

JERSEY / JUDGMENT

Case -v- Milborn [2015]

JRC 046 (25 February 2015)

[2015] JRC 046

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judgment

the deputy bailiff (Now BAILIFF): 1. On 5 th January, 2015, the defendant applied in person to lift various interim injunctions contained in an Order of Justice signed by me on 25 th November, 2014, to dismiss the Order of Justice and to award damages both to the defendant and to the first party cited. As a fall back, the defendant sought relief that if the injunctions were not lifted, then there should be provided a further variation of those injunctions to enable a drawdown of the remaining funds. 2. As is clear from the terms of the Order of Justice, the plaintiff has already issued proceedings against the defendant in which he claims judgment in the sum of £132,060 in respect of an outstanding loan alleged to be due by the Defendant to him. The action was placed on the pending list and pleadings were filed - a statement of claim, an answer and a reply. The answer contained a counterclaim and there was a reply filed to that counterclaim. In September the defendant applied to strike out the statement of claim. This was considered by the Deputy Judicial Greffier, and the application dismissed with costs. The action was set down on the hearing list with orders for discovery and inspection of documents, and sundry other orders for the proper management of the proceedings to trial. There was no appeal against that decision, and trial has been set for 30 th March, 2015. 3. Clearly, in this judgment, we express no view about the merits of the claim. We have assumed for the purposes of this judgment only that the plaintiff has a good arguable case in those proceedings. 4. The Order of Justice issued by the plaintiff on 25 th November, 2014, contained interim orders restraining the defendant from disposing of his assets up to the value of £132,060 together with interest calculated to that date in the sum of £1,456.28 and covered in particular accounts at Barclays Private Clients International Limited trading as Barclays Private Client International and at Lloyds Bank International Limited trading as Lloyds Bank, and the defendant's shareholding in and the property and assets of Le Jardin de l'Etelier Limited, the first party cited. The injunctions also required disclosure of information by the parties cited, and the enforcement of the interim injunction against the defendant was ordered by prohibiting the parties cited from dealing with his assets. There were exceptions from the terms of the orders enabling the second and third parties cited to exercise rights of set off and, pursuant to an order made by this Court in December 2014, the payment to the defendant out of the bank accounts in the sum of £820 per week. It is clear from the Order of Justice that the basis for seeking injunctive relief arises out of certain property transactions

conducted by the defendant. It is alleged that on 22 nd July, 2014, the defendant owned the following properties:- (i) The north western part of the field Clos des Alliettes in the Parish of St Martin; (ii) Clos de Mallet et de Payn and the northern part of Clos de Mallet in the Parish of St Martin, united into one field and bearing the field numbers 714a and 689; and (iii) The majority of Jardin de l'Etelier and a certain strip of land containing evergreen trees or shrubs in the Parish of St Martin ("Le Jardin"). 5. The land described above was conveyed to third parties by the defendant on 5 th September, 17 th October, and 7 th November respectively, with the result that on completion of the last of these conveyances, the defendant no longer owned immovable property in Jersey in his own name. The plaintiff's concern seems to arise out of Le Jardin. This was sold to the first party cited for £50,000. In October 2014, Le Jardin was advertised by a local firm of estate agents as a property for development which had the benefit of planning permission to construct a four bedroomed dwelling. It was given an estimated sale price of £2.25 million, being available to those qualifying under Regulation 1(1)(k). Clearly the difference between the then advertised sale price and the sale price to the first party cited caused the plaintiff to consider that the defendant might be attempting to hide his assets. It is asserted that the defendant caused the first party cited to be incorporated on 17 th October, 2014. He is given as the only subscriber and is the owner of the registered ten issued and allotted shares of that company. No answer appears to have been filed to the Order of Justice, although the defendant has lodged with the Court a number of affidavits. 6. When he came to address us, the defendant said that he did not remember if he had ever claimed to be the beneficial owner of the first party cited when he caused it to be incorporated. He asserted that he had no connection with the first party cited, and that the injunction caused real prejudice both to it and to himself. To support his claims, he relied upon a number of documents which he produced to us. In his affidavit dated 3 rd December, 2014, referring to Le Jardin, he said this:- "Garden land known as Jardin de L'Etelier In accordance with the Zelah minute dated 29 th October, 2009, and having failed to secure planning permission on the land ... I formed a new Jersey company and minuted that the entire share capital be made over and returned to Zelah Ltd." 7. In his earlier affidavit of 27 th November, he had asserted that he owned no assets in Jersey at all. The same day that he swore the first affidavit, i.e. 27 th November, he also deposed an affidavit for the first party cited. Exhibited to that affidavit were some documents which we list in date order:- (i) Minutes of a meeting of the sole director of Zelah Limited on 29 th September, 2009, (the defendant was sole director). This minute purported to indicate that Zelah would borrow £200,000 from the defendant on an interest free basis and included as the penultimate paragraph the resolution to transfer the remaining garden area by the offices to the defendant in exchange for his settling all outstanding fees owed to a firm of architects by the company. (ii) Minutes of a meeting of the sole director of Zelah on the 14 th October, 2009. These minutes purported to show that the entire share capital of Zelah would be transferred to the two daughters of the defendant, but the defendant would continue as sole director. The minutes record that should the defendant fail to achieve a suitable planning permission on Le Jardin within five years, that land would be transferred by gift into a new Jersey company and the entire share capital would be returned to the defendant's daughters to be held and divided equally between them. On the assumption for the time being that it was a minute properly drawn up in good faith, there is scope for debate about what the minute actually

means. (iii) The copy of a document showing the first party cited to have been incorporated at the instance of the defendant by a request to the Jersey Financial Services Commission dated 15 th October, 2014. (iv) Minutes of a meeting of the sole director of the first party cited (the defendant) held on 16 th October, 2014, resolving that the defendant would "return" the whole of his shareholding to the Company, approving that transfer. Once again, assuming that the document truly reflected a meeting held on 16 th October, 2014, on which we express no view, there is scope for argument as to what the minute actually means. (v) Minutes of a meeting of the sole director of the first party cited (still the defendant) on 28 th October, 2014, authorising Mr Michael Falle to be the Company's mandatory to pass contract on Le Jardin. (vi) Minutes of a meeting of the sole director of the first party cited (still the defendant) on 29 th October, 2014, at 9:30am, resolving that in accordance with the agreement dated 29 th September, 2009, between Zelah Limited and the defendant whereby the garden area was transferred by gift to him in exchange for his settling the outstanding fees due by Zelah to a local firm of architects, the entire share capital of the first party Cited would be made over and returned to Zelah by way of gift, provided the Company (presumably the first party cited) would be responsible for and settle all outstanding fees to the architects in connect with the planning application which had been refused. (vii) Minutes of a meeting of the sole director (still the defendant) of the first party cited on 29 th October, 2014, at 3pm which record an agreement with the shareholders that Le Jardin should not be returned to Zelah but was to remain with the first party cited. The minutes record that it was purportedly agreed that the entire shareholding of ten shares be split equally between the defendant's two daughters. 8. When he addressed us, the defendant accepted that he had formed the first party cited. He asserted that he had an obligation to transfer Le Jardin back to Zelah Limited, and that the shareholders in Zelah Limited were his two daughters. He went on to assert that Zelah was in fact owned by a trust since 1990, of which Warren Trustees Limited were trustees. He told us that in 2009 he had to pay off a bond in order to "get the property back". He confirmed that the minutes to which we have referred are the only documents which reflect his obligation to transfer the property back to Zelah. 9. He then went on to assert that Zelah changed its name in or about February 2011 to L'Augrès Charitable Trust Limited. That company has no assets. He had agreed to donate land to that company for research into dementia, but financial difficulties made it impossible for him to do so. He confirmed that he had made these resolutions in respect of the companies in question as sole director of them. He also said that he had discussed the issues with his elder daughter. He had not discussed them with his younger daughter who has health issues at present. 10. When asked to indicate what loss the first party pited was suffering as a result of the injunctions, he was unable to do so but he did assert that in reality the injunctions were just a backdoor effort to obtain security for costs. The strikeout application 11. The defendant seemed to consider that it was possible for him to have the proceedings struck out simply by informing us that on the basis of the evidence to which we have referred, it was clear that the injunction ought not to have been granted. He is of course representing himself, although he also claimed at one point to be representing the first party cited as well. Despite the fact that he is a litigant in person, the Rules of the Royal Court still apply to him. In particular, Rule 6/13, which deals with the Court's powers to strike out pleadings or claims, provides that there are essentially four grounds for doing so:- (i) The pleading disclosed as no reasonable cause of action; (ii) The pleading as

scandalous, frivolous or vexatious; (iii) The pleading may prejudice embarrass or delay the fair trial of the action; or (iv) The pleading is otherwise an abuse of the process of the Court. 12. The Rules provide that no evidence shall be admissible on an application to strike out on the ground that the pleading discloses no reasonable cause of action. 13. No assertion was made before us that the Order of Justice fell within sub-paragraphs (b), (c) or (d) of paragraph 1 of Rule 6/13. Accordingly, we seem to be left with the application to strike out on the basis that the Order of Justice discloses no reasonable cause of action, and that is not a matter to be determined on the evidence but instead falls to be determined on the pleading itself. In our judgment there is no doubt at all that the Order of Justice discloses a reasonable cause of action. The defendant's application to strike out the Order of Justice fails on that ground alone. 14. We add however, that if we had looked at the evidence which has been put before us by the defendant for the purpose of assessing the application under Rules 6/12(b),(c) or (d), we would still not have caused the Order of Justice to be struck out. It would not be right for us to comment in any detail upon the documents which the defendant has put before us, but we do go as far as to say that they plainly and obviously call for explanation and that there will be questions to be put to the defendant in cross-examination at the time this Order of Justice is heard. 15. The defendant's summons for the Order of Justice to be struck out is therefore dismissed. 16. Although he issued no summons to this effect, the defendant also asked us to lift the interim injunctions and award damages both to himself and the first party cited. As the Order of Justice has not been struck out, we are not concerned with any claim for damages at this stage. 17. As to the lifting of the interim injunctions, we see no reason to do so. The plaintiff's concern is that the transactions around the conveyance of Le Jardin are suspicious. For the purposes of an interlocutory judgment, we say only that there are reasonable grounds for the injunctions. 18. The last part of the defendant's application was for a variation of the injunctions. This arises because the Royal Court itself varied the injunctions by Act of 5 th December, 2014. The defendant's weekly allowance was increased to £820 to cover the period from 28 th November, 2014, to 5 th January, 2015. In our order of 5 th January, we confirmed that the defendant could continue to have £820 per week for living expenses out of the monies restrained in the two bank accounts, and the plaintiff's lawyers undertook to confirm that decision to the relevant banks by close of business on 6 th January. Save as set out, the injunctions remained in place. 19. This application by the defendant should never have been brought. It did not begin to approach a threshold argument for having the Order of Justice struck out or the injunctions removed. There was a good arguable case for an order for indemnity costs. In the event, we ordered the defendant pay the plaintiff's costs as agreed or failing agreement as taxed on the standard basis, but we add the marker that further applications of this kind by the defendant would be liable to result in an indemnity order.

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