

JERSEY / JUDGMENT

Leeds -v- Admatch [2013]

JRC 058 (14 March 2013)

[2013] JRC 058

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in the name of Admatch or for its benefit 46. The November affidavit exhibited all of the relevant bank statements so that each payment into or out of the account could be identified by amount. However, the statements were redacted so as to obscure the identity of any payer or recipient where such was either Mr Weston or one of his companies. The amount could still be seen and it was made clear that the payment was to or from Mr Weston or one of his companies but the redactions meant that one could not identify the particular payer or recipient. Mrs Weston's March affidavit reduced the redactions to some extent in that payments to or from Mr Weston were now identified; but payments to or from any of his companies were simply listed as that and accordingly the name of the particular company could still not be ascertained. 47. Mr and Mrs Weston contended that they did not intend to breach the August order by making these redactions. They believed it was not necessary to identify these particular payers or recipients. Their reason for making the redactions was that they believed that identifying the particular companies would inevitably lead to Leeds taking action against those companies; action which the Westons believed to be wholly unjustified and which would simply be part of Leeds' campaign to drive them into submission by weight of litigation. 48. The Court was asked to rule on the issue of redactions at the hearing on 29th March, 2012. The Court said this at paragraph 4 of its judgment:- "In our judgment it is perfectly apparent that it is not open to the respondents to start concealing some of the information in those bank statements. If they wish to do that they should have applied at the time. In our judgment it is clearly relevant for the purposes for which the Order was made that the identity of entities or persons to whom some of Admatch's monies were paid be identified. Accordingly we make it clear and direct that the respondent's must file unredacted bank accounts and they must in so doing identify the companies they have described as companies A, B, C, D and E." 49. We remain firmly of that view. It is quite apparent that the whole purpose of the August order was, amongst other things, to see if it could be ascertained where the £190,400 had gone. It followed that the identity of the recipients of money from Admatch was clearly relevant. In evidence, Mrs Weston said that she made the redactions on the instructions of Mr Weston and he agreed that that was so when giving his evidence. We have no hesitation in concluding that Mr and Mrs Weston breached the August order by redacting the bank statements both in the November affidavit and in the March affidavits. 50. However, that contempt was purged upon the filing of the June affidavits, when unredacted bank statements were exhibited. Furthermore, we accept that the redacted bank statements (even in the

November affidavit) identified the sums which had been paid to Mr Weston and/or one of his companies. There was no attempt to hide the overall benefit which Mr Weston and his companies as a whole had received. Nevertheless it was a material contempt because it meant that the individual recipients of monies from Admatch could not be identified. (iv) Non-compliance with paragraph 1(c) of the August order - all Admatch's accounting ledger information including invoices, receipts and vouchers 51. Leeds has failed to produce any evidence which satisfies us that there are any contemporaneous book-keeping records or ledgers which exist but have not been disclosed. Although the inadequacy of the record-keeping by Mr and Mrs Weston may be a ground for criticism, it does not lead to the conclusion that they are in breach of the August order. We find that the only contemporaneous ledger was the schedule produced in 2005 to show the balance of £190,400 owed to Leeds. That was disclosed in the November affidavit. Advocate Sinel was highly critical of the column in that schedule headed " LUFC overnight balance in Admatch bank a/c ". He said that this gave the impression that the monies received by Admatch and due to be paid on to the first plaintiff were held in a bank account in Admatch's name, whereas it was clear from the bank statements that monies had been passed around Mr Weston's group of companies and the balance in the Admatch account was at all material times minimal. Mr and Mrs Weston accepted in evidence that this was so and that the heading was misleading. The true position, they said, was that the balance shown in the schedule was available to Admatch in order to pay the first plaintiff and could be called upon at any time. This was in fact what had happened when Admatch made its various payments of monies to the first plaintiff. Monies were called back from Mr Weston's other companies so that payments could be made to the first plaintiff. Indeed, in three cases, the other companies made the payments direct to the first plaintiff on behalf of Admatch. 52. In our judgment, whether the heading is misleading or not - and we accept that it is - is beside the point. Mr and Mrs Weston have supplied the schedule (which was prepared in 2005) in compliance with the order. Furthermore, the explanation they have given as to how the money was used is consistent with the explanation that Mr Weston gave back in 2009 as summarised in the emphasised passages referred to at paragraph 11 above. 53. Subject to what is set out below at paragraph 55(ii), we do not find that the Respondents have failed to disclose accounting ledger information in breach of paragraph 1(c).

(v) Non-compliance with paragraph 1(d) of the August order

- all related correspondence 54. No correspondence was produced in the November affidavit. The excuse given by Mr and Mrs Weston is that the word 'relevant' had been used in the judgment of the Court in August and that Mr and Mrs Weston had not noted that the order itself was in slightly different terms and referred to 'related correspondence'. We are not impressed with this excuse. On any view, the correspondence to and from the bank relating to payments into and out of the account was relevant. The reason that it was withheld was because such correspondence might have disclosed the identity of the payees whose identity had been redacted in the bank statements themselves. We find that the November affidavit was in breach of the order in failing to disclose related correspondence. However, Leeds has failed to prove that, by the time of the June affidavits, all related correspondence had not been produced. Any contempt had therefore been purged and Mr and Mrs Weston have

apologised in the June affidavit for any previous breach. Is there any continuing breach? 55. During the course of his submissions the Court asked Advocate Sinel to summarise the documents which he contended were still to be produced (setting aside those cases where the Court has found that documents do not exist). They can be summarised as follows:- (i) Minute book - Advocate Sinel contended that the minute book for Admatch should have been disclosed because it must contain minutes which would assist in establishing the financial position of the company. Mrs Weston was recalled at a late stage to give further evidence about this. She said that she had inspected the minute book and it contained virtually nothing because minutes had not been kept. That may be further confirmation of very poor compliance with proper procedures by Mr and Mrs Weston but we cannot possibly on the evidence find beyond reasonable doubt that the Respondents have failed to disclose a document relevant to the financial position of the company by not disclosing the minute book. (ii) Cheque book stubs - In cross-examination, Mrs Weston said that there were cheque stubs of Admatch and that there was some writing on those cheque stubs. In our judgment, the cheque stubs should have been disclosed. Where a cheque has been issued, the bank statements show the cheque number but do not show the identity of the payee of the cheque. A cheque stub would assist in this process. It is clearly therefore a material document in disclosing the full financial position of Admatch and what has happened to the monies. (iii) Tax returns - Although nil tax assessments by the Income Tax Department have been disclosed for all relevant years, Admatch's tax returns have not been disclosed. Mr and Mrs Weston assert that they are not in their possession. We accept that they could have made greater efforts than they did to obtain copies of the returns either from the Comptroller of Income Tax or from Toole; but the question arises as to whether a failure to disclose tax returns is a breach of the order. Whilst someone who was trying hard to give the maximum amount of information would no doubt have provided these as well if possible, we remind ourselves that contempt is not to be found proved unless the order is unambiguous. We do not think that a tax return unambiguously falls within the order. A tax return is a document prepared for the purposes of income tax and it is a consequence of the financial position of the company. We do not think that it unambiguously falls within paragraphs (a) to (d) or that it unambiguously must be produced in order to show the financial position of the company. In any event, the Respondents have produced the tax assessments showing nil profit and it can therefore be taken that the returns would show likewise. We know that the returns would not have annexed any accounts of Admatch because of the exchange of correspondence between the Comptroller and Mr Weston referred to earlier (see paragraph 23(iii)). (iv) Information concerning other group companies

- Advocate Sinel protested that the Respondents had not disclosed any book-keeping accounts or bank statements of any of Mr Weston's companies to show the corresponding receipt or payment of monies by such companies, so as to support the claimed payments into or out of Admatch's bank accounts. In our judgment, by no stretch of the imagination can the August order be taken to require the production of records belonging to other companies owned by

Mr Weston. (v) Enquiries of third parties - With reference to the concluding section of the August order, Advocate Sinel contended that Mr and Mrs Weston had not made sufficient enquires of third parties to obtain documents falling within the terms of the order. We do not find this to be the case. In relation to tax matters, we have already held that tax returns did not fall within the order and accordingly there was no obligation on Mr and Mrs Weston to obtain these from Toole or from the Comptroller. Next, Advocate Sinel suggested that Mr Weston should have made enquiries of Cope Industrial Holdings Limited (one of his associated companies) in connection with the payment of £20,000 from Mr Weston's personal account to Cope on 17th October, 2005. We do not agree. We do not see how a payment from a personal account of Mr Weston to another company can be said to fall within the category of documents which had to be disclosed under the August order. Advocate Sinel also submitted that further enquiries should be made of Bartfields and Ford and Warren to justify the amounts shown as outstanding to them as creditors in the November affidavit. We do not agree. The basis upon which they were claimed as creditors was described in the affidavits. Although someone trying to be as helpful as possible might have taken steps to obtain invoices, we are not satisfied that Mr and Mrs Weston are in breach of the order by not approaching Bartfields and Ford and Warren for further information. Finally, Advocate Sinel argued that Admatch should have disclosed the agreement with Barclays Merchant Services ("BMS") concerning the provision of credit card facilities and that, if Admatch was not in possession of such an agreement, it should have obtained a copy from BMS. Again, we do not see that this was unambiguously necessary in order to comply with the order. (vi) Provision of false or misleading information

- Advocate Sinel devoted considerable energy to seeking to show that Mr and Mrs Weston had made inconsistent statements about Admatch's financial position and the destination of the £190,400 on previous occasions. He therefore invited us to draw the inference that what was now being put forward was false and misleading. In our judgment, having listened to the cross-examination, we have to say that Leeds has come nowhere near establishing to the relevant standard that Mr or Mrs Weston are now lying in what they have said to the Court on this occasion or are knowingly putting forward false or misleading documents. Leeds will no doubt be able to use any alleged inconsistencies during the course of the on-going proceedings in England where Mr Weston personally is being sued by Leeds in respect of the missing £190,400. But that is quite different from inviting this Court to find beyond reasonable doubt that the information which has been supplied pursuant to the August order is false or misleading. In that respect, one specific point made by Advocate Sinel was that the list of creditors in the November affidavit is unlikely to withstand scrutiny. However, the affidavits make it clear that, for example, in relation to Ford and Warren and Bartfield, the amounts claimed to be due are estimates by Mr and Mrs Weston. Furthermore the basis of the substantial claim from St Helier Investments Limited with supporting invoices for the provision of the services of Mr and Mrs Weston in connection with this litigation is clearly stated and indeed were the subject of comment by the Royal Court and the Court of Appeal in the security for costs application (

[2008] JLR 287 at paragraphs 38 - 47 and

[2009] JLR 186 at paragraphs 6 and 29). Whether, should it become necessary, it will be found that St Helier (an associate company of Mr Weston) is in fact owed over £400,000 for the provision of such services is open to question. But Mr and Mrs Weston assert that that is Admatch's position and the Court cannot possibly hold on the basis of the evidence before it that it is satisfied beyond reasonable doubt that this is a deliberately false statement on their part. Summary 56. For the reasons we have given, we find that Admatch and Mr and Mrs Weston were in contempt of court by redacting the bank statements as produced in the November and March affidavits and by failing to disclose related correspondence. However, that contempt was purged by production of the June affidavits. They were also late in filing their affidavits as described at paragraph 41. Following the filing and serving of the June affidavits, there was no continuing breach of the August or March orders save in the very minor respect of the failure to produce the cheque stubs. We propose to order that they be disclosed within a specified period, upon which we shall hear the parties. 57. Following the formal issue of this judgment, we shall hear the parties on what penalty, if any, should be imposed on Mr and Mrs Weston for the contempt of court which we have found proved. We shall also hear the parties in relation to the costs of these contempt proceedings and different aspects thereof, bearing in mind our finding that the breaches we have described existed to June 2012 but that thereafter there was (apart from the minor aspect of the cheque stubs) no continuing breach. Authorities Leeds-v-Admatch

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[2009] JRC 023 . Borrie & Lowe; the Law of Contempt (3rd edition). Taylor-v-Chief Officer of States of Jersey Police

[2004] JLR 494 . Skinner-v-Le Main

[1990] JLR N13B. Iberian Trust Limited-v-Founders Trust and Investment Co Limited [1932] 2 KB 87. Halsburys Laws of England Volume 9(1) reissue. Re Bramblevale Limited [1970] Ch 128. Companies (Jersey) Law 1991. Bankruptcy (Désastre) (Jersey) Law 1990. Leeds Utd-v-Admatch

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