relation to the forum application). 65. The upshot is that, as a result of my decision in the present proceedings, there are costs orders going in opposite directions. Leeds has to pay the costs of Mr Weston in connection with the Jersey Levi and Weston proceedings (including the forum application and its appeal) and of the English proceedings. In the contempt proceedings referred to at paragraph 17 above ("the Jersey contempt proceedings") Mr Weston was ordered to pay some of the costs to Leeds and Leeds was in turn ordered to pay certain other costs in those proceedings to Mr

Weston. Conversely, Mr Weston now has to pay two thirds of the total Admatch costs in relation to the original proceedings before this Court. My provisional view is that it would be wrong for either Leeds or Mr Weston to have to pay a gross sum to the other before the counter-balancing costs have been established. In other words, I consider that one party should pay to the other the net sum owing by way of difference between the awards going in each direction. I emphasise that this is a provisional view and I am willing to hear the parties upon formal delivery of this judgment as to whether it is practical or desirable to make an order in this respect and certainly one must make sure that there is no incentive on the party which believes that it will be the net paying party to delay in taxing any costs."

15. The Act of Court of 5 th September, 2014, in the Admatch proceedings at paragraph 5 stated as follows:- "Now this day, upon hearing the advocates for the parties, the Court, for the reasons set out in a judgment delivered by the Bailiff:-

- 1) - 4) 5) ordered that:- (a) no costs order made in these proceedings shall be enforced without leave of this Court, such leave being unlikely to be granted unless the parties have established the net sum owed as a result of netting off the costs payable as between the Plaintiffs and the Party Convened of the following proceedings:- (i) the present proceedings (Leeds v Admatch) in the Royal Court; (ii) the Jersey contempt proceedings; (iii) the Jersey Levi and Weston proceedings (Royal Court and Court of Appeal); (iv) the English Levi and Weston proceedings; (v) the English defamation proceedings between Mr Weston and Leeds, which are still ongoing. Save that if the Court is satisfied that either party has failed to act with due expedition in seeking to arrive at the net sum owed, the Court will have regard to such conduct and may as a result grant such leave if satisfied that it is appropriate to do so; and (b) there shall be liberty to apply in this respect." The applicable legal principles 16. There was no real argument between the parties on the applicable legal principles where security for costs is sought. In my judgment these principles apply to an application for security for costs where a party seeks to resist in this jurisdiction enforcement of a judgment in another jurisdiction, just as they apply to any dispute in this jurisdiction where the Royal Court is asked to determine the merits of a claim between parties in dispute. 17. In the Admatch litigation the Court of Appeal in its judgment reported at Leeds United v Admatch

[2009] JLR 186 set out the principles where security for costs were sought against a non-resident plaintiff. This is relevant because it was not in dispute that Mr Bates resides in Monaco. The head note stated at paragraph 2 as follows:- "2 Applications for security for costs against non-resident plaintiffs should be assessed on an individual basis and the respondent had not established that there was a real need for security in the present case." 18. In *Café de Lecq v Rossborough*

[2011] JLR 31 at paragraph 20(ii), in applying the Court of Appeal's decision in Admatch referred to above, Commissioner Clyde-Smith in relation to non-resident plaintiffs stated:- "In our view, the protection hitherto given to resident plaintiffs must now be extended to all plaintiffs so that the practice following Leeds should be as follows, namely that consistent with the policy that there should be access to the courts for all, rich or poor, and without

detracting from its wide discretion to order security where justice so requires, it will be the general practice of the court not to require plaintiffs (wherever resident) to provide security because there is reason to believe that they will be unable to meet orders for costs against them save in the case of: (ii) Non-resident plaintiffs, who may be required to provide security to meet the legitimate objective of protecting the ability of defendants to enforce costs judgments outside the jurisdiction, such applications to be assessed on an individual basis." 19. While the above quotation from *Café de Lecq* refers to a plaintiff and a defendant, for the purposes of Mr Weston's proposed challenge to Mr Bates' application to register the judgment of Sir Michael Tugendhat, I consider that the above references to a non-resident plaintiff should be read as applying to Mr Bates as a non-resident judgment creditor. The parties' contentions 20. Mr Weston's primary argument in relation to his application for security was that the costs Mr Bates was now claiming were costs that either Mr Bates had not paid personally or even if paid personally by him would, in any event, be recoverable by him from Leeds. This was because Leeds had agreed with Mr Bates that they would be responsible for all costs in relation to any dispute with Mr Weston which agreement covered the English libel proceedings. Mr Weston therefore argued that Mr Bates could not recover from him costs that Mr Bates had neither paid personally nor produced any evidence of having paid personally nor any evidence that he had, or will have, any obligation to pay such costs personally. Furthermore, Mr Bates had neither offered nor provided to Mr Weston any undertaking to reimburse Leeds for any sums which Leeds may have already paid to Carter Ruck (in accordance with Mr Cellino's specific assurance to Mr Weston that Leeds had been paying Carter Ruck's bills (see paragraph 50 below)) and which such sums Leeds may now seek to recover from Mr Weston, as part of the eventual concluding settlement between Leeds and Mr Weston, pursuant to Sir Michael Birt's Order of 5 th September, 2014. 21. Subject to any further appeal against the decision of Sir Michael Tugendhat where Mr Weston reserved his rights, any costs due were owed to Leeds and accordingly should be taken into account as part of the counter balancing exercise permitted by paragraph 65 of Sir Michael Birt's judgment 5 th September, 2014, and paragraph 5 of the Act of Court of the same date set out above. 22. Mr Weston further argued that paragraph 5 of the Act of Court of 5 th September, 2014, which referred to the English defamation proceedings between Mr Weston and Leeds included or should have included any orders technically made in favour of Mr Bates. To the extent that the Act of Court of 5 th September, 2014, did not make an express reference to Mr Bates an error had occurred. 23. In support of these arguments, Mr Weston posed the question why Mr Bates, given he had ceased to have any financial interest in Leeds since 2012, was he purporting to speak on behalf of Leeds in criticising the Jersey justice system (see JEP article dated 15 th August, 2014,) and in an interview on Radio Yorkshire on 10 th November, 2016. These observations in the media led Mr Weston to suggest that Mr Bates was still running the litigation for Leeds which was consistent with his contention that Leeds had agreed to meet all costs responsible arising in relation to all claims involving Mr Weston, including those in the name of Mr Bates. 24. In relation to the difficulties of enforcing a judgment in Monaco, Mr Weston relied on how difficult it had

been to serve the English libel proceedings on Mr Bates. The cost of service alone was said to be in the region of £10,000. Mr Bates had also made two unsuccessful challenges in England to service in Monaco and these had taken around one and half years. Mr Weston further suggested that the costs of the unsuccessful challenges, in the region of £80,000, have not yet been recovered from Mr Bates. If Mr Bates was prepared to go to this length to resist service, he would also be likely to resist any attempt to enforce in Monaco any cost order made against him in Jersey. 25. In the interview with Radio Yorkshire referred to above, Mr Weston noted that Mr Bates admitted, for the first time in some eleven years of litigation, to carrying out retaliatory conduct in his dealings with both Mr Weston and Mr Levi. Mr Weston suggested that Mr Bates would continue taking the same approach. Mr Weston further alleged that Mr Bates over the years had made a whole series of untrue or misleading statements to illustrate how Mr Bates could not be trusted to co-operate in the payment by him of any Jersey costs order. 26. Advocate Hoy in response argued that the order that his client was seeking to enforce was an interim payment on account of costs granted by Sir Michael Tugendhat following on from striking out the English libel proceedings. All rights of appeal in respect of this decision had been exhausted with both applications for leave on the papers and orally being refused and so there was no defence to the application to register the judgment and no successful challenge could be made. This was therefore one of those rare cases where the merits of the claim should be taken into account on a security for costs application. 27. The fact that there might be an indemnity between Leeds and Mr Bates in respect of the costs of the English libel proceedings was not enough to justify security for costs. Mr Bates was legally liable to pay the costs to his solicitors and was therefore entitled to recover the same from Mr Weston. The fact that he might have the benefit of an indemnity from Leeds did not take away either the legal obligation of Mr Bates to pay his lawyers costs or the right to recover those costs from Mr Weston. 28. The judgment of Sir Michael Birt on 5 th September, 2014, and the Act of Court of the same date were limited to monies owed between Leeds and Mr Weston. This was a separate sum of money owed to Mr Bates. 29. There had been no challenge to either the costs order being made in England or to the order of a payment on account of costs. Nor had there been any appeal against the costs orders made. 30. As far as the quantum of security for costs is concerned, Mr Weston contended that he wanted to retain legal advice and therefore he had provided an estimate based on how much time lawyers were likely to spend in arguing the challenge to registration of Mr Bates' judgment, applying their normal hourly rate. 31. Advocate Hoy argued that quantum could not be assessed on the basis of what Mr Weston might do. At the present he was representing himself. There was also no evidence advanced to justify any quantum figure. Decisions 32. The starting point for my decision in relation to the application for security for costs is that, as noted in *Café de Lecq*, security for costs is not generally required from a plaintiff wherever resident. 33. In this case, I accept that Mr Bates' actions, in making life difficult in terms of resisting service of the English libel proceedings when he could have instructed his solicitors to accept service, is evidence supportive of Mr Weston's application for security and that Mr Bates is more likely than not to resist any attempt to

enforce a costs order made against him in Jersey. 34. Furthermore, I agree with Mr Weston's observations that as Mr Bates has not had any interest in Leeds since 2012, it is difficult to understand why he continues to make comments on behalf of Leeds' position in respect of its dispute with Admatch and Mr Weston. 35. I have also noted that in proceedings between Mr Levi and his wife and Mr Bates in a judgment of the Leeds County Court dated 14 June, 2012, Mr Bates was found to have a "personal grudge" against Mr Levi and was required to pay damages for harassment. In the judgment *Levi v Bates* reported at

[2009] EWHC 1495, Mr Bates was also found to have defamed Mr Levi and required to pay damages of £50,000. I have referred to these two decisions because Mr Levi was Mr Weston's business partner noted by the Court of Appeal in 2009. I am therefore satisfied that Mr Bates would not make life any easier for Mr Weston than he did for Mr Weston's business partner. 36. However the difficulty with Mr Weston's application is that he is facing a judgment of the English High Court where all rights of appeal have been exhausted (save that Mr Weston intimated a possible appeal to the European Court which has not been made to date), and where he has not been granted permission to appeal against the costs order. Ordinarily there would be no ability to challenge registration of a costs order following on from a judgment where there is no further right of appeal. 37. Furthermore, Mr Weston has to go further than simply to show the existence of an indemnity in order to resist enforcement of the judgment. An indemnity by Leeds in favour of Mr Bates does not mean that Mr Bates is not legally liable to his solicitors and also does not mean that Mr Bates does not have the legal right to recover costs. All an indemnity usually means is a right to reimbursement or that, if such costs have in fact previously been paid by Leeds, Mr Bates would have to account for any monies recoverable by him to Leeds, unless Leeds chose not to rely on any such right. This is a matter however between Mr Bates and Leeds and does not therefore assist Mr Weston. 38. Something more, therefore, is needed than an indemnity to show that Mr Bates is not legally liable to pay the costs of the lawyers who appeared for him in the English libel proceedings and that Mr Bates had effectively abandoned or given up any right to recover such costs. While such an agreement is possible it is much more than an agreement to indemnify. It also requires Leeds to have agreed with the lawyers who appeared for Mr Bates that only Leeds would have any responsibility to meet their costs. In other words Mr Weston would have to show there was no contract between Mr Bates and the lawyers who appeared for him in the English libel proceedings. This would not be a normal arrangement. Furthermore, in England as in Jersey, where costs are claimed, a lawyer is required to certify that the costs claimed do not exceed the costs which the party entitled to them is required to pay for the legal adviser concerned (see precedent F of Practice Direction 47 of the Civil Procedure Rules). The lawyers who appeared for Mr Bates if in fact they were only retained by Leeds, would therefore be misleading the English Court by claiming costs said to be due from Mr Bates. Yet the affidavit of Mr Pepper sworn in support of the application to register the English judgment describes Mr Bates as his client. Mr Pepper also deposes at paragraph 16 that there are no features which might

reasonably weigh against granting registration of the English judgment. An agreement that he was only retained by Leeds would be such a feature. 39. The matters set out in the above three paragraphs means that the burden on Mr Weston is a high one. He does not just have to show the existence of an indemnity; rather to succeed he has to show that any contractual retainer was in fact between Leeds and the solicitors who appeared on the record for Mr Bates alone and therefore that Mr Bates was not legally liable to pay such costs at all to the lawyers who appeared for him. Only on this basis could Mr Weston run a public interest argument to resist enforcement on the basis that an individual should not be able to enforce a costs judgment in proceedings where a costs order was made in that person's favour because they were not liable to pay such costs. 40. In addition, I do not know the financial effect of the argument Mr Weston wishes to run. Mr Weston has not chosen to adduce any evidence before me of the overall effect of costs orders made in Leeds' favour against him and costs orders made against Leeds in his favour. Yet nearly three years has passed since Sir Michael Birt's order of 5 th September, 2014. The 'due expedition' expected by the order has not occurred. This delay does not help Mr Weston. It means I do not know the total amount that Mr Weston says is due to him, against which money due to Leeds, if Mr Weston's argument prevails will be set off. Furthermore the effect of Mr Weston pressing his claims for costs is likely to have led to Leeds having their claims assessed. This is in context of, other than costs that were excluded, Leeds being awarded its costs against Admatch and two-thirds of those costs against Mr Weston. While I do not know what this figure is or what it might be, given the litigation was commenced in 2005 it would not surprise me if the costs due to Leeds from Mr Weston were substantial. I am also surprised that no indication of the amount of costs claimed by Leeds has been received by Mr Weston which could have been put in evidence and which would give me some idea of the overall effect of the set-off that Mr Weston contends. Mr Weston has not therefore shown that his argument, if it proves to be successful, would have the effect that monies were due from Leeds to him or at least in the round could lead to a position of financial neutrality. 41. I am also not persuaded that there is any error in paragraph 5 of the Act of Court dated 5 th September, 2014, for the following reasons:- (i) It is clear from paragraph 62 to 65 of Sir Michael Birt's judgment that what he was concerned about was the net position between Leeds and Mr Weston not Mr Bates. (ii) The reference to the English libel proceedings is entirely understandable as Leeds were a party to those proceedings. It is therefore not surprising there is no reference to the position of Mr Bates in the order. (iii) No evidence was produced by Mr Weston to show that an error had been made in respect of the Act of Court dated 5 th September, 2014. It is of course also now June 2017 i.e. three years since the 2014 judgment and over eighteen months since the costs order made by Sir Michael Tugendhat in Mr Bates favour. (iv) Mr Weston has not produced any evidence showing at any time since the order was made, that he has objected to it or that he considers it to be in error because it does not refer to Mr Bates. 42. Furthermore, the application is brought on the basis that Mr Weston wants security in respect of lawyers he might retain. However, it is not clear whether in fact he will do so. At present he represents himself and has not produced any evidence about

what financial loss he might suffer in defending the security for costs application. While I accept that 75 hours is not an unrealistic figure although possibly a little high to prepare a summons and the grounds of a challenge; an affidavit and written and oral arguments to challenge registration of the English judgment, Mr Weston has not satisfied me that lawyers in fact will be retained and that the security for costs in the amount claimed is, therefore, justified. 43. He has also not produced any evidence about the impact on his own financial position or any of his businesses should he pursue his challenge personally. In the absence of evidence of any financial loss, under Rule 12 of the Royal Court Rules, Mr Weston would only be entitled to security at an hourly rate of between £15 and £25 per hour. Based on 75 hours this produces a maximum figure of £1875. 44. In my judgment the factors against Mr Weston outweigh those in his favour and mean that I am not satisfied as a matter of discretion that it is appropriate to depart from the general practice of the Court so as to require Mr Bates in this case to provide security for costs, although it would not be easy to enforce a costs judgment against Mr Bates. 45. In particular, I consider there is a high burden on Mr Weston to succeed in any challenge he brings for the reasons set out above. Furthermore, he has failed to explain the effect of any successful challenge on any financial reconciliation of costs due between Mr Weston and Leeds. 46. In addition, even if I had been satisfied it was appropriate to grant security, because of the uncertainty about whether or not Mr Weston would retain lawyers and the lack of any evidence as to any financial loss Mr Weston might suffer by conducting the present claim himself, at this stage I would only have ordered security based on the rates permitted for litigants in person where financial loss is not established. 47. Furthermore, in light of my conclusions above, it is not necessary to extend time for Mr Weston to file any challenge to registration of the judgment. 48. As far as discovery is concerned, this can be dealt with relatively briefly. 49. What Mr Weston sought in his summons was as follows:- "a. the Judgment Creditor shall be required to provide prompt disclosure of:-

- i. the hitherto undisclosed agreement between himself (and/or any company in which he holds or has held an interest) and GFH Capital of Bahrain ["GFH"] made in late 2012 (or thereabouts), wherein Mr Bates (and/or any company in which he holds or has held an interest) sold Leeds United Football Club [the "Club"] to GFH; ii. any other related agreement whereby Mr Bates (and/or any company in which he holds or has held an interest) was (and/or remains) permitted and/or facilitated, after his sale of the Club, to manage (or continue to manage) and/or to run (or continue to run), in the name of the Club, any litigation (or certain specific litigation) relating to the Club and to do so either at his own expense or at the whole (or partial) expense of the Club; iii. A schedule detailing all costs incurred to date by the First Defendant in the English Defamation Action number HQ1 OD02911, stipulating what sum or sums he has actually paid personally in respect of each item so scheduled; iv. Similar such information, in respect of the Second Defendant's involvement in the English Defamation Action number HQ1 OD02911, but only where the information is already in the possession of (and/or otherwise readily available to) the Judgment Creditor or his advisors.

- b. All such disclosure, as described above, shall be provided to the Applicant within TEN days of the date of this Order and the information so disclosed to the Applicant shall thereafter be maintained in reasonable confidence by the Applicant and his advisors and may be used only for the purposes of any litigation involving any or all of the Parties to the English action numbered HQ1 OD02911.
- c. If the Judgment Creditor declares that no such agreement(s) or information, as described above, exist(s) nor ever existed, he shall make that declaration in reasonable detail by means of a personally sworn and signed affidavit within the aforesaid TEN days. Any such affidavit shall, inter alia, explain the basis upon which he has personally managed such litigation.
- d. In the event of non-disclosure, within the period ordered, of the requisite documentation (or an affidavit relating thereto, deemed satisfactory by the Court), the Jersey Registration shall forthwith be set aside without further order of the Court; the proceedings thus being determined and concluded in the Applicant's favour with the Applicant's costs of and incidental to the proceedings being payable by the Judgment Creditor on the Indemnity basis (or on such other basis as the Court may otherwise consider appropriate)." 50. Mr Weston argued that without this information he did not know the precise terms upon which Leeds had agreed to pay all legal costs incurred by Mr Bates in litigation with Mr Weston. All he could refer to were conversations with Mr Massimo Cellino, who had acquired Leeds from GFH Capital. Mr Weston further complained that he had asked for these documents from Mr Bates but had received no response. 51. In my judgment, this request is premature. At present no application has been made to challenge the judgment; but only threatened. What Mr Weston is therefore asking for is effectively pre-action discovery. Firstly, I have no power to order pre-action discovery as Master. Secondly, I regard such an application as premature until Mr Weston has issued his summons and supporting affidavit seeking to challenge the registration of the English judgment. It is only after such a challenge has been made when all grounds relied upon have to be set out, is it appropriate to decide what discovery should be provided. At such a stage the Court should have before it the evidence upon which Mr Weston relies in support of his argument that Mr Bates was not liable at all to meet any costs incurred by lawyers on the record for him in the libel proceedings leading to the English judgment. Evidence in response may also, by then, have been filed by Mr Bates. 52. I wish to add however that while no discovery order is going to be made in Mr Weston's favour at this stage, since 1 st June, 2017, an overriding objective was introduced into the Royal Court Rules which requires the Court and parties to deal with cases justly and at proportionate cost. In Rule 1/6(2) this includes dealing with cases in ways which are proportionate to the amount of money involved; the importance of the case and the complexity issues of each party. Parties are also required to ensure that a case is dealt with expeditiously and fairly. 53. While the information sought by Mr Weston may extend to matters that are commercially sensitive, given Advocate Hoy's arguments that the indemnity was only an ordinary indemnity, it would seem appropriate to produce on a voluntary basis sooner than later a copy of the relevant provisions of the sale agreement or any other agreement containing any indemnity or other agreement either by Leeds or by Mr Bates

concerning or applicable to the costs of the English libel proceedings. This could well help save costs and I suggest would be a proportionate approach in light of the arguments Advocate Hoy has advanced. This does not mean that Mr Bates is obliged to produce the entirety of the agreement or reveal commercially sensitive terms not in the public domain. This can be dealt with by appropriate redaction. However, it does not appear to be difficult to produce evidence of any indemnity or other agreement to support the arguments advanced by Advocate Hoy. In addition, it should not be difficult for Mr Pepper whose firm is on the record for Mr Bates in the English libel proceedings to confirm whether he was retained by Leeds or by Mr Bates, given the required certificate that his firm either has included or will have to include in a claim for costs. 54. Finally, in respect of the discovery application as I have refused the request, again there is no basis to extend time for Mr Weston to seek to challenge registration of the English judgment. Authorities Bates v Weston

[2015] EWHC 3070 . Leeds United v Admatch and Weston

[2014] JRC 167 . Leeds United Football Club Ltd-v-Weston and Levi

[2014] JRC 166 . Leeds United v Admatch

[2009] JLR 186 . Café de Lecq v Rossborough

[2011] JLR 31 . Levi v Bates

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