

JERSEY / JUDGMENT

Nautech Services Limited -v- CSS Limited and Ors [2014] JRC 159 (26 August 2014)

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judgment

the commissioner: 1. The representor ("Nautech") claims that the respondents are in contempt of an interim injunction imposed by the Court on 7 th May, 2013. The hearing took place over five days following which our decision was reserved. Our finding is that the fourth respondent, Mr Christopher Inns, did breach the interim injunction and that the first respondent ("CSS") is vicariously liable for those breaches. 2. Nautech was incorporated in Jersey in 1992 and is engaged in the business of providing maritime and seismic workers including captains, navigation officers, engineers, electronics officers and specialist personnel who have backgrounds in geophysics and the use of seismic apparatus on board ships. All personnel have to have internationally recognised qualifications and full safety certifications, which Nautech verifies independently. Over the years it has built up an extensive database of personnel (including CVs) from which to service the requirements of its clients. 3. Mr Peter Harrison is the sole director and beneficial owner of Nautech which, until the events which we will describe took place, employed Mr Inns as the operations manager, the second respondent, Mr Ryan Dunning, as an operations supervisor and the third respondent, Mr Stephen Coleman as a recruitment consultant. Both Mr Harrison and Mr Inns are offshore geophysical electronic engineers and had worked together on vessels in the past. Mr Harrison explained that responsibility for Nautech's business was essentially divided between the two of them with Mr Harrison being responsible for client relations and marketing (which entailed extensive time away from the office) and with Mr Inns being responsible for the office in Jersey, the provision of personnel to clients, the IT systems and staff. It was clear that Mr Inns played a key role. 4. It is Nautech's case that Mr Inns, Mr Dunning and Mr Coleman conspired with the fifth respondent, Mr Kevin Gollop, and others to establish CSS in competition with Nautech and to extract a large quantity of information which was confidential to Nautech and subject to its copyright; and this as a springboard for the new business of CSS. Mr Gollop is the managing director and beneficial owner of CSS. 5. CSS was incorporated on 25 th February, 2013. Mr Dunning and Mr Coleman resigned from Nautech on 29 th March, 2013. That set off a train of enquiry on the part of Mr Harrison, which led to Nautech issuing proceedings by way of an Order of Justice dated 11 th April, 2013, and obtaining ex parte an Anton Piller order and other interim relief. The Order of Justice was amended on the 12 th April, 2013, for reasons which are not relevant to this judgment. Pursuant to the Anton Piller

order, computer equipment was removed from CSS, Mr Dunning, Mr Coleman and Mr Gollop, who were defendants to the proceedings. Mr Inns admitted in evidence that he had lied to Mr Harrison about his involvement in CSS but in any event his employment was suspended on the 8th April, 2013, shortly before the proceedings were issued. He was also made a defendant to the proceedings but no computer equipment was seized from him. On 28th May, 2013, he was dismissed as an employee. He subsequently worked for CSS but as an agent rather than an employee. 6. The respondents applied successfully to have the Anton Piller order lifted for the reasons set out in the judgment of Bailhache, Deputy Bailiff, on 13th May, 2013, *Nautech Services Limited-v-CSS Limited*

[2013] JRC 089 . Both sides came in for criticism in that judgment, the Court finding (at paragraph 64) that a substantial purpose of the Anton Piller order was to strangle CSS at birth and to prevent it from starting up business as a competitor at all. At the same time, it was also clear to the Court for interlocutory purposes (from the evidence it had seen and from admissions made on the respondents' behalf) that material had been copied from the database of Nautech and used inter alia to effect a mail-shot to potential contractors. The result was that although there had only been reasonable grounds for suspicion that copying was taking place at the time that the application for the Anton Piller order was made, falling short of a strong *prima facie* case, the subsequent events showed that the reasonable suspicion was in fact well founded, at least in part. 7. The Deputy Bailiff summarised the position at paragraphs 92 and 93 as follows:- "92 In this case, we are satisfied that although the Anton Piller orders in principle ought to be discharged for the reasons which we have given, which would normally mean that [Nautech] should not profit from orders improperly obtained, [the respondents'] conduct also leaves much to be desired. Accordingly, any interim orders from now on should have the dual objectives of enabling [Nautech] to use the material which has been obtained for the purposes of providing its case and secondly should not prevent [the respondents] from taking steps legitimately to run their business. The corollary of the last point is that [Nautech] should be prevented from maintaining orders which are intended to restrain competition as opposed to protecting its legitimate rights. 93. One of the difficulties that this case presents is that the information on [Nautech's] database apparently includes data, including probably some items of sensitive personal data, which can hardly be said to belong in any absolute sense to [Nautech]. What [Nautech] is *prima facie* entitled to assert is that the way in which this information is organised on its database or computer is confidential information. We think that [Nautech] is also *prima facie* entitled to assert that information as to the terms of employment of the various employees by [Nautech] over the years amounts to confidential information or trade secrets of [Nautech], as is of course information about the client lists of [Nautech]. If [the respondents] have in their heads details of persons who might be approached as potential employees of the first [respondent], or clients who could be asked to place their business with the first [respondent], there is no reason, now that the second to fourth [respondents] are no longer employed by [Nautech], why they should not approach such persons or clients.

Similarly, if anyone approaches the first [respondent] as a result of conference flyers, web site or other trade advertising or personal information as to the start of its business, there is no reason why such details cannot be entered on the first [respondent's] database. We reject the view that on the material in this case [Nautech] is entitled to a springboard injunction which prevents the [respondents] from doing business. The fourth [respondent] has been in this business for many years. The second and third [respondents] have been in the business for some years. The first [respondent] appears to be owned by persons as yet unidentified who also have experience in the marine field. We think that the new business must not, as is said in the authorities, be strangled at birth." 8. The original interim injunction had been in these terms:- "59. The [respondents] and each of them must not infringe Nautech's copyright in the database or make further use of Nautech's confidential information and/or trade secrets or any part thereof for any purpose including offering any situations vacant to engineers, officers or crew or otherwise exploiting the said confidential information of Nautech or any part thereof." Following it would seem the difficulty of the database including data which could not be said to belong in any absolute sense to Nautech, the interim injunction was amended by the Court on the 7th May, 2013, to read as follows:- "...each of the [respondents] is prohibited from infringing the [Nautech's] copyright in any of the [Nautech's] confidential information and/or trade secrets or any part thereof for any purpose including, without prejudice to the generality of the foregoing, the exploitation of that information for the purposes of offering any situations vacant to engineers, officers or crew; 9. Despite the Court's view that Nautech was not entitled to a springboard injunction preventing CSS from doing business, it applied unsuccessfully on 3rd June, 2013, for a springboard injunction preventing the respondents from benefiting from the head-start it was alleged they had wrongfully obtained and this by restraining them from operating any website offering maritime services and seismic services or the recruitment of maritime personnel, seismic personnel and otherwise offering recruitment services until trial. In giving the Court's reasons on 7th July, 2013, Nautech Services Limited-v-CSS Limited

[2013] JRC 154 Bailhache, Deputy Bailiff said this:- "Finally, the injunctions at paragraph 96 of the Court's judgment of 15th May provide protection to [Nautech] which holds a fair balance between the need to ensure that the [respondents] do not use wrongly obtained information and [Nautech] does not unfairly inhibit competition. We are very conscious that there were and are no restrictive covenants inhibiting the second, third and fourth [respondents] from joining a competitor. We think that it is the loss of the engine room of those employees rather than access to [Nautech's] database which causes the greatest harm to [Nautech's] business, and there is no contractual or other reason which prevents the second, third and fourth [respondents] operating in competition." 10. Nautech brought its representation alleging contempt of the interim injunction on 3rd April, 2014. In essence, it alleges that the respondents had breached the interim injunction by making contact with a number of specified contractors/clients/suppliers using information that was confidential to Nautech and subject to its copyright. Construction of the interim

injunction 11. The general approach to orders of the Court was confirmed by the Court of Appeal in *Matthews v Matthews*

[2001] JLR 671 where Tugendhat JA referred at paragraph 41 to the following observations of Munby J in *Harris v Harris*

[2001] 3 FCR at 227:- "... It is an elementary principle of justice and fairness that no order will be enforced by committal unless it is expressed in clear, certain and unambiguous language. So far as this is possible, the person affected should know with complete precision what it is that he is required to do or abstain from doing. The authorities setting out this sometimes overlooked principle are legion. ... A related principle is that an order should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation...." 12. It needs to be borne in mind, however, that in England interim orders are often granted without the benefit of the claimant's pleaded case and in that sense are free standing. In this jurisdiction, an interim injunction forms part of the Order of Justice and whilst it must be expressed in clear, certain and unambiguous language, it may be necessary to interpret the same in the context of the Order of Justice particularly where, as here, words or expressions have been defined in the body of the Order of Justice. 13. Paragraph 2 of the amended Order of Justice defines what was meant by "the database":- "2. Since its incorporation in 1992, Nautech's business has been dependent upon the creation and maintenance of a suite of bespoke computer programmes listed in Schedule F hereto including databases containing relevant employment details of engineers, officers and crew currently under contracts of employment with Nautech or available to accept positions under contract with Nautech. The databases allow selected staff to search and manage maritime services personnel who may be available to accept positions on ships. The databases include personnel employment status, qualifications and other personal information for over 1,000 qualified maritime personnel built up over 20 years (hereinafter collectively called 'the database')." Schedule F is in the following terms:- The Confidential Information. Nautech's Maritime Personnel Database (Nautech Email Public Folder) Nautech's Seismic Personnel Database (Nautech Email Public Folder) Nautech's Survey Personnel Database (Nautech Email Public Folder) Nautech's Remotely Operated Vehicle and Diving Personnel Database (Nautech Email Public Folder) Nautech's Documents Folder containing copies of signed WesternGeco maritime personnel contracts in pdf format. Nautech's Documents Folder containing copies of signed WesternGeco seismic personnel contracts in pdf format. Nautech's Central Contacts Database (Nautech Email Public Folder) Nautech's Shared Maritime Job sheet (Nautech Spread Sheet) Nautech's Shared Seismic Job Sheet (Nautech Spread Sheet) Nautech's Merged Shared Master Job Sheet for Maritime and Seismic Personnel (Nautech Spread Sheet) together "the Database" 14. It is not helpful that Schedule F, which comes at the very end of the Order of Justice and after the interim injunction, also contains a definition of database but it is clear the expression "the database" for the purposes of the interim injunction means a number of databases located within the computer programmes listed in Schedule F. 15. Under the heading " Misuse of

confidential information and trade secrets ", paragraph 15 provides:- "15 The information contained in the database is trade secrets of Nautech. The database contains details of the contracts of employment for engineers, officers and crew and those contracts are between Nautech and the individual maritime personnel." 16. Under the heading "INFRINGEMENT OF COPYRIGHT", paragraph 17 provides:- "17. The database comprises a literary work in which copyright subsists. All such copyrights are owned by Nautech." 17. In its original form, the interim injunction can for the purposes of this judgment be reduced to the following:- "The [respondents] must not infringe Nautech's copyright in the database or make further use of Nautech's confidential information and/or trade secrets ...". 18. The term "database" means the databases located in the computer programmes listed in Schedule F and pursuant to paragraph 15, the confidential information was that contained within those databases. By the use of the word "or" the respondents were prohibited from infringing Nautech's copyright in the database (as defined) or from further using Nautech's confidential information (as contained within those databases) whether or not the latter were also subject to copyright. 19. When the interim injunction was amended by the Court on 7 th May, 2013, the second limb was removed, so that now the respondents were prohibited from:- "infringing [Nautech's] copyright in any of [Nautech's] confidential information and/or trade secrets or any part thereof for any purpose ..." 20. Nautech's primary case on construction is that the word "in" means "in and/or misusing" thus reinstating the two limbs of the order in its original form. Advocate Moran for Nautech sought support for the judgment of the Deputy Bailiff giving directions on 2 nd May, 2014, (JRC 102E):- "30. In giving these directions I would like to emphasise that I see the contempt application as currently falling within quite a narrow compass. The real question is whether [Nautech] is able to establish that the solicitation of these named clients by one or more of the [respondents] results from the misuse of [Nautech's] confidential data and/or copyright . As at present advised, I see this issue as separate from the issues which will be determined at trial but I am also conscious that a speedy resolution of this allegation may assist, one way or another, in a mediated settlement." (our emphasis) 21. Advocate Moran went on to submit that the word "database" had been deleted from the original order because it became otiose in the light of paragraph 28 of the amended Order of Justice which under the heading of " Conspiracy " provided:- "28. In the premises, Mr Inns, Mr Dunning, Mr Coleman and Mr Gollop conspired together with the sole purpose of injuring Nautech's business, to misuse Nautech's confidential information, copy the database and other proprietary information of Nautech... " (our emphasis) 22. On the strength of this, Nautech's primary construction therefore prohibited the respondents from (a) infringing (i.e. further copying) Nautech's copyright in any literary works of Nautech; and, (b) the exploitation (i.e. misuse) of the confidential information in any of the items 1 - 10 of Schedule F as defined therein by the words outside the brackets and/or the trade secrets of Nautech for the purpose of offering any situations vacant to engineers officers and crew. 23. Nautech's alternative construction would limit sub-paragraph (a) above by prohibiting the respondents from infringing (i.e. further copying) Nautech's copyright in any literary works of Nautech contained in any of

the items 1 - 10 of Schedule F as defined by the words outside the brackets. Sub-paragraph

- (b) would remain the same. 24. Advocate Blakeley argued that reference to "other proprietary information" in paragraph 28 was not a sufficient basis to allow Nautech to extend its copyright claims beyond the works identified in Schedule F. Paragraph 28 does not identify what "information" is said to be proprietary, does not state what the nature of intellectual property right resides therein and in any event, copyright does not protect information itself
- it subsists in works rather than information. 25. We agree with his submissions. The Order of Justice is expressly premised on the basis of databases located within the computer programmes listed in Schedule F and the use of the phrase "other proprietary information" in that part of the Order of Justice setting out the claim in conspiracy cannot drive a coach and horses through the claim in copyright, so that it extends to any literary works of Nautech wherever held. 26. Furthermore, we accept Advocate Blakeley's submission that we must construe the interim injunction as it is currently worded. We cannot write back in a limb that has been removed for whatever reason. Accordingly we find that Nautech has to show firstly that its confidential information contained within those databases has been used and secondly that such information is subject to Nautech's copyright. 27. A further issue arose as to the Court's approach in contempt proceedings to an interim injunction worded in this way, in that it begs one of the issues that will need to be determined at the trial, namely, whether copyright subsists in the confidential information which Nautech alleges has been used. 28. In *The Staver Company Inc v Digitext Display Ltd*
- [1985] FSR 512, the defendant had been restrained by way of interim injunction from "infringing the plaintiffs' copyright in six specified drawings". The defendant re-designed certain of its units and applied for a declaration that these fell outside the scope of the injunction. Quoting from the judgment of Scott J at page 518:- "The purpose of an interlocutory injunction in a case such as the present is to regulate the position of the parties pending trial while avoiding a decision on issues which can only be resolved at trial. If an interlocutory order cannot be enforced without the plaintiff being required to prove the triable issue, this purpose will not have been achieved by the order. Mr Pumfrey has based his submissions on the particular form of the injunction granted by the order. If the order is read literally, Mr Pumfrey's submissions are in my view correct. It would not be a breach of an order in this form to sell an article that did not in law infringe copyright to which the plaintiff was entitled. Mr Thorley submitted that the order, on its true construction, required it to be assumed pending trial first, that copyright subsisted, secondly that the plaintiff was entitled to that copyright and, thirdly, that the defendant's 9 inch and 12 inch units were infringing copies. He supported his submission by referring to *Higinbotham v Burne*
- [1939] 56 RPC 399, where the Court of appeal held that in construing a contractual undertaking not to infringe a patent, the validity of the patent had to be assumed. This approach to construction of a contract is not in my judgment suitable for construction of a court order, breach of which represents a contempt of court and may give rise to committal

proceedings. The order must be taken to mean what it says. This order enjoins the defendant from infringing copyright. Mr Pumfrey is, in my view, right in submitting that an order in this form cannot be broken unless the plaintiff is entitled to the copyright as claimed and unless the articles sold are in fact and in law infringing copies." 29. He went on to say this at page 521:- "The discussion in this case has satisfied me that there are grave objections in principle to the granting of interlocutory injunctions in a form that appears to anticipate the plaintiff's success at trial. In my view, interlocutory injunctions ought, in cases like the present, and perhaps in many other types of case, to identify the prohibited acts in a manner which is not dependent on the resolution of factual triable issues." 30. Scott J went on to amend the interim injunction to delete the reference to copyright so as to apply to the manufacture and sale by the defendant of certain specified units. 31. In *Spectra Vest Inv v Aperknit Ltd*

[1988] FSR 161, Millett J took a different approach to the granting of interim injunctions that referred to copyright. That case involved an infringement of the plaintiffs' copyright in a design known as "Puss-N-Boots" which depicted cats sitting in a pair of boots in a variety of attitudes and which could be printed on to garments. The Court had *ex parte* ordered the defendants not to infringe the plaintiffs' copyright in the design and that order had been replaced by an undertaking on the part of the defendants to the same effect. The defendants then went on to sell garments printed with a similar design but having dogs associated with boots. The plaintiffs alleged breach of the undertaking, but the defendants argued that they must first prove the subsistence and ownership of that copyright. Millett J said this at page 169:- "Mrs Giret's first submission was that, in order to show breach of the order, the plaintiffs would have to prove (in accordance with a criminal standard of proof) the very facts that would have to be established at the trial, including the subsistence and ownership of the copyright in the "Puss-N-Boots" design. This submission was made in reliance on the decision of Scott J in *Staver Co. Inc. v Digitext Display Ltd* [1985] FSR 512. With respect to Scott J, I cannot accept this proposition. The purpose of an interlocutory injunction, as Scott J pointed out, is to regulate the position of the parties pending trial while avoiding the necessity of deciding issues which can be properly resolved only at the trial. If an interlocutory order cannot be enforced without the plaintiff being required to prove the triable issue, in advance of the trial, without the benefit of discovery, and to a higher standard of proof than will be required at the trial, the whole purpose of the order will be frustrated. In my judgment, where an interlocutory order restrains a defendant until trial from 'infringing the plaintiff's copyright', this means 'the copyright which the plaintiff claims to have', and requires the subsistence and ownership of the copyright to be assumed. It cannot mean 'the copyright which the plaintiff has', for this has not yet been decided; nor can it sensibly mean 'such copyright if any as the plaintiff is hereafter found to have', which would not only deprive the injunction of practical utility but also deny the defendant any remedy under the cross-undertaking in damages. In my judgment, the undertakings in the present case, which were in the standard form in a copyright action, were to refrain from doing any acts which, assuming the plaintiffs to own the copyright in

the "Puss-N-Boots" design which they claimed would infringe it. This construction gives the words of the undertakings their natural meaning in the context, enables them to fulfil their purpose effectively, and is in accordance with the decision of the Court of Appeal in *Heginbotham Bros Ltd v Burne* (1939) 56 RPC 399. Scott J distinguished that case on the ground that it was concerned with contractual undertakings but, with respect, I do not understand how the same words in an undertaking can bear one meaning when addressed to one person and another meaning when addressed to another. In the present case, however, the point is academic, since the necessary evidence was, fortuitously, extracted from the plaintiffs' witnesses in cross-examination". Millet J went on to say that where the plaintiff puts a defendant to the test in a contempt action it is no longer appropriate to assume the subsistence, ownership and infringement of the intellectual property right:- "The next question is whether, by making up and distributing for sale after 11 February 1987, sweatshirts bearing the "Dog-N-Boots" design, the defendants have broken their undertakings to the court. That depends on whether the "Dog-N-Boots" design is or includes a reproduction of the whole or a substantial part of the "Puss-N-Boots" design. Mrs Giret invited me not to decide this question, on the ground that by doing so I would decide the very question to be determined at the trial. But the question of contempt must be decided even if it involves deciding the issue in the action: *Chanel Ltd. v FGM Cosmetics*

- [1981] FSR 471. There is no escape. If a defendant is accused of having broken an order of the court, the court is bound to decide whether he has done so or not." 32. Copinger and Skone James on Copyright, 16 th edition at paragraph 21-149 makes the point, citing these two decisions, that it is desirable that an interim injunction is not expressed in terms such as the "claimant's copyright", since this means that in order to succeed in an application to commit the defendant for contempt, the claimant is obliged to prove the very things which are in issue in the action. 33. It seems to us that much will depend on the facts of the particular case. In *Staver* , the Court was concerned with the manufacture of display units and it was possible to vary the interim injunction in a way which avoided reference to copyright. The position here is different in that we are concerned with large quantities of information stored on databases in circumstances where Nautech does not know how much has been copied. Whilst it is desirable to avoid interim injunctions which are expressed in terms such as the "claimants' copyright", that is the form of interim injunction imposed here, and as in *Spectra Vest* , there is no escaping our obligation. The respondents are accused of having breached the interim injunction, and we are bound to decide whether or not they have done so and to do that, we will have to decide whether Nautech's copyright has been infringed, at least to the extent alleged in the representation. Contempt of Court 34. The law in relation to the burden and standard of proof, intention and the position of directors of a corporate entity are usefully summarised in the judgment of Sir Michael Birt, Bailiff, in *Leeds v Admatch*

- [2013] JRC 058 at paragraphs 31-36:- "31. There was no dispute between the parties as to the applicable law. As it is put in *Borrie & Lowe*; the Law of Contempt (3rd edition) ("*Borrie*") at 555:- 'The administration of justice can obviously only be effective if it has the means to enforce court judgments or orders and it is in part upon the law of contempt that such enforcement depends. It is a contempt to disobey a judgment or order either to do a specified act within a specified time or to abstain from doing a specified act ... Further, it is a contempt not to comply with an order for interrogatories, or discovery, or inspection of documents'. 32. A breach of an order does not have to have been done intentionally in order to amount to a contempt. This was decided in the jurisdiction in *Taylor v Chief Officer of States of Jersey Police*
- [2004] JLR 494 where the Court said this:- '30.... We are in no doubt that Jersey law should adopt the same approach as English law. It is of the first importance that orders of the court should be obeyed. This is not for the purpose of upholding the court's dignity. The court makes orders because it believes them to be in the interests of justice. If parties are to be able to rely upon the court resolving disputes between them, they must have confidence that orders will be enforced. If it is open to a party to argue that although he has failed to comply with the court's order he did not mean to breach the order, there would be endless scope for argument and for parties to try and get out of their obligation to obey the order. ... Far better for there to be an absolute rule that orders must be obeyed with mitigation being available as necessary where the breach was not deliberate. The policy considerations which have led the English courts to adopt the approach which they have are equally applicable in Jersey. 31. In summary, the question of whether or not a contempt by reason of a breach of a court order has been committed involves an essentially objective test requiring the determination of whether or not the alleged contemnor has acted in a manner constituting a breach of the order. If he has then a contempt will be established regardless of whether or not he acted contumaciously or with the intention of breaking the order, although whether any, and if so what, punishment ought to be imposed on him will or may be materially dependent on considerations of this sort.' 33. Because contempt of Court may attract punishment such as imprisonment or a fine, it must be proved to the criminal standard, i.e. beyond reasonable doubt. *Skinner v Le Main*
- [1990] JLR N13B. 34. Furthermore, because contempt involves possible punishment, a person is not to be held in contempt for breaching a court order unless that order is unambiguous as to what is required of him. See *Iberian Trust Limited v Founders Trust and Investment Co Limited*
- [1932] 2 KB 87 at 95 and the passage in *Borrie* at 560-561. 35. This Court has not previously had to consider the position of directors of a corporate entity which is in breach of an order. The position in England is described in *Halsburys Laws of England* Volume 9(1) reissue, Civil Contempt, at para 458 as follows: 'A judgment or order against a corporate body may be enforced by an order of committal against the directors or other officers of the

corporation. A director or other officer who is aware of the terms of such a judgment or order (or of an undertaking given by the corporation) may be committed for contempt of court if he wilfully fails to take adequate and continuing steps to ensure compliance, notwithstanding that he did not actively participate in the breach. ...' 36. Borrie puts the position as follows at page 571:- 'In the light of these cases the current position seems to be that no action can be taken against a director or officer personally for breach of an order against a company, unless (i) the director knows of the order, and (ii) he either actively assisted in the breach or wilfully failed to take steps to ensure that the order was obeyed.'" 35. Both counsel agreed that whilst the alleged breaches by the respondents had to be proved by Nautech to the criminal standard, namely whether they had used Nautech's information, the issues of whether that information was confidential and subject to Nautech's copyright had to be proved by Nautech to the civil standard. Evidence 36. At the hearing, the Court received extensive affidavit evidence and heard evidence from Mr Harrison, Mr Inns, Mr Dunning, Mr Coleman and Mr Gollop. It also heard evidence from Nautech's expert, Mr Adrien Merhet and from the respondents' experts, Selena Oldham of CCL Forensics and Jonathan Lea of Pivotal Tribes. The Court received the benefit of oral submissions from counsel (who were assisted by English counsel) as well as extensive written open and closing submissions. The parties and counsel will, however, understand the Court wishing to limit itself in this judgment to the matters it regards as necessary to the decisions it has reached. 37. On the third day of the hearing and having heard two of the witnesses for the respondents, Advocate Blakeley applied to the Court to abridge time for the service and hearing of a summons seeking to strike out Nautech's representation on the grounds that it disclosed no reasonable cause of action. The Commissioner declined the application. Time would have had to be given out of a very tight timetable to enable it to be heard and a decision given. If unsuccessful there would have been insufficient time for the contempt allegations to be completed, giving rise to the case being adjourned part heard. At that very late stage of the process, case management considerations dictated that the hearing of the contempt allegations be completed without such an interruption. As can be seen from the decision we have reached, an application to strike out would not have been successful in any event. Alleged breaches 38. We have approached the matter by taking first the factual allegations, which in essence were that emails had been sent to prospective contractors/clients/suppliers using information that had been derived from Nautech. That had to be proved to the criminal standard. To the extent that we found this proved, we would then go on to consider whether this information was firstly confidential and secondly subject to copyright. 39. The respondents have admitted that, prior to the issuing of proceedings on the 11 th April, 2013, very substantial quantities of information were exported from the databases of Nautech:- (i) By Mr Inns, of pst files which were uploaded onto a laptop computer. Mr Merhet explained that PST stands for "Personal Storage Table" and a PST file was a type of file that allowed data to be uploaded to another file. According to his evidence the size of the mailboxes exported were approximately:- Mr Dunning, 6.7 GB Mr Coleman, 6.2 gb Mr Jamie Dollimore, 11 gb Mr Inns, 16 gb (ii) By Mr Coleman, who exported all of his

contacts, which were then used to send out emails to approximately 400 diver contacts and 200 rov (remote operating vehicle) contacts, introducing them to CSS and requesting updated CVs. (iii) By Mr Dunning, who exported Excel spread sheets essentially showing the location of crews as at March 2013. 40. Following the issuing of proceedings, a number of steps have been taken by CSS to prevent further access to that information, including:-

- (i) The creation of a new server (the old server being delivered to its lawyers), the deletion of the old database and the creation by Voyager software of a new empty database. (ii) The delivery of the laptop computer to its lawyer. (iii) Selena Oldham of CCL Forensics was instructed to investigate the laptop, the obsolete server and the current server and in her report and in evidence she confirmed that:-

- (a) The pst files in the laptop had been deleted and it contained no live pst files. She did confirm that the pst files were very large. (b) No external hard drives were attached to the laptop following the Anton Piller order. (c) No link files indicating user access to the pst files were identified following the Anton Piller order. (d) The last shutdown time of the obsolete server corroborated the testimony of the respondents that it had not been used and had been in secure storage with their lawyers. (e) There were no relevant link files. (f) In relation to the current server, CV document files of recruitment candidates which pre-dated the Anton Piller order, whilst still present within the Voyager software, were not accessible via the Voyager program. (g) The creation dates of new candidates CVs begin on 24 th May, 2013, so there is a significant time gap between the date of the Anton Piller order and the creation of new CV documents. 41. It therefore seemed that CSS had taken steps in compliance of the interim injunction to ensure that none of this information that it had been admitted had been exported prior to the issuing of proceedings could be accessed again. We were not persuaded to the criminal standard of proof, that any of this information had been used after the interim injunction had been imposed. Gmail Account 42. However, there was an earlier transaction or series of transactions which need to be addressed. An action request form from IT Consultancy (an external consultancy firm who provided IT consultancy services to Nautech) dated 1 st June, 2012, shows Mr Inns was unable to move a folder on the server and wished to have his "personal contacts transferred from his Blackberry to [his] iPhone". A note on the form states that he was shown how to export contacts from "gmail sync to CSV file" and that IT Consultants "imported CSV file to personal contacts folder on his exchange mailbox". Mr Merhet explained that CSV stood for "Common Separated Value" and a CSV file facilitated uploading data into a Gmail account. 43. Mr Inns stated in his second affidavit in these proceedings that he remembered changing his mobile telephone in or around the summer of 2012 from a Blackberry to an iPhone and needing the contacts that he had on his Blackberry to be put into the iPhone. He was assisted by Jersey Telecom, who downloaded the contacts from the Blackberry to a Jersey Telecom laptop or hard drive which was then uploaded on to his personal Gmail account and then downloaded to the iPhone. We note that this took place after he had had his first meeting with Mr Gollop on 15 th May, 2012, to discuss an investment by a Mr Jamie Deane into a possible competitor to Nautech, which came to nothing and which Mr Gollop told us was not a precursor to CSS. 44. Mr Merhet explained that Nautech did not run a single

dedicated applications database but used instead a number of Microsoft Office based applications accessed from workstations for each employee. For demonstration purposes he had exported copies of the mailboxes of each of Mr Inns, Mr Dunning and Mr Coleman (including the CSV and PST files) as they were on 10 th June, 2013, when they were "mothballed". 45. This demonstration showed the familiar layout of Outlook mailboxes with emails that had been received in the centre and on the left a series of folders to which emails could be "dragged" for filing. Some folders were default folders, created by Outlook, such as "contacts" and others could be created by the user, as Mr Inns had done for his "personal contacts". 46. The contacts in the Blackberry used by Mr Inns would be synchronised semi automatically with the default contacts on his workstation. It was not in dispute that the following series of actions took place in or around June 2012:- (i) The contacts in the Blackberry used by Mr Inns were exported to a Jersey Telecoms laptop. (ii) From there, the contacts were exported to the personal Gmail account of Mr Inns c2inns@gmail.com . (iii) From there, the contacts were exported to his new iPhone (which has now been seized by Nautech), but as a quite separate transaction and for which there would appear to be no explanation, the contacts were also exported to a CSV file and placed in a folder in his Outlook mailbox called "gmail contacts" which contains some 635 contacts. (iv) A few minutes later, a second export of his default contacts of some 1,869 contacts was made to a PST file. 47. Mr Inns had no memory of why the separate export of contacts to the CSV file and to the PST file took place and there was no evidence from Outlook mailbox that those files had since been exported. We think it unlikely that these transactions would have taken place on his workstation without his involvement and we think it likely that these steps were taken to facilitate a future export of that data. 48. The key point, however, is that Mr Inns' personal Gmail account now had the contacts which had been uploaded from his Blackberry and it was from his Gmail account that he had allegedly sent some of the emails in breach of the interim injunction. 49. Working back from the CSV file held on Mr Inns' workstation, it is clear that the contacts held within it are the same contacts that were amongst those exported to his Gmail account. They in turn came from his Blackberry, which in turn came from Mr Inns' workstation. Whilst in theory the Blackberry contacts could have been sourced from somewhere outside Nautech, we are satisfied beyond all reasonable doubt that the contacts contained on the CSV file were work contacts which originated ultimately from Mr Inns' work station. LinkedIn 50. There was a further method by which information could have been obtained from Nautech, namely through the LinkedIn account of Mr Inns which he maintained whilst employed by Nautech. 51. In her closing submissions, Advocate Moran argued that the Court should find that the copyright in LinkedIn account belonged to Nautech for a number of reasons, including:- (i) Mr Harrison asked Mr Inns to open the account - this was disputed by Mr Inns. (ii) It was part of his job description - in fact his job description refers to one of his personal responsibilities being business development through networking, including using network tools such as LinkedIn. (iii) Nautech paid for the account. (iv) The email address used by Mr Inns to administer the account was his Nautech email address. 52. We note from the LinkedIn user agreement that it is described

as a social network and online platform for professionals, the purposes of which is to connect the world's professionals to enable them to be more productive and successful. As between the user and LinkedIn, it states that the user owns the content and information provided. The agreement goes on to say that between the user and others the account belongs to the user who agrees to keep the password secure and confidential and not to allow others to use the account. It is Mr Inns' profile that is on the account and prima facie, it seems to us that the information within it belongs to him, unless there is clear evidence of an agreement with Nautech to the contrary. 53. On the evidence before us we are not persuaded that copyright in the LinkedIn account belongs to Nautech.

Furthermore, the LinkedIn account is not a database located in the computer programmes listed in Schedule F. It does not therefore come within the ambit of the Order of Justice and the interim injunctions imposed thereunder. In any event in a further communication from Advocate Moran on 7 th July, 2014, she clarified that Nautech did not allege that the LinkedIn connections or indeed the gmail contacts were copyright works of Nautech. It alleges instead that the LinkedIn connections and the gmail contacts are copies of Nautech's literary works which copies infringe Nautech's copyright in its literary works, and as the copying took place after the interim injunction was imposed, are in breach of it. 54. Like other such networks, it is accessed through an email account and Mr Inns was therefore unable to access it using his Nautech email address after 8 th April, 2013. It cannot therefore have been the source of any information for the respondents after that date. Thereafter on 23 rd May, 2013, Mr Inns started a new LinkedIn account and that becomes relevant because Mr Inns says at paragraph 48 of his second affidavit in these proceedings " I have built up my new LinkedIn account by adding people that I know well enough from memory, adding my own gmail contacts and conducting searches on LinkedIn for people who work in the relevant industry" (our emphasis). 55. If the contacts which had been exported to Mr Inns' Gmail account were copied in breach of Nautech copyright, then the further export of those contacts to his new LinkedIn account would be a further breach. Indeed, further copying of any of those contacts into the new Voyager software at CSS would again be a breach of copyright. We will return to this. The contractors 56. Advocate Moran had honed down Nautech's allegation to eleven cases where emails had been sent to persons we shall call "contractors". The issue is from where had the information in relation to each contractor, and in particular the email address, been sourced? Four sources of copyright protected literary works in data were put forward by Advocate Moran, namely the Outlook PST file, the Outlook default contacts, the Gmail account and the LinkedIn connections. We have dealt with the LinkedIn connections above. 57. The evidence of Mr Merhet was that Mr Inns was able to remotely access his Outlook mailbox from his home computer (which had not been seized through the Anton Piller order). His password was removed before the interim injunctions were imposed and he could therefore no longer remotely log into Outlook but his home computer would still hold the data derived from his Outlook mailbox but frozen in time. From this we deduce that he could have accessed the Outlook PST file or his default contacts, but there is only an inference that he might have done so. That is not enough. We were not persuaded to

the criminal standard of proof, that information from the Outlook PST file or the default contacts had been copied by any of the respondents after the interim injunction was imposed. 58. We were therefore left with those emails which in the Answer filed on his behalf Mr Inns admitted that the source of the email address he had used was his Gmail account. Those were as follows:- (i) Glanville Roberts - email dated 14 th June, 2013. (ii) Murray Dickinson - email of 7 th November, 2013. (iii) Mariusz Gronkowski - email of 19 th June, 2013. (iv) Kim Magness - email of 27 th September, 2013. (v) Chris Jones - email of 3 rd January, 2014. 59. The names and contact details of each of the above were contained in the CSV file (a print out of which we were supplied with by Advocate Moran) and therefore for the reasons set out in paragraph 49 above were sourced ultimately from Mr Inns' workstation. In evidence Mr Inns was unable to give any other explanation as to how those contact details got onto his Gmail account. Furthermore we were satisfied that they were work as opposed to personal contacts. We would make the comment in relation to Glanville Roberts, that although the documentation shows him initiating contact with Mr Inns via LinkedIn, no email address was provided by him and it was Mr Inns who then contacted him by email using an address he admits in his answer was from his Gmail account. 60. We can therefore say that in relation to these limited number of emails we are satisfied to the criminal standard that Mr Inns used information that had derived from his workstation at Nautech. 61. We accept that the dates of these emails do not come within the date ranges set out in Nautech's Representation, save arguably in relation to Kim Magness and Chris Jones. However a clearer picture has emerged as the case has progressed and as the Court has its own interest in ensuring that its orders are obeyed, we would amend the Representation if the point were to be taken. We see no injustice to the respondents arising out of that. Confidential information 62. Having found that Mr Inns used information which was derived from his workstation at Nautech for the purpose of sending the five emails specified above, we now turn to the question of whether that information was Nautech's confidential information. 63. In *Pell Frischmann v Bow Valley and Ors*

[2007] JRC 105A , the Court considered what amounted to confidential information in relation to facts that were quite different from those before us. The case was concerned about the circumstances in which the National Iranian Oil Company came to award the contract for the development of an offshore oilfield in Iran to the second and third defendants. The plaintiff alleged that the companies contrived to " steal " the contract from them and claimed an account of profits/damages/compensation. The defendants denied wrongdoing and claimed that in any event the contract was disastrous so no loss had been incurred. At paragraph 365, Page, Commissioner following English law said this:- "365. Pell Frischmann's complaint is that Bow Valley and Bakrie misused information which, as between them and Pell Frischmann, was confidential. The complaint relates to three main categories of information. In each case the misuse is said to give rise to a right, on the part of Pell Frischmann, to damages for breach of confidence. The three elements normally required for success on such a claim are that the information is confidential in nature;

that it must have been communicated in circumstances importing an obligation of confidence; and that there has been an unauthorised use of such information to the detriment of the person communicating it (Pell Frischmann in the present case); see the judgment of Le Cras, Lieutenant Bailiff, in *Benest v Langlois*

- (1993) JLR 117 at 145-147 adopting the judgment of Megarry J. in the English case of *Coco v A N Clark (Engineers)*
- [1969] RPC 41 at 47,48." 64. At paragraph 369, Page, Commissioner went on to say:- "As Mr Speck pointed out, within a commercial context, information that is quite prosaic in nature may, in the right circumstances, be treated by the law as "confidential" in the sense that it will be recognised as meriting protection from misuse. Instances illustrating this include information regarding the price negotiated for the purchase of a business (*Murray v Yorkshire Fund Managers Ltd*
- [1998] 1 WLR 951 at 954H and 956B); profit margins (*Indata Equipment Supplies Ltd v ACL Limited*
- [1998] FSR 248 at 258, 262 and *Thomas Marshall Ltd v Guinle*
- [1979] 1 Ch 227at 248H-249A); the requirements of actual and potential clients or customers (*Indata* at 263 and *Thomas Marshall* at 249A); details of negotiations (*Thomas Marshall* at 249A) and the identities and details of suppliers and their contacts (*Saltman Engineering Co Ltd v Campbell Engineering Co Ltd*
- (1948) 65 RPC 203; *Thomas Marshall* at 248H)." 65. In *Thomas Marshall* , the managing director of a company, who had purported to resign, traded on his own account on behalf of two companies in competition with his employer, buying from the employer's suppliers and selling to the employer's customers, and this in breach of his service agreement not to disclose or use confidential information relating to the affairs, customers or trade secrets of the employer. Sir Robert Megarry V.-C. considered the meaning of " confidential information " said at page 247:- "It is far from easy to state in general terms what is confidential information or a trade secret. Certain authorities were cited, but they did not carry matters very far. Plainly "something which is public property and public knowledge" is not confidential: see *Saltman Engineering Co. Ltd v Campbell Engineering Co Ltd*
- (1948) 65 RPC 203, 215 per Lord Greene MR. On the other hand, "something that has been constructed solely from materials in the public domain may possess the necessary quality of confidentiality: for something new and confidential may have been brought into being by the application of the skill and ingenuity of the human brain. Novelty depends on the thing itself, and not upon the quality of its constituent parts": *Coco v A N Clark (Engineers) Ltd* [1959][RPC 41, 47, a case that was not cited, but in part draws on the *Saltman* case, which was costs and prices which are not generally known may well constitute trade secrets or confidential information: see *Herbert Morris Ltd v Saxelby*

[1916] 1 AC 688, 705, referring to prices. If one turns from the authorities and looks at the matter as a question of principle, I think (and I say this very tentatively, because the principle has not been argued out) that four elements may be discerned which may be of some assistance in identifying confidential information or trade secrets which the court will protect. I speak of such information or secrets only in an industrial or trade setting. First, I think that the information must be information the release of which the owner believes would be injurious to him or of advantage to his rivals or others. Second, I think the owner must believe that the information is confidential or secret, i.e. that it is not already in the public domain. It may be that some or all of his rivals already have the information: but as long as the owner believes it to be confidential I think he is entitled to try and protect it. Third, I think that the owner's belief under the two previous heads must be reasonable. Fourth, I think that the information must be judged in the light of the usage and practices of the particular industry or trade concerned. It may be that information which does not satisfy all these requirements may be entitled to protection as confidential information or trade secrets: but I think that any information which does satisfy them must be of a type which is entitled to protection." 66. Advocate Blakeley argued that the names and email addresses of contractors are not confidential information. Contractors can be contacted by a variety of means, such as LinkedIn or Facebook or by advertisement in relevant journals or online job forums and they would be only too anxious to have their contact details made known to as many recruitment agencies as possible, as that is how they obtain work. However, we accept Mr Harrison's evidence that the database containing the contact details of contractors is at the heart of Nautech's business. Its ability to place specialist crew on vessels is dependent upon it having a pool of suitably qualified contractors whom it can contact and that pool is contained within its database. There is no publicly available "directory" of which we were made aware which contains that information. Nautech and its competitors compile their own "directories" which are self-evidently of value to them. Addressing the questions posed by Sir Robert Megarry V.-C. in *Thomas Marshall*- (i) Release of this information would be injurious to Nautech and of advantage to CSS. (ii) Nautech did believe that the information was confidential, i.e. that it is not already in the public domain. It may be that some of Nautech's rivals and CSS may have some of this information within their own databases but we are satisfied that Nautech believed, as indeed we think any of its competitors would believe, that such information would be confidential and entitled to protection. (iii) Nautech's belief in respect of both the above heads is in our view reasonable. (iv) We have judged this information in the light of the business which Nautech and its competitors operate. It seems to us self-evident that all of them would regard their database of contractors whom they can contact in order to supply specialist crew as being central to their business, of real value, and confidential. 67. We therefore conclude that the information used by Mr Inns was confidential information. Copyright 68. The next question we have to address is whether the use by Mr Inns of this confidential information infringed Nautech's copyright. 69. The Jersey law on copyright is contained in the Intellectual Property (Unregistered Rights)(Jersey) Law 2011 ("the 2011 Law") which replaced the Copyright Act 1911 (which had been extended to Jersey). There is

no local case law. In addition to updating the law, the 2011 Law brought Jersey into line with Directive 96/9/EC of the European Parliament and of the Council of 11 th March, 1996, on the legal protection of databases which had been incorporated into English law by the Copyright and Rights in Databases Regulations 1997/3032 which amended the Copyright, Designs and Patents Act 1988 ("the 1988 Act"). The 2011 Law mirrors that of the 1988 Act as amended. 70. Up until this time, no express reference was made in English law to databases which normally came within the description of either a table or a compilation. From 1996 in England and 2011 in Jersey a database is now a separate category of literary work in which copyright will subsist only if by reason of the selection or arrangement of its contents the database constitutes the author's own intellectual creation. The Directive also created a new sui generis right in databases if there had been a substantial investment in obtaining, verifying or presenting the contents of the database. 71. At the time that the interim injunction was imposed, Nautech did not claim the sui generis database right which is contained in Article 193 of the 2011 Law, although it has since amended its Order of Justice to make such a claim. At the time of the interim injunction, Nautech claimed copyright under Article 13 of the 2011 Law which provides:- "13 Copyright Copyright is a property right which subsists in accordance with this Part in the following descriptions of work - Original literary, dramatic, musical or artistic works;...." 72. A literary work is defined under Article 2 as:- "'literary work' means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes - (a) a table or compilation, other than a database; (b) a computer program (c) preparatory design material for a computer program; and (d) a database." 73. Article 6 defines a database as follows:- "6 "Database" (1) means a collection of independent works, data or other materials which - (a) Are arranged in a systematic or methodical way; and (b) Are individually accessible by electronic or other means. (2) For the purposes of this Part, a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database, the database constitutes the author's own intellectual creation." 74. To qualify for copyright under Article 13 therefore, a literary work has to be " original " and a database is original " if, and only if, by reason of the selection or arrangement of the contents of the database, the database constitutes the author's own intellectual creation. " 75. Copinger provides this commentary on the originality requirement for databases at paragraph 3-148:- "What constitutes a database for present purposes has already been considered. It is relevant to keep in mind that the kind of work which is the subject matter of protection is different from that protected by the sui generis database right: the purpose of copyright harmonised by the Directive is to provide encouragement for creative endeavour, and differs in this respect from the sui generis right, which is designed to encourage investment in particular types of data gathering. As regards the kind of work of selection or arrangement of the contents of the database which is relevant to the issue of originality, it is not confined to selection or arrangement performed after the data is finally created, and it thus includes selection decisions which are taken in the course of creating data, in particular as to the actual contents of the database, such work necessarily involving the choice of adopting one alternative and

rejecting others. It is then necessary to focus on the skill and labour which was actually concerned with this type of selection and arrangement and to exclude that which was not. The statement in recital 12 that as a rule the compilation of several recordings of musical performances on a CD does not fall within the scope of the Directive makes it clear that not everything which originates with the author will satisfy the Directive's originality test, the implication being that such a selection does not involve enough of the author's individual creativity. How much creativity is required is not made clear in the Directive, and will no doubt vary from case to case, but the requirement imposes a significant qualitative factor on the test, requiring some subjective contribution by the author. A collection made by sweat of the brow will therefore not satisfy the requirement, nor will computer-generated databases. Although the court will not apply a qualitative or subjective assessment (in the sense of judging whether the work is good or bad) in applying the test to the finished work, the author must have exercised judgment, taste or discretion (good, bad or indifferent) in selecting or arranging the contents of the database. Thus mere rote application of particular rules to the selection will not be enough, e.g. all poems written by someone between 1900 and 1910, whereas, it seems, a selection by someone of their 1,000 favourite poems would be. Finally, although there is no requirement to demonstrate aesthetic or qualitative criteria, there must be a quantitative baseline of originality before protection is acquired. So, in the example given, the quantity of 1,000 poems would clearly satisfy the test. In general in this respect, the hurdle is not very high". 76. If that hurdle of originality is overcome, the owner of the copyright in a database has the exclusive right under Article 30 of the 2011 Law to copy the work (*inter alia*). 77. The amended Order of Justice defines Nautech's databases as being those contained in computer programs listed in Schedule F. In terms of how those databases were arranged within those programs, the only evidence we heard was from Mr Merhet, who demonstrated the way Mr Inns, Mr Coleman and Mr Dunning would have operated their own workstations. From that demonstration we are satisfied that the requirements of Article 6(1) of the 2011 Law in relation to databases are met in that they each maintained a collection of independent works, data or other materials (names and contact details of contractors) which were arranged in a systematic or methodical way and were individually accessible by electronic means. We then have to consider in the case of Mr Inns whether pursuant to Article 6(2) the database maintained by him constitutes " the author's own intellectual creation ". 78. The Court of Justice of the European Union was asked to consider whether the " author's own creation " required more than significant labour and skill from the author and if so what in *Football DatCo Limited and others v Yahoo! UK Ltd and others*

- [2012] BUS LR 1753 . That case concerned a database of football fixtures for the English professional football leagues, a process which the judge at first instance found required several stages each involving judgment and skill. The Court answered that question at paragraphs 45 and 46 in this way:- "45 In light of the consideration above, the answer to the first question is that article 3(1) of Directive 96/9 must be interpreted as meaning that a "database" within the meaning of article 1(2) of that Directive is protected by the copyright

laid down by that Directive provided that the selection or arrangement of the data which it contains amounts to an original expression of the creative freedom of its author, which is a matter for the national court to determine. As a consequence: the intellectual effort and skill of creating that data are not relevant in order to assess the eligibility of that database for protection by that right; it is irrelevant, for that purpose, whether or not the selection or arrangement of that data includes the addition of important significance to that data, and the significant labour and skill required for setting up that database cannot as such justify such a protection if they do not express any originality in the selection of the data which that database contains." 79. Mr Inns tended to downplay the judgment required on his part in arranging the database, acknowledging it required intellectual input but not much. It was email based and he had created different sub-folders for the different operations of the clients. If an email came in from a contractor, he would assess whether it should be filed and if so where. It might alternatively be left in the inbox or even deleted. CVs might be left attached to the email or put into a separate CV folder. 80. We think that the exercise of judgment on his part in this process was substantial. It was essential for Nautech's reputation and indeed survival as a business that it supplied contractors for these specialist roles who had both the necessary experience and qualifications. Mr Inns had very extensive experience in the seismic industry before being involved in 2004 with Nautech, and in our view, he brought that skill and experience to bear in judging which contractors to accept into the database and if so where in that database to file them and which to reject. 81. We conclude that the work of selection and arrangement was Mr Inns' own intellectual creation involving substantial judgment on his part. That judgment would be exercised in respect of the receipt of each email, and therefore the quantitative baseline for originality is easily met. The database therefore qualifies as an original literary work in which copyright subsists pursuant to Article 13 of the 2011 Law and of which Nautech is the owner. Decision 82. As the owner of the copyright in the database, Nautech has the exclusive right to copy the work. We find that right was breached:- (i) When the contacts were exported in June 2012 to the Gmail account of Mr Inns, unless that export was undertaken with the consent of Nautech of which Mr Inns was the operations manager at the time-we have heard no evidence on this. (ii) When the names and addresses of the five recipients were copied by Mr Inns from his Gmail account in order to send out those five emails. (iii) When, as was accepted in evidence, Mr Inns copied the contact information in relation to the five emails to CSS. 83. Breaches of copyright (ii) and (iii) above took place at a time when the interim injunction was in force. 84. In addition by admitting that he had copied his Gmail contacts into his new LinkedIn account, Mr Inns has admitted a further breach of Nautech's copyright, to the extent that those contacts were the contacts uploaded from his Blackberry in June 2012. Those contacts would have included at the least the 635 contacts exported to the CSV file which we have found derived ultimately from Mr Inns' workstation. This was done at a time when the interim injunction was in force. 85. It was not in dispute that Mr Inns was acting in these matters on behalf of and within the scope of authority conferred on him by CSS as his principal and it is accepted by Advocate Moran and Advocate Blakeley that CSS as his

principal would be vicariously liable for any breaches of the interim injunction found by the Court (see *Heatons Transport (St Helens) Limited v TGWU*

[1973] A. C.15). 86. Advocate Moran submitted that because Nautech's confidential information had been copied to the Voyager software of CSS (to which all staff had access) Mr Coleman and Mr Dunning had also infringed its copyright. We accept that not knowing that they were acting in contempt of Court is no defence (see *Leeds v Admatch* above) but in this respect they are in no different position to every other employee of CSS. There is no evidence upon which we could find to the criminal standard that they were involved themselves in the copying of this confidential information and we decline to make any findings against them. 87. Mr Gollop is in a different position in that he is the sole director and shareholder of CSS. He admitted in cross-examination that he was aware that Mr Inns was feeding contact details from his gmail account into CSS and that he had not inquired of Mr Inns as to the source of that information as he regarded his gmail account as private. It was put to Mr Gollop by Advocate Moran that he turned a blind eye to the provenance of Mr Inns' contacts, despite being aware of the injunction and his response to that was that he believed on the basis of legal advice that Mr Inns' contacts belonged to Mr Inns. 88. We are uncomfortable with the position of Mr Gollop in this matter but after due consideration and applying the test set out in *Leeds v Admatch* find that he has not actively assisted in the breaches or wilfully failed to take steps to ensure that the interim injunction was obeyed. We therefore make no findings against him. 89. In conclusion, the Court finds that Mr Inns and CSS are in breach of the interim injunction to the extent indicated. We will need to sit again in order to consider what, if any, penalty to impose and what costs orders should be made. In view of the very substantial costs that would have been incurred, it is important that both matters be dealt with at the same hearing. We would expect the parties to come informed as to the quantum of their costs. 90. In addition to the usual remedies that a Court can impose where contempt is found proved, Nautech is seeking intrusive electronic safeguards over the ongoing business of CSS, pending "final order" which must be a reference to the final order in the main proceedings. 91. CSS has been a business now for over a year and we accept has been able to establish its own substantial database through largely legitimate means. We are conscious of the words of Lord Denning in *Potters-Ballotini Ltd v Weston-Baker and Others*

[1977] RPC 202, a case involving the use of confidential information, at page 206:- "Although a man must not use such information as a springboard to get a start over others, nevertheless that springboard does not last for ever. If he does use it, a time may come when so much has happened that he can no longer be restrained." 92. The inclusion of that intrusive relief gives us cause for concern that one of the objects of the Representation brought by Nautech may be to restrict competition as opposed to protecting its legitimate rights. We note that as long ago as 27 July, 2013, the Court expressed the view, in the context of the failed springboard application, that sufficient time had passed even then to render any advantage obtained by the respondents from the wrongly obtained material tenuous at best. *Authorities Nautech Services Limited-v-CSS Limited*

- [2013] JRC 089 . Nautech Services Limited-v-CSS Limited
- [2013] JRC 154 . Matthews v Matthews
- [2001] JLR 671 . Harris v Harris [2001] 3 FCR. Nautech Services Limited-v-CSS Limited
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