

THE HIGH COURT

[2020 No. 2905 P]

BETWEEN

DESIGN FEATURES LTD

PLAINTIFF

AND

GOLDSTEIN PROPERTY ICAV, GOLDSTEIN PROPERTY FUND 1  
AND QUANTA CAPITAL INVESTMENTS LTD

DEFENDANTS

**JUDGMENT (ex tempore) of Mr. Justice Twomey delivered on the 27th day of May, 2020**

**Introduction**

1. This is a costs' application arising from the grant to the plaintiff ("Design Features") of an *ex parte* interim injunction prohibiting the defendants (referred to collectively and individually as "Goldstein") from denying Design Features access to a warehouse at Finches Business Park on the Long Mile Road in Dublin which Design Features leases from Goldstein.
2. Access to the business park is through an electronic gate which is opened by ringing a mobile phone number, which recognises certain approved telephone numbers and thereby opens the gate.
3. Design Features obtained the *ex parte* interim injunction on the 23rd April, 2020 from Humphreys J. based on its claim that Goldstein, which controlled the gate, had deliberately removed the telephone numbers used by Design Features from the list of approved telephone numbers, thereby deliberately denying access to the business park.
4. In affidavits filed after the grant of the interim injunction, Goldstein claimed any access issues experienced by Design Features were caused by a technical issue with the gate.

**Background**

5. The background to the issues with the electronic gate, which first arose on the 7th April, 2020, is that due to the Covid-19 pandemic which hit Ireland in March 2020, Design Features notified its landlord, Goldstein, that it would not be able to pay its rent for April and May of 2020. This led to Goldstein issuing a five day forfeiture notice dated 7th April, 2020 to Design Features demanding payment from Design Features within five days of outstanding rent. As the rent for April was not paid within five days, this also led to the issuing of a forfeiture notice to Design Features on the 20th April, 2020.
6. After the interim injunction was granted on the 23rd April, 2020, access through the electronic gate was regularised, due, Goldstein claims, to the correction of a technical issue which was resolved on the 24th April, 2020. All outstanding rent has also been paid by Design Features.
7. Accordingly, the only issue for resolution by this Court is the costs of the proceedings to date, which proceedings are now moot for the foregoing reasons.

**Costs of the proceedings to date**

8. Design Features claims that it should be awarded its costs as it was justified in seeking the injunction, while Goldstein claims that it has been put to considerable cost in having to file affidavits denying, what it says are, false claims made by Design Features that Goldstein deliberately removed Design Features from the list of approved mobile phone numbers to allow it open the gates. In these affidavits, Goldstein avers that there was a technical issue with the electronic gate which prevented Design Features opening it.
9. In deciding the costs' application, this Court cannot determine the factual dispute between the parties, i.e. whether the problems Design Features had with access to its warehouse were caused by unintentional technical issues or by a deliberate removal by Goldstein of Design Features' telephone numbers from the approved list of telephone numbers.
10. However, this Court notes that certain facts are not in dispute. It is clear that Design Features were unable at various times between the 7th April and 24th April 2020 to access the warehouse rented by it from Goldstein. This access issue arose because of the failure of an electronic gate which was controlled by Goldstein to open. These access issues arose after Design Features fell into arrears on its rent which was due to Goldstein. The access problem was resolved the day after the injunction was granted, on 24th April, within a very short space of time (just over an hour) of a meeting held between the representatives of the parties on site. The access problem was resolved by Mr. Ian Enright of Goldstein making a telephone call to a contractor to remedy the alleged technical issue with the gate.
11. It is also not in dispute that Design Features wrote three solicitors' letters on the 10th, 17th and 20th of April 2020 in which it complained about being denied access to its warehouse and threatened that it would seek injunctive relief in the absence of it having its access issues resolved.
12. In reply, Goldstein simply said that it was not denying access. In particular, it is to be noted that in Goldstein's reply to the final and more detailed letter of the 20th April (in which Design Features listed the various failed attempts at access to its own premises during the previous two weeks), Goldstein simply stated that it had nothing to add to its previous replies (which stated that it was not denying access).
13. It is relevant to note that rather than seeking to address these technical issues raised by Design Features' solicitors in their letter on the 20th April, Goldstein convened a board meeting for that day and the purpose of that meeting was to approve the issue of a forfeiture notice to Design Features which was duly issued on that date.
14. It is also relevant to note that some days earlier, on the 17th April, 2020, Mr. Keith Hyland of Design Features had sent a number of texts to Mr. Ian Enright of Goldstein which asked for the gate to be opened on that day and in which Mr. Hyland tells Mr. Enright that he, Mr. Enright, is well aware that the reason for this failed access is because the access numbers have been removed. Yet, the only substantive response from Mr.

Enright of Goldstein to Mr. Hyland of Design Features to these access issues is to mention that he, Mr. Enright, is in Wicklow where the reception is poor (although this does not appear to have affected the sending or receipt of texts) and that he will call later (but there is no reference to such a call having taken place).

15. Therefore, in the replies to the texts and the solicitors' letters, there is no reference to the access issues arising because of a technical issue (rather than the removal of Design Features' telephone numbers) and most importantly there is no reference to the fact that this technical issue could and would be addressed in a matter of hours (which only happened after the injunction was granted).
16. A consideration of the replies to the solicitors' letters and the replies to the texts therefore leads this Court to the inescapable conclusion that as of the 23rd April, 2020, when Design Features sought the interim injunction, there was no substantive response from Goldstein to the concerns expressed by Design Features regarding its access to its warehouse. This conclusion is reached irrespective of whether the issues regarding access were caused by innocent technical issues or the intentional removal of Design Feature's mobile numbers from the approved list.

#### **Conclusion**

17. For this reason, while this Court cannot, for the purposes of this costs' application, resolve the factual dispute between the parties, it is nonetheless relevant to note that the only substantive response by Goldstein to Design Features' detailed complaints about access was the issue of a forfeiture notice.
18. For this reason, it is this Court's view that Design Features had little option, but to first threaten (as it did in its letters of 10th, 17th and 20th April 2020) the seeking of an injunction and then, when there was no meaningful attempt to resolve the issues which were inhibiting Design Features' access to its warehouse, to proceed with that threat and seek the injunction.
19. The fact that Goldstein could have, if it had wished, resolved these 'technical issues' very easily on the 7th April or any date thereafter up until the injunction was granted on the 23rd April, is illustrated by the fact that the 'technical issues' were resolved in just over an hour on the morning of the 24th April, by a call from Mr. Ian Enright to a contractor.
20. Thus, it seems clear to this Court that this 'technical issue' could, and should, have been resolved without the need for injunctive proceedings, but equally that the absence of any meaningful response by Goldstein to Design Features' complaints about access, left Design Features with no option but to bring those proceedings in order to ensure that its access was not being denied (whether by 'technical issues', as claimed by Goldstein or intentional removal of approved numbers, as claimed by Design Features).
21. For its part, Goldstein has claimed that Design Features obtained the interim injunction by falsely claiming that Goldstein deliberately removed Design Features' mobile phone numbers from the approved list and therefore that Goldstein should be awarded the costs

of these proceedings (and in particular the costs of filing various affidavits to dispute the allegedly false claims in the affidavit filed on behalf of Design Features).

22. However, even if one takes Goldstein's claim at its height, that the access issues arose because of an innocent technical issue, it seems clear to this Court that Goldstein was in no hurry (whether that was because at the relevant time Design Features was in default on its rent or for some other reason) to resolve the technical issue, thus forcing Design Features to seek injunctive relief.
23. In these circumstances, this Court concludes that Design Features was entitled to seek the ex parte interim injunction in all the circumstances. Accordingly, costs should be awarded to Design Features.