

In the Royal Court of Jersey

7th October, 1991 142.

Before: The Deputy Bailiff, and
Jurats Hamon and Vibert

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| <u>Between:</u> | Anthony Peter Cooley | <u>Plaintiff</u> |
| <u>And:</u> | Gillian Wood | <u>Defendant</u> |
| <u>And:</u> | Hambros Bank (Jersey) Limited | <u>Party Cited</u> |

Application by defendant to vary interim injunctions contained in plaintiff's Order of Justice so as to permit the defendant to withdraw the sum of £5,000 from her account at the party cited.

Advocate M.M.G. Voisin for the defendant applicant,
Advocate P.M. Livingstone for the plaintiff,
The party cited was not a party to the
application.

JUDGMENT

DEPUTY BAILIFF: This is an application by Gillian Wood, the defendant in the action, for a variation in the interim injunctions granted in the Order of Justice, dated the 4th April, 1990, of Anthony Peter Cooley, the plaintiff, in order to permit her to withdraw the sum of £5,000 from her account at Hambros Bank (Jersey) Limited, the party cited, in addition to the sum of £1,000 per month that she is permitted to draw by way of living expenses.

The conflict between the parties relates to the ownership of a Company called Fedora Investments Ltd. According to the plaintiff, the defendant withdrew £10,000 and £105,000 from the Company's bank account with the party cited, without his knowledge or consent; that the bulk of these monies arise from the sale of two properties in Portugal which realised £161,500; that the Company was in the joint beneficial ownership of the parties; and that he claims a substantial part of the assets of the Company.

In his affidavit in support of the injunctions, which he swore on the 29th March, 1990, the plaintiff concedes that the partnership which he alleges existed between the parties may not in equity be an equal partnership because he did not introduce 50 per cent of the capital to finance the Company's business. He seeks an account. He believes that he introduced at least 40 per cent of the capital, and possibly more.

The defendant, in her Answer, filed on 21st June, 1991, admits the two transfers, but denies they were made without the knowledge and consent of the plaintiff. She avers that the two properties in Portugal were the sole assets of the company, sold by way of share transfer for £161,472 after payment of agent's commission. The defendant has produced an account which shows an apportionment of the proceeds as to £115,000 to her, £47,000

to the plaintiff, leaving a balance on the account of £1,443.20 pending the completion of the transfer. She says that the sum of £47,000, representing the plaintiff's share of the proceeds of the sale of the company has been paid into a fixed deposit account in the name of the Company.

The plaintiff in his affidavit disputes the liabilities for which the applicant/defendant requests the £5,000; and claims that he did not receive correspondence sent to him because the defendant intercepted it. We find it difficult to believe that with all modern means of communication he could not have spoken with his legal advisers and given them full instructions.

The grant of an injunction is a privilege accorded to a plaintiff ex parte, a point apparently overlooked by the plaintiff. We had intended to make orders whereby he would take active steps to enter into meaningful negotiation or file a reply and set the case down within six weeks, failing which we would have lifted the injunctions in their entirety. That is now unnecessary because the defendant has herself taken the necessary steps.

We see that the injunctions required the party cited to make full disclosure to the legal advisers of the plaintiff within 72 hours of service of the injunction. We cannot accept that he could not, with due diligence, have progressed his action much more quickly.

Applying two principles stated in PCW (Underwriting Agencies) Ltd -v- Dixon and anor. [1983] 2 All ER 158, we have no hesitation in granting the application.

And because this is an application which should have been granted by consent, the plaintiff will pay the costs of and incidental to the applicant on a full indemnity basis.

Authorities

Supreme Court Practice (1991 Ed.) Order 29 Rules 29/1/2 and 29/1/3 on pp. 472-473, and section on p.509 entitled "Defendant's living and other expenses".

PCW Underwriting Agencies Ltd -v- Dixon and anor. [1983] 2 All ER 158.

Iraqi Ministry of Defence and ors -v- Arcepey Shipping Co. SA (The Angel Bell) [1980] 1 All ER 480.