Andrew David Wilkins v Virginia Anne King Headrick

Jurisdiction:	Jersey
Judge:	Sir Peter Crill, Jurats Rumfitt, Tibbo
Judgment Date:	21 September 2000
Neutral Citation:	[2000] JRC 186A
Reported In:	[2000] JRC 186A
Court:	Royal Court
Date:	21 September 2000

Text

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ROYAL COURT

(Samedi Division)

Before:

Sir Peter Crill, **Commissioner, and** Jurats Rumfitt **and** Tibbo

Between:
Andrew David Wilkins
first Plaintiff
Philip Wardel Moorrees Reynolds Provisional Trustee in bankruptcy of Virginia Anne King Headrick
second Plaintiff
Andrew David Wilkins Provisional Trustee in bankruptcy of Robert John Headrick
third Plaintiff
Andrew David Wilkins Provisional liquidator of Headrick Vehicle Trading (Pty) Ltd
fourth Plaintiff

and
Virginia Anne King Headrick
first Defendant
Robert John Headrick
second Defendant
Tensing Investments Ltd
third Defendant
Hill Samuel (Channel Islands) Trust Co Ltd as Trustees of VAKH Trust and/or The VAK Headrick Family Trust and/or The Headrick Family Trust (released by consent by Order of the Royal Court dated 26th July, 1996)
fourth Defendant

and

Hill Samuel Bank (Jersey) Limited
first Party Cited
Hill Samuel (CI) Trust Company Limited
second Party Cited

Advocate C.P.G. Lakeman **for the Plaintiffs**.

Advocate D.F. Le Quesne **for the first and second Defendants**.

The other parties did not appear and were not represented.

Authorities

Gee: Mareva Injunctions & Anton Pillar Relief (4 th Ed'n): pp.143–146, 157–164; 377–390.

Supreme Court Practice (1999 Ed'n): Vol 1: 0.29.

Dessain & Wilkins: Insolvency Law in Practice: Chapters 5 & 6.

Application by the first and second Defendants for an Order raising injunctions in the proceedings.

THE COMMISSIONER:

1 On 7 th June, 1996, an Order of Justice was obtained at the instance of the Plaintiffs, signed by the Deputy Bailiff, imposing sweeping injunctions on the Defendants as regards certain assets; in particular on Mrs. Virginia Headrick and Mr. Robert John Headrick. At the same time, injunctions were imposed on the fourth Defendants, Hill Samuel (Channel Islands) Trust Company Limited as Trustee of the family trusts for the Headrick family and on the first and second Parties Cited, who held cash and shares in respect of the third Defendant, Tensing Investments Ltd. The total assets appeared to be approximately £800,000 in cash,

plus some Scottish real property, the exact value of which is not relevant.

2 The reason for such steps being taken by the Plaintiffs was this:

3 On 7 th March, 1996, ABSA Bank made a loan to a company called Tensing Investments Ltd. A number of financial transactions followed resulting in allegations of fraud being made on 18 th April, 1996, against Mr and Mrs Headrick. On 6 th May, 1996, a warrant was issued for their arrest. They have not replied to that warrant and may therefore be described, without offence to them and quite accurately, as fugitives from justice.

4 On 8 th May, 1996, their estates were placed under provisional sequestration by a Court in South Africa and the first Plaintiff, Mr Andrew David Wilkins, was appointed provisional trustee of the estate of Mrs Headrick and on 17 th May, the first and second Plaintiffs, Mr Andrew David Wilkins and Mr Philip Wardel Moorrees Reynolds, were appointed joint provisional trustees of the estate of Mr Robert John Headrick. Be that as it may both the Defendants — Mr and Mrs Headrick — were under provisional sequestration in the Republic of South Africa.

5 The application was therefore made to the Deputy Bailiff not by ABSA, the principal creditor of Mr and Mrs Headrick and their company, Tensing Investments Ltd, but Court Officers appointed under provisions of the relevant statutes in the Republic of South Africa. I think the Court is entitled to make a distinction between such an application by an official of a friendly country's Court and an application by a creditor.

6 Included in the Order of Justice with the injunctions freezing assets either to the order of or under the control of Mr and Mrs Headrick were a number of sweeping legal interrogatories to which the principal defendants Mr and Mrs Headrick were required to reply within 10 days.

7 The Plaintiffs and the Defendants, however, through their lawyers agreed two things: first that it was not necessary for the Defendants immediately to plead to the action and, secondly, that the Plaintiffs were not going to proceed with the interrogatories.

8 On 16 th June, the order of sequestration in respect of Mrs Headrick was reconfirmed in South Africa. Proceedings against another Defendant, Hill Samuel (Channel Islands) Trust Co Ltd were discontinued.

9 There were a number of other alterations dealing with expenses: an application by the Plaintiffs to delete the proviso in respect of expenses being refused and so on. As regards Mr Headrick the order of sequestration of his estate was reconfirmed in South Africa on 18 th October, 1996. Thereafter matters continued in South Africa regarding liquidated assets.

There was some litigation in France and it was clear that the Plaintiffs were actively pursuing the Defendants certainly in France and South Africa.

10 On 31 st March, 1998, the South African Court authorised the issue of letters of request to the Plaintiffs to institute Scottish proceedings against Mr and Mrs Headrick and those letters of request were issued on 20 th April, 1998. Mr Neil McNeil, a chartered accountant, was thereafter appointed liquidator in the Scottish proceedings. The necessary formalities were completed and following interim reports by Mr McNeil about the first and second Defendants' replies to his questions, a more searching procedure was invoked by the Plaintiffs whereby they applied to the Scottish Court for a private examination by a Sheriff of Mr and Mrs Headrick and others who are not relevant to this case.

11 The private examination by the Sheriff of Mrs Headrick was commenced on 16 th March and adjourned; and the private examination of Mr Headrick commenced on 18 th March.

12 Then, one might almost say out of the blue, on 19 th October, 1999, the second Order of Justice issued. It did not contain the same draconian interrogatories. To that second Order of Justice on 29 th February, 2000, the first and second Defendants replied and filed answers mainly consisting of straight denials of all the allegations.

13 In the course of this year, two summonses or cross-summonses were issued one by the Plaintiffs seeking an Order from this Court that the first and second Defendants had no *locus standi* and therefore could not plead because their assets were sequestrated in South Africa. Secondly an application by the first and second Defendants to set aside the second Order of Justice for various reasons, not the least being an abuse of the process of the Court. By agreement between the parties and with the payment of the Defendants' costs by the Plaintiffs, neither of those summonses were proceeded with.

14 Today the Court is faced with a summons by the first and second Defendants, issued on 16 th June, asking that the injunctions be raised on one or more of the following grounds:

> (a) the proceedings are an abuse of the process of the Court;
>
> (b) it is not just and/or convenient to justice that the injunction should stand and resulting from that an enquiry as to damages.

15 That application is supported by an affidavit by the second Defendant. It is, however, in very general terms and seems to suggest that the reason they took no action to bring a summons such as the one before us today at an earlier time was that it was best to let sleeping dogs lie. In his affidavit the second Defendant states that he hoped the Plaintiffs would eventually either withdraw the action or that he would be able to apply to have the action struck out for want of prosecution. That is set out at paragraph 6(1). However, we find

it strange to read at the beginning that, as the years passed by, the pressure from the Plaintiffs reduced. It may have reduced in Jersey but it certainly did not reduce anywhere else. They were under severe pressure in Scotland.

16 The real point of this application, as Mr. Le Quesne has pointed out, is that there was not full and frank disclosure when the first Order of Justice, containing the injunctions, was obtained.

17 Mr Le Quesne has pointed out that the Orders obtained were unusually wide in the context of usual *ex parte* Orders and further the use to which the Plaintiffs could put the information was also unusually wide. As regards the latter claim we do not think that is right. There was a very clear direction by the learned Deputy Bailiff. It is a well-known fact that when one obtains an interim injunction of this nature i.e. a Mareva injunction — even though it is seeking information, or protecting an asset — there should be full and frank disclosure and an expeditious prosecution of the action. With those two general observations it would be hard to disagree.

18 Mr Le Quesne argues, firstly, that the Plaintiffs agreed not to require the Defendants to provide the information therefore that part of the interim injunction was not enforced. Secondly, they did not require them to file answers. There is much in what Mr. Le Quesne says: if it was necessary to obtain vitally quickly and urgently this important information, why was it not pursued? Thirdly, he refers to — and I have already mentioned them — the proceedings in Scotland in the second Order of Justice. It seems to us that the Plaintiffs had a duty to disclose either to the Deputy Bailiff, Mr Hamon, or, most importantly, to the Court, what was happening in other jurisdictions in order that the Court could decide whether it was necessary for its original injunctions to remain in place.

19 It seems to us there are two parts to the injunctions: one freezing the assets and the other imposing what I have called judicial interrogatories.

20 There is a heavy duty on every counsel and plaintiff seeking to obtain such draconian orders and Mr Le Quesne has stated that the Plaintiffs abused the provisions which this Court applies, in order to obtain the Order. We cannot agree that, at the time the Order was obtained, there was not full and frank disclosure nor that in some other way they abused what they required. However, thereafter, we are satisfied that they did not prosecute or that they abandoned the Orders so obtained and to that extent and because the authorities show that full and frank disclosure continues even after an injunction of this sort has been obtained, requiring any substantial and relevant change to be made known to the issuing Judge, we are going to discharge the injunctions.

21 However, that is not the end of it. We have acceded to what Mr Le Quesne invited us to do and regard the procedure for obtaining Mareva injunctions as something which cannot lightly be set aside nor by agreement ignored. It is for the Court, and the Court alone, to

change an injunction of that nature. On the other hand, of course, the Defendants — although it is true that the burden was on the Plaintiffs — so to speak sat on their hands: I refer to the affidavit of Mr Headrick. Furthermore, looking at the affidavits which we have received from the instructing South African solicitor and Mr McNeil, there are grave doubts as to whether Mr Headrick, and possibly Mrs Headrick also, are nothing more nor less than a pair of rogues. But, as Mr Le Quesne has said, that should not prevent them from bringing the application they have today; and they have succeeded.

22 On the other hand we understand very well from the papers that there could be a real risk — in lifting the injunctions as we have done, and were we not to reimpose them — that the shares in Tensing, which itself holds assets in Scotland, might revert to the two Defendants and thus defeat the whole object of the original exercise in South Africa. That, we think, would defeat the ends of justice. However, before reimposing the injunctions we would invite Mr Lakeman to address us on the principles which we should apply and on the kind of injunction which we should insert, mainly for the preservation of the assets.

[In a discussion which followed with counsel, the Court stayed its Order lifting the injunctions, either pending an appeal or a further hearing].