ROYAL COURT (Samedi Division)

23rd May, 1994

<u>Before</u>: The Bailiff, and Jurats Vint and Vibert

| <u>Between</u> : | Anthony Leonard Charles Nightingale | Plaintiff |
|------------------|--|-------------------|
| And: | Kevin Ronald Leech | First Defendant |
| <u>And</u> : | Home Food Limited | Second Defendant |
| And: | Abacus Secretaries (Jersey) Limited formerly Petershill Secretaries (Jersey) Limited | I Third Defendant |
| <u>And</u> : | Abacus Investments (C.I.) Limited formerly DES Investments Limited | Fourth Defendant |

Application by the Defendants to vary or raise mandatory injunctions imposed by Order of Justice dated 20th May, 1994.

Advocate J.A. Clyde-Smith for the Defendants. Advocate A.D. Hoy for the Plaintiff.

JUDGMENT

THE BAILIFF: It is clear that the most frank and full disclosure of all the circumstances arising from the application should be made to the Judge by any person seeking a mandatory injunction which by its very nature is only issued in exceptional circumstances. That 5 is quite clear from the R.S.C. (1993 Ed'n) 0.29/1/5.

In the application made to me, two important matters were omitted. First, the statement by the accountants signed by the plaintiff and dated some time in 1989 - it is not clear from the immediate page when it was actually signed - but the signature says "A. Nightingale - Loan Account from 1st April, 1989 to the 4th March, 1990". That refers to a figure of £62,597.92 clearly paid into the loan account.

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In the Order of Justice and in the affidavit supporting it, it is alleged that that figure should have been reduced by £15,000 which itself should have been repaid to the security account of Mr. Leech, who is a venture capitalist and who assisted the plaintiff to acquire 50% of the shares in the company running "Norma Jeans". This is the amount remaining outstanding at the time the Order was taken out. That was not correct. Secondly, in the undertaking - apart from the usual undertaking for damages was a statement that the plaintiff would continue "to manage the affairs of the business of the company with all due care and diligence". At that time - the time that that application was made - he had removed a large number of the responsible and experienced staff from "Norma Jeans" and installed them at his own premises, which he was running for himself, called "Rossignol"; and it is quite clear to me that had that information been available to me and had the financial implications of the allegations also been disclosed to me, contrary to what was alleged, I would not have signed the injunction ex parte. I would have required an inter partes hearing and I might well have put the plaintiff to proof of his ability to meet such damages as might have been awarded should the issue go against him in the substantive hearing.

Under the circumstances and in view of the blatant failures and behaviour of the plaintiff in this matter, the Court is unanimously of the opinion that the whole of the injunction should be discharged with costs.

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Authorities

Garden Cottage Foods Ltd -v- Milk Marketing Board (1983) 2 All ER 770.

Channel Islands & International Law Trust & Ors -v- Scarborough & Ors (7th September, 1989) Jersey Unreported.

Cerqueira -v- Bilbao International Bank (Jersey) Limited & Anor (1981) JJ 141.