

JERSEY / JUDGMENT

Glympton Services (Jersey) Limited -v- Wright [2014] JRC 162 (29 August 2014)

[2014] JRC 162

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judgment

the commissioner: 1. On 18 th July, 2014, the Court granted the application of the plaintiff ("Glympton") for a declaration and imposed an injunction upon the defendant ("Miss Wright"). We now set out our reasons. 2. Miss Wright began working for a member of the Royal Family of a Middle Eastern country in January 1997. In or about 2006, it was proposed that she should be employed by a Jersey incorporated company, Glympton, which provides services to that Royal Family. That employment, as a personal assistant, would appear to have commenced in or around March 2007 and terminated when she was made redundant on 31 st July, 2009. 3. Having been made redundant, Miss Wright (who resides in England) then brought proceedings in the United Kingdom in the London (South) Employment Tribunal in relation to her employment. In those proceedings, she indicated through her counsel that she had written a book about the family and was considering a number of lucrative book deals. It would seem that she ceased instructing her lawyers in those proceedings in August 2010 and they were not progressed to any final determination. 4. It is Glympton's case that Miss Wright is bound by obligations of confidentiality arising out of her contract of employment which would be breached by the publication of such a book, and accordingly it issued proceedings against Miss Wright in the High Court of England in June 2010 seeking an injunction against her. 5. Henmans Freeth LLP, who act for Glympton in those English proceedings, explained in their letter of 2 nd May, 2014, that in order to obtain a final injunction the High Court required Glympton to commence proceedings against Miss Wright in Jersey for a determination as to the terms of her contract of employment; Glympton being a Jersey incorporated company and the contract being governed by the exclusive jurisdiction of the Courts of Jersey. 6. Proceedings were therefore issued by Glympton in this jurisdiction on 10 th August, 2010, seeking a declaration in that respect and injunctive relief. In the meantime, Miss Wright gave an undertaking in the English proceedings (in summary) not to communicate or disclose to any person any matter relating to the family. That undertaking subsists until the final determination of Glympton's claim before this Court. 7. An answer was filed in the Jersey proceedings on 10 th January, 2011, and a reply on 18 th February, 2011. A summons for directions was adjourned in May 2011, because of concerns which arose as to Miss Wright's capacity. Her legal advisers were finding it difficult to obtain instructions from her. 8. In due course, on 13 th December, 2013, directions were given (despite an unsuccessful application

by the defendant for a further adjournment). The action was set down for hearing and discovery ordered. Miss Wright failed to comply with her discovery obligations and on 27 th March 2014, the Court ordered that unless she filed a discovery list verified by affidavit by 5pm on Monday 14 th April, 2014, the answer filed by her would be struck out without further order. No such list was filed and accordingly the answer of Miss Wright has been struck out. 9. Glympton brought its claim before the Court on 12 th May, 2014, (after due notice to Miss Wright) seeking a declaration that Miss Wright was bound by confidentiality obligations and a final injunction. The Court was minded to make the declaration and grant the injunction sought but was concerned about the references in the papers before it as to the capacity of Miss Wright. It therefore adjourned the matter to 18 th July, 2014. In the meantime, it instructed the Judicial Greffier to write to Miss Wright by email and by registered post making it clear that unless she appeared on 18 th July, 2014, either personally or through an advocate to show cause why such relief should not be granted, the Court would proceed to grant the same. The Judicial Greffier was instructed to give Miss Wright his contact number so that she could telephone him if she was unclear as to any part of the Court's order. The Judicial Greffier's letter was delivered to her address and signed for by her on 16 th May, 2014. The Judicial Greffier also wrote to the Court of Protection in the United Kingdom who have confirmed that no one has been appointed to conduct her affairs. Miss Wright did not appear on 18 th July, 2014, and no communication had been received from her either by the Court or by Glympton's advisers. Contract of employment 10. There is no signed contract of employment between Glympton and Miss Wright and it is therefore necessary to go through the evidence that was before the Court. This was contained in the affidavit of Peter Browne, a director of Glympton, dated 6 th May, 2014, from which we made the following findings of fact:- (i) On 8 th November, 2006, Mr Browne sent Miss Wright by email a draft of her contract of employment. The confidentiality provisions were contained in Clause 11 under the heading "Security" in these terms:- "In carrying out your duties, you will be required to display the highest standards of integrity and discretion. You will be required to comply with all reasonable security procedures and to cooperate closely with the Employer's security staff. You are required, as a condition of your continuing employment, to sign a Confidentiality Agreement in the form set out in the Schedule and to return it to the Employer." (ii) The attached Confidentiality Agreement contained the following:- "THE UNDERSIGNED HEREBY AGREES AND COVENANTS to keep confidential and not to communicate or disclose to any outside person or persons whatsoever (including but not limited to any member of the media or other journalist or other writer, private investigator or other person) during said provision of services and for an additional period of twelve years after the end of that, any matter of any kind concerning or related in any way to the person or activities of [], any member of his family, any person working for or involved with him or his family as an employee or independent contractor or in any other role or capacity. The only exception to this commitment to non disclosure shall be in response to a proper and lawfully served demand or order from a competent UK court with jurisdiction in such matter, and as to that exception, Undersigned will notify [] or his highest ranking aid then at Glympton Park Estate, Glympton, Woodstock, Oxfordshire OX20 1AH (telephone: 01993 813525 fax: 01993 813498) immediately on being served with such demand or order. Undersigned further expressly agrees and covenants not to give an interview or write or otherwise disclose information concerning the

individuals and activities set forth above." (iii) Miss Wright reviewed the draft and responded by email on 9 th November 2006 as follows:- "The overall contract is fine, it covers the basic job description and responsibilities. I fully agree with the subject matter covered under the titles: Sickness or injury, termination, security ,, disciplinary rules and procedures, grievance, data protection and general." [Our emphasis] (iv) Mr Browne and Miss Wright met on 10 th November, 2006, to discuss the contract and in particular, the starting date of her employment, her salary, her compensation for a period during which she had not been paid and her pension rights. (v) Miss Wright was working for the family in Beverley Hills at that time and was not able to meet again with Mr Browne until th March, 2007, when all the terms of the draft contract were agreed save for the issue of her salary and back pay. The file note of the meeting makes express reference to the Confidentiality Agreement. (vi) On 21 st March, 2007, Miss Wright's back pay was confirmed at \$140,000 (which she gratefully accepted) and her salary at £60,000 per annum. The first payment of her salary was made in May 2007 which included her salary for April 2007, which was the date that she officially began working for Glympton. 11. Thereafter, Miss Wright at all times acted in a manner which was consistent with the terms of employment as set out in the draft sent to her in November 2006 and agreed in March 2007, and indeed relied upon the same for the purposes of her claim before the English Employment Tribunal. 12. As Mr Browne says at paragraph 38 of his affidavit, Miss Wright's previous employment with the family meant that she was well aware of the need for privacy and confidentiality and she had herself negotiated similar contracts with nannies employed for the family. She therefore knew that confidentiality and secrecy were essential conditions of anyone's employment in connection with the family. The law 13. There are four requirements for the creation of a valid contract under Jersey law:- (i) Consent of the party undertaking an obligation. (ii) His/her legal capacity to enter the contract. (iii) Objet or subject matter of the contract. (iv) Cause or the reason for the obligation being formed. (See *Selby v Romeril*

[1996] JLR 210 , which adopted Article 1108 of the French Civil Code). 14. In *Incat Equatorial Guinea Limited and Four Others v Luba Freeport*

[2010] JLR 287 , Bailhache, Deputy Bailiff said this in relation to these requirements:- "21 Pausing there, it is noteworthy that these requirements for the creation of a valid contract go some way to explaining the ancient maxim: *la convention fait la loi des parties*, which reflects art. 1134 of the French Code Civil, which is in these terms: "*Les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites*". 22. At the heart of this provision in the French Code Civil and behind the maxim to which we are so accustomed in Jersey is the concept that the basis of the law of contract is that each of the contracting parties has a *volonté*, or will, which binds them together and requires that the mutual obligations which they have agreed be given effect by the courts. The notion of *volonté* as the foundation of the contract is sometimes thought to result from the political liberalism of the age of reason and of the economic liberalism of the 19th century, where obligations imposed from outside should be as few as possible. A man is bound only by his will, and because he is the best judge of his own interests the best rules are those freely agreed by free men. However, it is to be noted that rather earlier the same rationale appears in the

commentaries of Berault, Godefroy & d'Aviron on *La Coutume Reformée de Normandie*, vol. 1, at 74, this edition being published in 1684, where the authors say this: "Car la volonté est le principal fondement de tous contracts, laquelle doit avoir deux conditions, la puissance & la liberté . . ." before going on to consider the restrictions which the law imposes on the making of contracts which are contrary to good morals or otherwise unlawful, notwithstanding the *volonté* which existed in the contracting parties." 15. There is no requirement that an employment contract should be reduced in full to writing (See *Silver et uxor v Coe*

- [1966] JJ 707). The task for the Court was to ask itself whether there was a sufficient meeting of minds between Glympton and Miss Wright, notwithstanding the absence of a signed agreement. The evidence before us left us in no doubt that there was a meeting of minds between Glympton and Miss Wright in relation to the terms of her employment, and specifically her obligation of confidentiality as set out in the Confidentiality Agreement appended to the draft contract. Whilst the same had not been signed, all of the terms were agreed by March 2007 and there were no areas of uncertainty. Thereafter both she and Glympton had conducted themselves in a manner which was consistent with the draft contract and in reliance upon it. Declaration 16. The next issue for the Court was as to whether it was appropriate to make a declaration in default of appearance by Miss Wright and in circumstances where we only had affidavit evidence from Mr Browne, who had not been subject to any cross-examination. That issue was considered in *Eckman v Sidem International*
- [2010] JLR 299 which confirmed that in Jersey a broad approach is taken to the granting of declarations, the Court giving consideration (paragraph 16) to live practical questions with practical consequences. The Court at (paragraph 23) cited *Patten v Burke Publ Co Limited*
- [1991] 1 WLR 541 as:- "...pointing to the need for the Court to consider whether the applicant for a declaration can obtain the fullest justice to which he is entitled without it. If that were not to be the case then..... it would be appropriate to consider the grant of a declaration." 17. As Mr Williams submitted, a declaration in this case would not impact upon the rights of third parties (one of the reasons for refusing a declaration in *Eckman*) and without it, Glympton would be unable to obtain the fullest justice as it would be unable to enforce the confidentiality obligations of Miss Wright in the jurisdiction in which she resides, namely England. The Court therefore concluded that it was appropriate to make the declaration sought, namely that Miss Wright was bound by the terms of the Confidentiality Agreement. Injunction 18. The Court did question whether it was appropriate for it to impose an injunction upon Miss Wright restraining her from acting in breach of the Confidentiality Agreement as she did not reside in this jurisdiction and any such injunction would be unenforceable outside this jurisdiction. However, we were persuaded by Mr Williams that there could be circumstances in which Miss Wright might seek to publish confidential information concerning the family in this jurisdiction and the existence of an injunction here would arguably prevent that from occurring. We therefore imposed an injunction

substantially in the terms of the Confidentiality Agreement. Costs 19. Glympton sought no order as to its costs. Authorities Selby v Romeril

[1996] JLR 210 . Incat Equatorial Guinea Limited and Four Others v Luba Freeport

[2010] JLR 287 . Silver et uxor v Coe

[1966] JJ 707 . Eckman v Sidem International

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