

JERSEY / JUDGMENT

re Leisurennet v [2002] JRC 225 (29 November 2002)

[2002] JRC 225

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judgment

the deputy bailiff: 1. In this case the liquidators of a South African company called Leisurennet Limited are bringing an order of justice against a number of defendants, arising essentially out of alleged breaches of fiduciary duty by the first and second defendants as directors of Leisurennet. The full background can be seen in a judgment which the Court delivered on 26 th February, 2002 when the liquidators sought recognition of their appointment in this jurisdiction. 2. The plaintiffs seek interim injunctions in the form of Mareva injunctions, essentially restraining disposal of various assets which are said to belong to, or to be under the control of, the defendants and asking for disclosure of information in order to police those injunctions. The application is made ex parte but notice was given to Mr Thompson, who had acted for the first and second defendants in the earlier separate proceedings for registration of liquidators, to which we have referred. 3. Mr Thompson has appeared, although, as he emphasises, this was under protest both as to the jurisdiction of the Court and as to whether he was on the record in relation to these proceedings. He asserted that he was not because they are new proceedings. It follows, of course, that any order made in these proceedings is capable of variation on a duly made, inter partes, application in the future. 4. We are satisfied that this is a proper case in which to grant the injunctions in the form set out in the order of justice, subject to certain changes which were accepted by Mr Speck during the course of the hearing. In particular, in paragraph 2, the time for disclosure of information by the defendants will be ten working days with the confirmatory affidavit fifteen working days after service. In paragraph 4, the parties cited are to provide their information within ten working days with confirmatory affidavits within fifteen working days. Furthermore paragraph 4 will be amended to make it clear that it includes the trust assets held by the first and second parties cited. In paragraph 5, the reference to ten working days will be replaced by fifteen working days and the last part of paragraph 5 will be amended by the wording suggested by Mr Speck, which will be agreed with the Greffier. 5. Mr Speck had originally also asked for leave to serve outside the jurisdiction and for substituted service but, during the course of the hearing, he accepted that the current application was not in appropriate form and he should, therefore, make an application to the Greffier in due course. 6. That leaves one matter for resolution, which is the question as to whether there should be a provision in the freezing orders for payment of legal costs to the first and second defendants. In essence, this is pleaded as a proprietary claim on

behalf of the plaintiffs to the assets, of which, they say, the first and second defendants defrauded Leisurennet. The third and fourth defendants are said to have dishonestly assisted in the enterprise. 7. But Mr Thompson has pointed out that the claim is partly personal, because, even on the pleadings, the proprietary claim is limited to 5.6 million Deutschmark. Any balance of the claim, he says, is a personal claim against the defendants. 8. Different rules apply to legal costs in proprietary claims. In a personal claim there is normally provision in a freezing order for payment of reasonable legal expenses by the defendant. This is not invariably so, but it is often so. Conversely, in a proprietary claim, where the plaintiff alleges that the funds belong to him, there is a heavy onus on the defendant to show that those funds should be used by the defendant to fund his defence of the claim. The relevant principles were set out by the Court of Appeal in *Armco Inc -v- Donohue*

[1998] JLR N 12. 9. Mr Thompson says that, in so far as it is accepted that part of the claim is a personal claim, we should make the usual provision for legal costs. Mr Speck, on the other hand, argues that this is essentially a proprietary claim and that the right course is to leave the defendants to make an application in due course for payment of their legal costs. 10. We have to say that we have not previously come across a case in which a claim has been part personal and part proprietary. We think, on balance, the right course, at this stage, is to make an order that the first and second defendants, between them, be entitled to legal costs up to an aggregate of £20,000 upon production of appropriate invoices in the usual way. This should be sufficient to enable them to consider the proceedings, once served, and to bring any applications which they may wish to in respect of the injunctions, further provision for legal costs, and any other matters. Accordingly, we so order. This is clearly to be regarded as an interim order at this stage and we will hear the parties, inter partes, at any later stage on whether, in principle, it is right to allow further costs or not, as well as any other matters. So this is not to be taken to decide for all time whether this is an appropriate case for legal costs to be paid or not. (Further discussion with counsel on costs followed) 11. I will order costs in the cause, save in relation to any costs attributable to the application for service out and substituted service where I order costs against the plaintiffs. *Authorities Armco and four others-v-Donohue*

[1998] JLR N.12. *Harman-v-Higgins & Anor* (14 th January, 1999) Jersey Unreported; [1999/5A] Service of Process (Jersey) Rules 1994. Page Last Updated: 20 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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