

167.

ROYAL COURT

6th October, 1989

Before: Commissioner P.R. Le Cras, and
Jurats Le Boutillier and Gruchy

Between: **Christine Shirley Neely and Ace
Accommodation and Employment
Services Ltd, trading as
Rent a Room and Connections** Plaintiffs

And: **Lorraine Coleman** First Defendant

And: **Macoles Self Catering Holiday (CI) Ltd,
formerly Connections Ltd** Second Defendant

And: In the matter of a representation brought by
the Plaintiffs alleging breaches by the First
Defendant and Brian Heppolette of the
interim injunctions imposed by virtue
of service of the Order of Justice

Advocate P.C. Sinel for the Plaintiffs
Advocate G.R. Boxall for the Defendants
Advocate B.E. Troy for Mr. B. Heppolette.

Judgment on contempt allegations

COMMISSIONER LE CRAS: In March of this year an injunction was obtained against Miss Coleman that she was not to operate an accommodation agency for a certain length of time. Bearing in mind the various definitions of 'operate' which have been propounded by counsel, we are quite satisfied that Miss Coleman, when she was employed at Troys in the early summer of this year, was indeed in the particular circumstances doing just that, and despite advice she continued until recently in her course.

It is clear that after an attempt had been made to have the injunction raised which failed, there was an attempt to conceal her rôle. It is clear to us equally that this operation was a deliberate course of action which began before the Order of Justice with the original injunction, continued after the serving of the injunction and continued after the failure to have the injunction raised. Whichever test is used of those propounded by counsel we are quite clear that the plaintiff has satisfied all the tests propounded in those authorities. We therefore find that Miss Coleman is in breach of the Order and is therefore in contempt of Court, and that Mr. Heppolette has aided and abetted her in this.

Miss Coleman and Mr. Heppolette you have been singled out. We take notice that the breach is not continuing and we take notice as well that it was done with mixed motives by Mr. Heppolette and it does not appear to have been a very profitable breach. Nonetheless it ought not to have occurred and you ought not to have done it, but we note that you have no intention of doing it again. These Orders are there to be obeyed unless and until they are satisfied. We will mark our disapproval, in spite of the fact that it has now been put right, we feel we have to mark it with a sanction; you will pay a fine of £100 which you will pay at £25 per month.

Mr. Heppolette we have noted through your counsel the apology which you have made. You, too, will pay a fine of £100.

It is right in this particular case that costs should be on an indemnity basis. There was an Order of the Court, the plaintiff had to come to Court to have it upheld and the matter was thought through. The Order that I

propose to make is that Miss Coleman should pay two-thirds of the costs of and incidental to this representation for contempt and that Mr. Heppolette should pay one-third on the same basis. In saying that, Mr. Troy, I bear in mind that Miss Coleman could not have operated unless there had been an office to operate from. As far as Miss Coleman is concerned I propose to stay the Order for the recovery of the costs until this case is finally determined.

Authorities referred to in relation to the contempt representation:

Words and Phrases Legally Defined (16th edition) - the definition of "operate" in particular, the case of Lawrence -v- Lloyd (1930) S.A.S.R. 194, per Richards, J, at p198.

In re Bramblevale Ltd (1970) 1 Ch. 128 et seq C.A.

Extract from the Times, 5th November, 1986 - the case of Deborah Building Equipment Ltd and Another -v- Scaffco Ltd and another (Judgment of October 31) re. the Criminal Standard of proof required in committal for contempt.

Borrie and Lowe (2nd edition), p395 at para. 1.

- Judgment on Summonses:
1. By the Plaintiffs seeking an order that they be permitted to amend the terms of their Order of Justice; and
 2. By the Defendants seeking an order that the Order of Justice in the action be struck out.

COMMISSIONER LE CRAS: This is an application to strike out and at the same time an application to amend on the other side the Order of Justice. I am satisfied that there is a serious issue to try in this case. The action will not be struck out and the summons to that effect is dismissed.

Turning now to the application to amend the Order of Justice, I may say that it is hardly a matter of surprise that the plaintiff should seek to amend it and it is proper that this should be done. I propose to allow this application, together with the several amendments proposed this afternoon, on the usual terms.

ADVOCATE SINEL: An application for costs in respect of the striking out application, Sir?

COMMISSIONER LE CRAS: They will be taxed costs, and you will have them of and incidental to the striking out application.

Authorities referred to in relation to the hearing of the summonses:

The White Book (1988 edition) Order 18 r. 19 - re striking out pleadings and endorsements.

South Hetton Coal Company -v- Haswell, Shottan, and Easington Coal and Coke Company (1898) 1 Ch. 465 et seq C.A.

Humphreys -v- Polak and wife (1901) 2 KB (Vol. 2) at p385 et seq.