

JERSEY / JUDGMENT

Bates -v- Weston [2018]

JRC 006 (10 January 2018)

[2018] JRC 006

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judgment

the commissioner: 1. There are before me appeals from two decisions of the Master in connection with these proceedings. First, the Judgment Debtor ("Mr Weston") appeals against the decision of the Master on 15 th June, 2017, Bates-v-Weston

[2017] JRC 092 , to refuse his application for security for costs. Secondly, the Judgment Creditor ("Mr Bates") appeals against the decision of the Master (explained in a judgment dated 18 th July, 2017, Bates-v-Weston

[2017] JRC 111) whereby he ordered Mr Bates to provide discovery of certain categories of documents. 2. The matter was heard before me on 26 th October, 2017, and I announced my decision on 27 th October but said that I would give my reasons later. What follows constitutes my

reasons.

The factual background 3. On 11 th November, 2015, sitting in the High Court in London, Sir Michael Tugendhat struck out certain libel proceedings ("the libel proceedings") brought by Mr Weston against Mr Bates and Leeds United Football Club Limited ("Leeds"). On the same date, Mr Weston was ordered to pay the costs of both Mr Bates and Leeds in respect of the libel proceedings and was further ordered to make a payment on account of Mr Bates' costs in those proceedings in the sum of £40,000 by 9 th December, 2015. 4. Mr Weston has not paid this sum and on 10 th March, 2017, on the ex parte application of Mr Bates, the Assistant Judicial Greffier ordered that the judgment for the sum of £40,000 ("the Judgment") be registered as a judgment of the Royal Court pursuant to Article 4 of the Judgments (Reciprocal Enforcement)(Jersey) Law 1960 ("the 1960 Law"). 5. Mr Weston has subsequently applied pursuant to Article 6 of the 1960 Law to have the registration of the Judgment set aside and it is that application which has given rise to the present proceedings, during the course of which the Master made the two orders previously referred to. The proceedings are currently listed for hearing on 8 th February, 2018. 6. Before turning to the Master's decision, it is necessary to record briefly some of the background to the present proceedings. 7. Leeds (together with an associated company called Leeds United Association Football Club Limited which had assigned all its rights against Admatch to Leeds)

was engaged in long running and hotly contested litigation in this jurisdiction against The Phone-In Trading Post Limited (t/a Admatch) ("the Admatch proceedings"). Admatch was a company owned by Mr Weston who represented it as director throughout those proceedings. The dispute related to the sum of £190,400 which Leeds said was due to it on the basis that Admatch had received that sum on behalf of the associated Leeds Company. Admatch acknowledged having received the sum but asserted that it was entitled to set it off against much greater sums owed to an associate company of Admatch. 8. The Admatch proceedings eventually came to an end in May 2011 when judgment for the disputed sum of £190,400 was given against Admatch because of a failure on Admatch's part to comply with certain unless orders. 9. In the meantime, in December 2010, Leeds commenced separate proceedings in this jurisdiction against Mr Weston and a colleague 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 ground that England was the more appropriate forum. A subsequent appeal by Leeds against that decision was dismissed and Leeds was ordered to pay the costs of the forum hearing both at first instance and on appeal. 10. Leeds duly brought similar proceedings in the English High Court against Mr Weston and Mr Levi ("the English Levi and Weston proceedings") 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 ordered Leeds to pay the costs of Mr Weston and Mr Levi in connection with the English Levi and Weston proceedings. 11. On 21 st July, 2014, Leeds was ordered 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). 12. Following the conclusion of the Admatch proceedings, Leeds convened Mr Weston and sought an order that he personally should pay the costs incurred by Leeds in the Admatch proceedings on the ground that Admatch was a company without assets and the litigation had in reality been carried on for the benefit of Mr Weston or other companies which he owned. 13. On 5 th September, 2014, Leeds United-v-Admatch

[2014] JRC 167 , I ordered that Mr Weston should pay two thirds of the costs for which Admatch was liable subject to certain exceptions which are not relevant for present purposes. 14. At paragraph 65 of the judgment, I said this:- "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 reference at (v) above to the English defamation proceedings was a reference to the libel proceedings referred to at paragraph 3 above and which have resulted in the Judgment. 16. In his third affidavit, Mr Weston raises a number of matters which he says entitle him to have the registration of the Judgment set aside. These matters were summarised by him at paragraph 16 of his affidavit. For the purposes of this present appeal, two of them appear to me to be material. (i) He asserts that Mr Bates has not incurred any liability for the costs of the libel proceedings because, when he sold Leeds to GFH Capital of Bahrain ("GFHC") in December 2012, it was a term of the agreement that Mr Bates would continue to have control over the existing litigation but that Leeds would continue to pay for it. When GFHC sold Leeds to Eleonora Sports (represented by Mr Massimo Cellino) in April 2014, Eleonora Sports acquired ownership subject to the same obligation. Thus Mr Bates would continue to have day to day control over the litigation and Leeds would continue to pay for it. Mr Weston says he was told this by Mr Cellino. (ii) When making his order for costs on 11 th November, 2015, Sir Michael Tugendhat had not been informed of the contents of paragraph 5 of the Act of 5 th September, 2014, (as set out above). Mr Bates' costs were covered by the Act because they were in reality the liability of Leeds and/or Mr Bates should be considered as a party personally convened to the Admatch proceedings as the controlling mind of Leeds in the same way as Mr Weston had been joined as a party convened well after the event. Security for costs 17. With that introduction, I turn to consider the two matters which are before me, starting with security for costs. 18. Jurisdiction to award security for costs in the case of an application to set aside registration of an overseas judgment under the 1960 Law is conferred by Rule 5 of the Judgments (Reciprocal Enforcement) Rules 1961 which provides as follows:- "(5) Security for costs Save as otherwise provided by any relevant Act of the States the Court or the Judicial Greffier may , with respect to an application for registration, order the judgment creditor to find security for the costs of the application

and of any proceedings which may thereafter be brought to set aside the registration." 19. The principles upon which security for costs may be ordered in connection with plaintiffs resident overseas were established in the case of Leeds United Football Club Limited-v-Admatch

- [2009] JLR 186 . It is clear that, where there are grounds for concluding that a plaintiff is likely to hide his assets or otherwise make it difficult or expensive for a successful defendant to recover costs awarded in his favour, security for costs may be ordered. Thus Sumption JA said at para 23:- "Like the Deputy Bailiff, we are perfectly prepared to accept that some plaintiffs may have no assets or may hide them. If this is established as a probability on the application for security, then unless the effect would be to stifle the claim the application will probably succeed." 20. The Master found that Mr Bates was likely to make life difficult for Mr Weston in enforcing any costs order awarded against Mr Bates. In my judgment there were ample grounds for him so to conclude. Thus:- (i) It is clear that there is mutual antagonism between Mr Bates and Mr Weston. For example, in articles in the programmes distributed at home matches, Mr Bates on a number of occasions wrote in critical and abusive terms about Mr Weston, some of which were the subject of the libel proceedings. (ii) Mr Bates' ownership interest in Leeds has been shrouded in mystery involving a number of different companies. When directed by the Court in the Admatch proceedings to swear an affidavit setting out details of the ultimate beneficial ownership of Leeds, Mr Bates swore an affidavit asserting that, despite the fact that he was chairman of Leeds, he did not know who the beneficial owner was and that such information could only be obtained from a Swiss fiduciary company. Despite this, he later declared himself to be the principal beneficial owner in May 2011. (iii) An example of the likely approach of Mr Bates to any litigation involving Mr Weston is to be found in connection with the service of the libel proceedings. Mr Bates was served in Monaco, where he lives, with a print out of the claim form rather than the original sealed version of the claim form. He therefore contended that he had not been validly served with the libel proceedings. He lost before the Master but nevertheless appealed to Tugendhat J, who also held that he had been validly served as the relevant rules did not require a particular version of the claim form to be served; the real issue was whether a defendant had as a matter of substance had the claim form drawn to his attention. (iv) In a judgment of the Leeds County Court dated 7 th June, 2012, Mr Bates was found to have a "personal grudge" against Mr Levi and was required to pay damages for harassment. (v) In the judgment Levi-v-Bates reported at [2009] EWHC 1495 , Mr Bates was found to have defamed Mr Levi and required to pay damages of £50,000. Mr Levi was Mr Weston's business partner and it is clear that Mr Bates' feelings towards Mr Weston are no less hostile than they were towards Mr Levi. 21. In my judgment there is ample material before the Court to justify a finding that it is likely that Mr Bates will make it as difficult as possible for Mr Weston to enforce any costs order in his favour should Mr Weston be successful in the proceedings. Mr Bates would be likely to seek to hide his assets. This is therefore one of those cases envisaged by Sumption JA in the passage quoted above where an order for security of costs may be made. 22. Despite

his similar conclusion on this aspect, the Master declined to order any security, essentially on the basis that he did not regard the merits of Mr Weston's case as being sufficiently strong. I agree that Mr Weston may face a number of difficulties in succeeding but I do not regard this as a reason for declining to order security where there is a finding that the judgment creditor is likely to hide assets to avoid any costs order. I do not regard Mr Weston's prospects of success as being so weak that they outweigh the otherwise strong argument for granting security. 23. The question then arises as to how much security should be ordered. Mr Weston has represented himself so far but asserts that, should sufficient security be awarded, he would instruct an advocate. He therefore submits that the amount to be ordered by way of security should be calculated by reference to the costs which would be incurred with an advocate. 24. I agree with the Master that this is not an appropriate approach. It is Mr Weston's choice to represent himself rather than employ an advocate. The Court can only proceed on the basis of the current situation. I therefore agree with the Master that security should be calculated by reference to the hourly rate allowed for a litigant in person of up to £25 per hour in the absence of any evidence of financial loss, as to which there is none. 25. As to the number of hours, Mr Weston asserts that it takes him and his wife much longer to carry out research and prepare documents and for a hearing than it would for an advocate. He says that he has so far spent 457 hours on these proceedings. 26. I accept that it takes a litigant in person longer than an advocate to carry out the necessary work, but the number of hours must still be reasonable. Security for costs should only be issued on the basis of the time a litigant in person could reasonably be expected to spend, not on the time that he may actually spend, no matter how long. 27. Advocate Hoy accepted that, for the purpose of awarding security for costs - and reserving fully his position in the event of any subsequent taxation of costs - a figure of approximately one third of the time so far spent by Mr Weston i.e. 150 hours would be reasonable to cover the necessary work up to a conclusion of the hearing to set aside the registration of the Judgment. 28. I agree. It was in those circumstances that I ordered security for costs in the sum of £3,750, such sum to be paid by 10 th November, 2017. I emphasise that this should not be taken as any form of guide to the taxing officer in the event of a subsequent taxation of costs. I have had to make this assessment on the basis of very limited information. Discovery 29. The Master ordered Mr Bates to file an affidavit of discovery in relation to the following documents or categories of documents:- (a) any agreement relating to the sale of Leeds to GFHC made in late 2012 containing any provision permitting or facilitating Mr Bates to manage (or continue to manage and/or run) or to continue to run in the name of Leeds any litigation relating to Leeds including the English libel proceedings Weston-v-Bates and Leeds United claim no: HQ10DO2911 or to conduct such litigation either at his own expense or at the whole or partial expense of Leeds; (b) any other related agreement permitting Mr Bates after the sale of Leeds to GFHC to manage all or any such litigation; (c) a schedule detailing all costs incurred by Mr Bates in the English libel proceedings identifying the periods covered by such costs and in particular identifying costs incurred before and after the sale of Leeds to GFHC including identifying what costs have actually been paid by Mr Bates personally; (d) The same

information in respect of Leeds' involvement in the English libel proceedings insofar as this information is or has been in the possession, custody or power of Mr Bates; and (e) a copy of any contract or letter of engagement or other document regarding any terms agreed between Carter-Ruck and Mr Bates and/or Leeds signed or agreed by or on the instruction of Mr Bates insofar as the latter is or has been in the possession, custody or power of Mr Bates. 30. The Master also made orders concerning disclosure by both parties of any note of English counsel or English solicitors recording what was said when the judgment of Sir Michael Tugendhat was handed down on 11 th November, 2015, and Mr Bates was also ordered to disclose any transcript of that hearing if it was in his possession, custody or power. 31. Advocate Hoy submitted that the Master had erred in ordering discovery of the documents at (a) - (e) on the basis that these documents are irrelevant to the question of whether registration of the Judgment should be set aside. The High Court has made an order for costs in proceedings before it and therefore Mr Bates, as the party in whose favour the costs order was made, is entitled to the benefit of that order. It is irrelevant as to whether Leeds may or may not have agreed to indemnify him in respect of his liability to pay his solicitors, Carter-Ruck. 32. In my judgment, the Master correctly analysed the position in relation to an indemnity as to costs at paras 37 and 38 of his judgment of 15 th June. If a person agrees to pay another party's legal costs or to indemnify that party for the legal costs which he incurs with his solicitor that does not alter the legal relationship between the client and the solicitor. The solicitor can look to the client for payment and the client then looks to the indemnifier. The contract is between the client and the solicitor and the legal obligation to pay the solicitor's costs rests with the client. If costs are subsequently recovered from an opposite party and have in fact been paid by the indemnifying party, the client would have to account for any monies received to the indemnifier. But that would be a matter between the client and the indemnifier. 33. Transposing that to the present position, even if Leeds has agreed to pay for or indemnify Mr Bates in respect of the legal costs which he incurred with Carter-Ruck concerning the libel proceedings that does not affect Mr Bates' liability to Carter-Ruck. He is therefore entitled to recover any costs awarded against an opposite party even if, upon receipt, he may have to pass these across to Leeds if in fact Leeds has paid Carter-Ruck. 34. In my judgment therefore, the documents at (a)

- (d) in the Master's order cannot assist Mr Weston even if they show that it was agreed as between Mr Bates, Leeds and/or the purchaser of Leeds that Leeds would pay for or indemnify Mr Bates in respect of the legal costs which he incurred with Carter-Ruck as his solicitors. Even if such an agreement exists, Carter-Ruck would still be entitled to look to Mr Bates for payment of their fees as their client. I accept Advocate Hoy's submission therefore that these documents are not relevant and that discovery of them should not be ordered. 35. However, it would in theory be possible for the letter of engagement between Mr Bates and Carter-Ruck to provide that Carter-Ruck would not look to Mr Bates for their fees but only to Leeds. In that event, Mr Bates would have no legal obligation to pay Carter-Ruck's fees. Mr Weston would in those circumstances have an arguable case that the Judgment should be set

aside on one or more of the grounds specified in Article 6(1) of the 1960 Law. 36. The Master held that this was in effect an application for limited discovery. I agree with him that, given the comparatively modest amount involved, the nature of the dispute before the Court and the overriding objective, it is appropriate to make an order for limited discovery where satisfied that documents may be relevant to the matter in issue. 37. I further agree with the Master that Mr Weston has raised a relevant issue as to what the position was between Mr Bates, Leeds and Carter-Ruck. Mr Bates appears to have continued to play a leading role in relation to the litigation even after he sold the shares in Leeds. Furthermore, for a considerable period in relation to the libel proceedings, Carter-Ruck were instructed by both Leeds and Mr Bates. Where a lawyer is acting for two parties, there may be an issue as to who is responsible for costs and how costs will be allocated between them. 38. In my judgment, the terms of engagement between Carter-Ruck and Mr Bates and Leeds may well be relevant to the issue in this case and therefore I uphold the Master's decision in respect of (e) of the order although I vary it so as to read:- "(e)(i) a copy of any contract or letter of engagement or other document regarding any terms agreed between Carter-Ruck and Mr Bates which covers or includes the English libel proceedings Weston -v- Bates and Leeds United claim no: HQ10DO2911; and (ii) a copy of any contract or letter of engagement or other document regarding any terms agreed between Carter-Ruck and/or Leeds signed or agreed by or on the instruction of Mr Bates insofar as the same is or has been in the possession, custody or power of Mr Bates, including or relating to the said English libel proceedings."

Conclusion

39. For these reasons, I allowed Mr Weston's appeal against the Master's refusal to order security for costs and ordered security to be provided in the sum of £3,750 by 10 th November, 2017.
40. I also allowed the appeal of Mr Bates against the Master's order for discovery to the extent of quashing the orders for discovery contained at (a) to (d) (set out at para 29 above) and varying (e) as set out above at para 38. Authorities Bates-v-Weston

[2017] JRC 092 . Bates-v-Weston

[2017] JRC 111 . Judgments (Reciprocal Enforcement)(Jersey) Law 1960. Leeds United-v-Admatch

[2014] JRC 167 . Judgments (Reciprocal Enforcement) Rules 1961. Leeds United Football Club Limited-v-Admatch

[2009] JLR 186 . Levi-v-Bates

[2009] EWHC 1495 . Page Last Updated: 18 Jan 2018 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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