

JERSEY / JUDGMENT

Leeds -v- Admatch [2011]

JRC 159 (15 August 2011)

[2011] JRC 159

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judgment

the bailiff: 1. This is a summons by the second plaintiff seeking certain post-judgment discovery against the defendant order to aid in the enforcement of the judgment which it has obtained.

Background

2. The background to these proceedings has been described in a number of judgments. The most recent is that dated 19th May, 2011,

[2011] JRC 101 when the Court granted judgment in the sum of £190,400 against the defendant in favour of the second plaintiff following the striking out of the answer because of the defendant's failure to comply with certain unless orders. 3. For today's purposes it is sufficient simply to record that the first plaintiff is an English company which once owned and operated Leeds United Football Club. The defendant, which trades under the name of Admatch, is a Jersey company owned and controlled by Mr Robert Weston. In August 2004, the first plaintiff and Admatch entered into an agreement for Admatch to act as agent to the first plaintiff for the purpose of selling match and season tickets by credit card. There is no dispute that, subject to the claimed right of set off referred to below, Admatch owes the first plaintiff £190,400 under that agreement. 4. In the course of 2005, control of the first plaintiff was acquired by interests associated with Mr Ken Bates. The present proceedings were issued by the first plaintiff in December 2005 seeking payment from Admatch of the sum of £190,400. On 4th May, 2007, the first plaintiff went into administration, with net debts reported to be about £40 million. By an agreement of that date, the administrators transferred the assets of the first plaintiff (including the claim against Admatch) to the second plaintiff, and the shares in the second plaintiff were sold to a consortium led by Mr Bates. Subsequently, the first plaintiff went into liquidation. On 26th July, 2007, the second plaintiff was joined to the action. 5. As already mentioned, the debt in the sum of £190,400 is admitted. However, in the proceedings, Admatch contended that the agreement contained at clause 9(f) a set-off clause which entitled Admatch to set-off from any monies it owed to the first plaintiff any sum owed by the first plaintiff (or by any parent, associate or subsidiary company of the first plaintiff) to Admatch (or to any

parent, associate or subsidiary company of Admatch). Admatch alleged in its answer that the sum of £1,439,734 was owed by the first plaintiff or an associate to Cope Industrial Holdings Limited ("Cope"), which was a company in which Mr Weston had a controlling interest and was therefore said to be an associate of Admatch. 6. After numerous interlocutory hearings the Court ordered on 19th January, 2011, that unless Admatch paid taxed costs in the sum of £63,529 (which had been incurred in respect of an earlier appeal to the Court of Appeal) within five weeks, its answer would be struck out. On the same occasion the Court made a further unless order to the effect that, unless Admatch filed a re-amended answer and a revised affidavit of discovery within the same five week period, its answer would be struck out. Leave to appeal against those decisions was subsequently refused by the Court of Appeal. 7. Admatch did not comply with any of these unless orders and accordingly on 19th May, 2011, for the reasons set out in the judgment referred to earlier, the Court ruled that the answer of Admatch had been struck out and granted judgment in favour of the second plaintiff in the sum of £190,400 together with interest. This application 8. Mr Weston has asserted throughout these proceedings that Admatch is a dormant company with no assets, only liabilities to him or to other members of his group of companies. Admatch ceased trading in 1999 and, since then its only activity has been for a few months in 2004/5 when it undertook the activities with the first plaintiff which are the subject of these proceedings. During this period Admatch received monies in respect of the purchase of tickets by credit card. It paid most of these sums on to the first plaintiff in accordance with the agreement but, according to a spreadsheet dated 7th August, 2005, prepared by Admatch, it had not accounted for the sum of £190,329.02 (rounded up in these proceedings to £190,400) which accordingly it still retained. It is that sum for which judgment was given on 19th May, 2011, because the answer of Admatch

- which claimed a right of set-off - was struck out. 9. Mr Weston asserts that the sum in question is no longer held by Admatch. He referred me to the e-mail dated 18th November, 2005, whereby Admatch gave notice of the exercise of right of set-off. He asserts that, whatever the position may have been before then, the sum of £190,400 became Admatch's on that date and it was free to do with it as it wished. 10. In February 2009, the second plaintiff issued a summons seeking information as to what Admatch had done with the sum of £190,400. The summons was issued on the basis that, although the second plaintiff's claim was pleaded merely as a breach of contract, clause 8 of the agreement between Admatch and the first plaintiff provided that the monies received by Admatch pursuant to the agreement would remain the property of the first plaintiff save for any authorised deductions referred to in clause 9. It was argued therefore that the second plaintiff did in fact have a proprietary claim to the sum of £190,400. This was not accepted by Mr Weston who said there had been a subsequent oral variation of that part of the agreement. During the course of that hearing, Mr Weston stated how Admatch had dealt with the monies it received pursuant to the agreement. The Court summarised what he said in two passages in the judgment

[2009] JRC 023 :- "16. ... The response also stated that Admatch and the group of companies with which it was associated consistently operated their business with the benefit of bank overdraft and loan facilities and that accordingly all funds received by Admatch or its associated companies were almost invariably utilised to reduce group borrowing from banks. The funds were then re-drawn as necessary. This was elaborated by Mr Weston during the course of the hearing when he made it clear that, as instalments of the Processed Monies came in, they were utilised for the general benefit of Mr Weston's group of companies, with monies being transferred back to Admatch as and when an instalment had to be paid to the first plaintiff pursuant to the agreement." ... "22. [Mr Weston] asserted that the Processed Monies were not held by Admatch, which was now substantially dormant and had a small overdraft. The monies had been used for general group purposes with the Processed Monies being passed almost immediately after their receipt back and forth between various companies in the group as dictated by the requirement to keep interest charges on overdrafts to a minimum. He said that, even if it could be done, it would be an enormously time-consuming exercise to try and work out exactly where the Processed Monies had gone and whether they could now be traced because of the frequent inter-company movements. He fully accepted that, if Admatch lost at trial, he or one of his companies would have to put funds into Admatch so that it could pay the second plaintiff. He accepted that, if Admatch did not pay, the second plaintiff would no doubt renew the application which had now been brought and would seek personal relief against him, amongst others, as a director of Admatch. It would therefore be in his interests to ensure that Admatch paid up." The Court did not grant the relief sought at that stage on the ground, inter alia, that the plaintiffs had been content to litigate without such information for several years and there was a risk of the trial date being lost if the order was granted at such a late stage. However, the Court stated specifically that the situation would change if the second plaintiff were successful at trial and the Court would be willing to reconsider the matter at that stage. 11. In the light of the information disclosed by Mr Weston, and given that it has now obtained judgment against Admatch, the second plaintiff now seeks an order that Admatch file an up to date affidavit in respect of its financial position for the period from 1st January, 2003, to date with such affidavit to include at least the following documents:- (i) all accounts and financial statements; (ii) all bank statements; (iii) all accounting ledger information including invoices, receipts and vouchers; and (iv) all relevant correspondence relating to the company's financial position; and generally to set out all income and expenditure of Admatch during the above-mentioned period. The Law 12. The second plaintiff filed a skeleton argument referring to a number of Jersey cases concerning the Court's inherent jurisdiction and to the relevant provisions in England which enabled the courts to require a judgment debtor to provide information as set out in the former Supreme Court Rules and now in the Civil Procedure Rules. The cases referred to were contained in the bundles filed for the hearing. 13. However, it seemed to me on reading the papers that these arguments were beside the point. The position in Jersey is clearly established by a line of cases of which the most recent is Jomair Leasing Limited-v-Hourigan

- [2011] JRC 042 . These cases had not been referred to by either side in their written material lodged with the Court and I supplied a copy of Jomair to Advocate Tracey and Mr Weston at the beginning of the hearing. That case concerned an application that a bank in Jersey disclosed information about assets which it held for a judgment debtor against whom judgment had been granted in the State of Utah, United States. I would quote the following extracts from the Court's judgment:- "8. This Court has in a number of cases made it clear that there is jurisdiction to grant an order for disclosure in order to aid enforcement of a judgment. See Goldtron Limited-v-Most Investment Limited
- [2002] JLR 424 at paras 25 - 28; Apricus Investments-v-CIS Emerging Growth Limited
- [2003] JLR N 40,
- [2003] JRC 151 at paras 16 - 20; and Africa Edge SARL-v-Incat Equipment Rental Limited
- [2008] JLR N 41,
- [2008] JRC 175 at paras 8 - 10. ...
12. In this case, the defendant has failed to satisfy the Utah judgment for over 8 years and this Court has now itself granted judgment in respect of the same matter. We are quite satisfied that the interests of justice require disclosure of his assets in Jersey. We note that disclosure is sought from the party cited rather than the defendant but this does not affect the position. The essential principle remains that the Court can make disclosure orders whether against a defendant or third parties in order to aid in the execution of a judgment or award and the interests of justice would usually point in favour of ordering such disclosure." 14. In the Africa Edge case the Court ordered the defendants to disclose their world wide assets in order to aid in the enforcement of a judgment in Belgium which had been obtained many years earlier. 15. In the Apricus Investments case, Bailhache, Bailiff said at paragraph 16:- "It is well established that disclosure orders may be made even without being auxiliary to a Mareva injunction in order to assist a judgment creditor to obtain satisfaction." The Court went on in that case to make disclosure orders against the defendant to assist in the enforcement of an arbitration award against the defendant. 16. The source of the power is undoubtedly the inherent jurisdiction of the Court to ensure that its orders can be enforced so that plaintiffs are not left holding empty judgments. Discussion 17. Advocate Tracey's case is simple. Following judgment it has now been established that Admatch must pay £190,400 to the second plaintiff. The company now apparently has no assets although it was in the past in possession of the sum of £190,400 which it had received. The second plaintiff wishes to know what has happened to that sum so as to aid in the enforcement of its judgment. 18. Mr Weston has raised a number of grounds for arguing that it would be inappropriate and premature to make the order requested. First, he argues that the second plaintiff has already received all the information to which it is entitled in order to seek recovery of the judgment debt. Thus it has Mr Weston's affidavit of 12th February, 2010, which asserts that Admatch has no assets and had no assets before the action started. He points out that the Viscount decided to take no further action in the enforcement of the taxed costs referred to earlier

because he was satisfied that there were no assets to enforce against. He says that the spreadsheet referred to earlier showing how the sum of £190,400 was made up is available to the second plaintiff as is a cashflow chart which showed relevant cash movements between Cope and certain other companies in connection with the amount which was the subject of the set off claim. He also referred to the correspondence in December 2005 whereby Admatch exercised its right of set-off. He asserts that in those circumstances, for the second plaintiff to claim that it did not know what had happened to the disputed £190,400 is "ridiculous and untrue". 19. However, none of these documents assist in any way in showing what has happened to the £190,400 which Admatch received but which it has not passed on to the first or second plaintiff. They therefore do not assist Mr Weston in his argument. 20. Secondly, Mr Weston refers to the fact that the second plaintiff has started a separate action in December 2010 against Mr Weston and Mr Levi personally and that this action arises out of the same events as have given rise to the present proceedings. He argues that this is an abuse of process and that it is unfair to put further pressure on him personally by demanding that Admatch produce the information requested in this case at a time when he is seeking to defend the other set of proceedings and at a time when his health is affected. He points out that he will not be estopped from claiming the set-off in the other proceedings and that there is a risk therefore of inconsistent findings if he is successful on the set-off point in those proceedings. He submits therefore that it would be premature to allow enforcement action to take place at this stage. Furthermore, he is fearful that information which he is forced to produce in these proceedings might be used against him in the other proceedings. 21. I have not been referred to the Order of Justice in the new action but the proceedings are against different defendants and I was informed by Advocate Tracey that they were based on a proprietary claim with allegations of assisting in a breach of trust and other matters. I have to say that I do not see the existence of the new action as constituting any reason for not allowing the second plaintiff to seek to enforce a judgment which it has obtained, so as to recover the sum which the law now says that it is entitled to. 22. Thirdly, Mr Weston submits that the first plaintiff failed to conduct due diligence at the time of the agreement and knew it was contracting with a dormant company with no assets. It was now too late to try to remedy that failure which was the plaintiffs' own fault. However, that is to ignore the fact that Admatch received the sum of £190,400 which, as a result of the judgment, it is now clear should have been accounted for to the plaintiffs. It only has no assets because it has chosen to part with them. I do not consider that there is anything in this point. 23. Fourthly, Mr Weston submits that the plaintiffs could at any time have joined Mr Weston, Mr Levi or any of the other companies as co-defendants in the current proceedings, but they declined to do so notwithstanding an invitation by Mr Weston that they should. It was their failure to act in this respect which now forces them to seek the relief in question. Again, I do not consider that this assists Admatch. Whether or not the plaintiffs could have joined Mr Weston, the fact remains that they have a judgment against Admatch and Mr Weston has admitted that Admatch has parted with monies which it should have paid to the plaintiff. It seems to me entirely reasonable that Admatch should now be forced to disclose where it paid the various monies so as to explain its current financial

position. 24. Finally, Mr Weston submits that the matter should be delayed until after the outcome of the new action. He argues that providing the information is bound to lead to further applications against Admatch or against other companies in his group or against him personally. Given his state of health this would mean that he would be unable to prepare properly for the new proceedings, which are against him personally. I do not consider that it would be appropriate to delay matters. The Court has repeatedly said to Mr Weston that, if his health does not permit him to give the necessary time to this matter, he should instruct counsel or arrange for another director to represent the company. In relation to the new proceedings, he is represented by counsel. I see no reason why, now that it has judgment, the second plaintiff should not be entitled immediately to information from the judgment debtor to assist in the enforcement of the judgment. 25. In summary, the case seems to me a straightforward one. Notwithstanding that there has not been a trial on the merits, the fact is that, following the granting of judgment because of the failure by Admatch to comply with the unless orders, the second plaintiff is now entitled as a matter of law to be paid the sum of £190,400. The situation has therefore changed completely from that which existed before judgment was given on 19th May. Admatch admits that it had received that sum which, under the agreement, it should have paid over to the first plaintiff but instead it paid the money elsewhere within Mr Weston's group of companies. Admatch now seeks to say that it has no assets and therefore the judgment cannot be enforced. This is a classic case where a plaintiff is entitled to the assistance of the Court in establishing the financial position of the debtor and what has happened to monies which it had previously, with a view to the plaintiff then being able to take such action as it may be advised in order to enforce its judgment. 26. Subject only to substituting the date of 1st January, 2004, for 1st January, 2003, (on the basis that the arrangements in question did not start until May 2004) I therefore grant the orders requested by the second plaintiff. I am willing to hear the parties on the exact form of the order and the time for compliance. Authorities Leeds-v-Admatch

[2011] JRC 101 . Leeds-v-Admatch

[2009] JRC 023 . Jomair Leasing Limited-v-Hourigan

[2011] JRC 042 . Africa Edge SARL-v-Incat Equipment Rental Limited

[2008] JLR N 41. Africa Edge SARL-v-Incat Equipment Rental Limited

[2008] JRC 175 . Apricus Investments-v-CIS Emerging Growth Ltd

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