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Clive Philip Le Brun Tomes v Piers Ross Coke-Wallis and Coke-Wallis Jones de Polignac Trustees (Jersey) Ltd and Natalie Coke-Wallis (née Jones) his wife

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	25 January 2001
Neutral Citation:	[2001] JRC 25
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Text

[2001] JRC 025

ROYAL COURT

(Samedi Division)

Before:

M.C. St.J. Birt, Esq., Deputy Bailiff, and Jurats Myles and Bullen

Between:

Clive Philip Le Brun Tomes

Plaintiff

and

Piers Ross Coke-Wallis

First Defendant

and:

Coke-Wallis Jones de Polignac Trustees (Jersey) Limited
Second Defendant

and:

Natalie Coke-Wallis (née Jones) his wife
Third Defendant

Advocate R.G.S. Fielding for the Plaintiff.

The first and third Defendants on their on behalf and on behalf of the second Defendant.

Authorities

[*Shepherd Homes Ltd -v- Sandham* \[1971\] Ch 340](#) .

Bean on Injunctions (4th Ed'n): pp. 30–32.

Gee on Mareva Injunctions and Anton Piller Relief (3rd Ed'n): pp. 79–80.

Application by the Plaintiff for mandatory interim injunctions, requiring the Defendants to execute various trust deeds.

Bailiff

THE DEPUTY

- 1 In this case the plaintiff applies for some mandatory interlocutory injunctions in the following terms:

“1. Ordering the Second Defendant:–

(a) immediately to execute in a proper manner the Deed of Appointment and Retirement of Trustees of the Rimu Trust submitted pursuant to the Plaintiff's letter to the First Defendant of 27th December, 2000, and after execution thereof immediately to return same to the Plaintiff;

(b) upon delivery to it of a copy of the Trust Deed of any of the Trusts other than the Rimu Trust together with a Deed of Appointment and Retirement of Trustees in the same terms (mutatis mutandis) as that submitted in respect of the Rimu Trust immediately to execute the

same and return it to the Plaintiff;

(c) without delay following execution of the Deeds referred to in (a) and (b) above to take, do and complete all such actions, things and documents as may be necessary to vest legal title in the Trust Fund of each trust exclusively in Equinox and to place such Trust Funds exclusively under Equinox's control;

2. Strictly enjoining and restraining the First Defendant and the Third Defendant and each of them from:—

(a) preventing, impeding, hindering or obstructing compliance by the Second Defendant with the Orders to be made at sub-paragraphs 1(a) — (c) above;

(b) without prejudice to 2(a) above doing any act, matter or thing which has the effect of impeding, hindering, blocking or rendering more onerous the transfer of ownership and control of the assets of any of the Trusts to Equinox once the Deeds of Appointment and Retirement of Trustees of each of the Trusts referred to in paragraph 1(a) and (b) above have been executed by the Second Defendant.

3. Strictly enjoining and restraining the Third Defendant from communicating with the Plaintiff or any of his staff with regard to the terms of the Agreement or from interfering in any way with the implementation of the terms of the Agreement PROVIDED that any actions which may require to be undertaken by the Third Defendant in order to procure compliance by the Second Defendant with the injunctions hereinabove set forth shall not be prohibited by this Order.”

- 2 The background is as follows. Until 31st July, 2000, the plaintiff, Mr Tomes, and the first defendant, Mr Coke-Wallis, were in partnership. Their business essentially comprised two arms, namely an accountancy practice and a trustee services practice. The latter was carried on by a trust company called Cototrust (Jersey) Limited.
- 3 Differences arose between the parties but they reached agreement on 5th August, 2000. The relevant terms are recited in the Order of Justice and in the affidavit of Mr Tomes sworn in support of this application. In effect the clients of the accounting practice and of Cototrust were to be divided between Mr Tomes and Mr Coke-Wallis as set out in the schedule to the agreement. Those to be taken by Mr Tomes were described as CPT clients and all the Trusts which are the subject of this application are CPT clients. In exchange Mr Tomes was to transfer his 50% shareholding in Cototrust to Mr Coke-Wallis and this has been done.
- 4 Clause 3(4) of the agreement provided as follows:

“PCW shall upon or as soon as possible after the signing of this Agreement

procure that he and each of the Companies and each of the PCW Staff resign all directorships, trusteeships and secretarial positions and protectorships held in respect of CPT Clients (subject to such indemnities which may be reasonably required by PCW, PCW Staff and the Companies in respect thereof). The costs and expenses of any such resignation and transfer of office shall be borne by CPT and PCW equally."

- 5 Cototrust was one of 'the Companies' as defined. There was, therefore, an unambiguous and unconditional agreement that in respect of CPT clients, Cototrust would resign as trustee of any trusts. The clients of the practice were written to and told to whom they were being allocated; they were invited to contact the parties if they had any difficulties over this.
- 6 In accordance with the agreement Mr Tomes took possession of his clients' files. However, he could not formally transfer the trusteeship of the trusts until his new trust company, Equinox Trustees Limited, was incorporated by the Jersey Financial Services Commission. This did not take place until some time in October. In the meantime Mr Tomes had acted for the CPT clients. For example, on 29th August, he had written to one of the two banks used by the practice, namely Standard Chartered Bank (C.I.) Limited, informing them that henceforth Mr Tomes would be looking after the clients listed in the letter and would be dealing with their affairs. That list included the Rimu Trust. The letter was countersigned by Mr Coke-Wallis and has been acted on by the bank.
- 7 A similar letter was written to the other bank used by the former practice, the Royal Bank of Scotland International, but this letter was not countersigned by Mr Coke-Wallis because the bank did not invite him to do so.
- 8 Although it is not relevant to the injunctions we are considering today we think it right to mention that Mr Tomes did not have his own computer server at the time of the separation. He was therefore linked in to the old computer server of Cototrust and Mr Coke-Wallis. Mr Tomes stored all his information, client details, etc. on that computer server to the knowledge of the defendants.
- 9 Following the incorporation of Equinox Mr Tomes sent various draft deeds of retirement and appointment in connection with six trusts which were designated as CPT clients. He sent these to the defendants between 22nd November and 6th December and invited Cototrust to execute them.
- 10 On 21st November, in the absence of Mr and Mrs Coke-Wallis, and at the request of Mr Tomes, officers of Cototrust executed a deed of retirement and appointment in respect of the Rimu Trust and returned it to Mr Tomes. The deed transferred the trusteeship to Equinox. Mr Tomes or his staff inserted the date of 5th August on the returned deed. Their reason for this was stated as being that that was the effective date for all transfers and resignations.

11 On 18th December, Mrs Coke-Wallis sent a facsimile to Mr Tomes asserting that the backdating of the deed of retirement and appointment in connection with the Rimu Trust resulted in the document being a nullity. There then followed a flurry of correspondence. We have seen it, as it is in the documents before us. We would summarise the correspondence briefly as follows:

(i) In her fax of 18th December, Mrs Coke-Wallis asserted that Cototrust remained the trustee of the Rimu Trust and was therefore the sole authorised signatory on the bank account. She said that before Cototrust could resign it would need to see the certificate of incorporation of Equinox; the consent for the issue of shares in Equinox from the Jersey Financial Services Commission; the licence for Equinox; and the minutes of the inaugural board meeting of Equinox. She also said that she would need to be notified of all transactions which had been undertaken to date in respect of the trust.

(ii) On 19th December, Mr Tomes returned the deed of retirement with the date amended from 5th December to 21st November being the date that he had received it from Cototrust. He invited Cototrust to initial the changed date to rectify any difficulties over the backdating to 5th August. However, this was not done by Cototrust. Mrs Coke-Wallis simply wrote in manuscript on the document "Interesting! But today is NOT the twenty first day of November, 2000!!!" We have to say that this was indicative of her attitude. It was wholly unco-operative and we can see no reason why she could not have amended the document to reflect the actual date of execution.

(iii) On the same day Mrs Coke-Wallis sent a further fax. This made a new demand and said that, before resigning, Cototrust would need to receive confirmation from the settlors/beneficiaries of each trust that they consented to the appointment of Equinox. Later the same day Mr Tomes asked for the return of the executed deeds of retirement of the six trusts which we have referred to earlier. In reply Mrs Coke-Wallis said that she would need to have copies of all trust deeds and she would also need to receive the permanent files and the correspondence files of each trust and that these had to be delivered to the Cototrust office. Furthermore in her letter Mrs Coke-Wallis said that: "you have failed to provide us with evidence ... for us to be satisfied that Equinox Trustees Limited is an appropriate company to appoint". This was, of course, despite the fact that, by the agreement of 5th August, Mr Coke-Wallis had committed himself to procure that Cototrust should retire as trustee in favour of Mr Tomes or an entity on his behalf.

(iv) On 20th December Mrs Coke-Wallis sent a letter to the Royal Bank of Scotland International. She informed the bank that Cototrust was still the trustee of the relevant trust and told the bank that it was not to act on the instructions of Mr Tomes. Furthermore she went on to say: "Any deed of retirement and appointment of trustees would need to be valid, not simply to our satisfaction but to that of the JFSC, the Royal Court of Jersey, the Attorney General and the House of Lords."

(v) On 27th December, Mr Tomes wrote to Mr Coke-Wallis. He supplied the certificate of incorporation, the consent to the issue of shares and the inaugural board minutes of Equinox as had been requested earlier. Furthermore, he agreed to send certified copies of the trust deed in each case where Cototrust was to resign as a trustee in favour of Equinox. He also offered an indemnity for the actions of Equinox taken between 31st July and the date of retirement. He sent an amended deed of appointment and retirement in connection with the Rimu Trust which incorporated this indemnity.

(vi) On 11th January, 2001, Jenners, who acted for the plaintiff, sent a chaser in respect of the deed of retirement because nothing had been heard since 27th December. They enclosed letters of consent from the instigators of some of the trusts in question.

(vii) Finally, on 18th January, Mr Coke-Wallis wrote to Mr Tomes. He purported to impose yet another new condition. He said that Cototrust needed to see the documents submitted by Mr Tomes or Equinox to the Industries Committee in respect of the application for a licence under the Regulation of Undertakings and Development (Jersey) Law, 1973. Cototrust, he said, would not be able to resign as a trustee until then. He also said that the indemnity must cover any breach of trust by Cototrust or the Coke-Wallis'. Furthermore he went on to ask what was meant by the word "instigator" in relation to the settlements. We have to say that we are satisfied that he, as an experienced practitioner, would have known exactly what was meant by the phrase "instigator" and we regard the letter as being unreasonable in imposing further conditions.

- 12 Although not directly relevant to the hearing in relation to the trusts, we should allude very briefly to events in connection with the computer link. Clause 11(1) of the agreement of 5th August provided as follows:

"All remote links to any computer located at the premises shall be severed as soon as CPT's computer servers are serviceable, to include accessible copies of that data held on the servers at the premises as at 4th August, 2000."

- 13 Mr Tomes did not have a serviceable computer server at the time of the split. He therefore, with the knowledge of the defendants, maintained a remote access link to the computer server at the defendants' premises in order to carry on his business from the date of the separation to date.
- 14 On 20th December Mr Tomes wrote to Mr Coke-Wallis to inform him that his new computer system had now been installed. He asked that ITEX Limited should be able to visit the defendants' offices the next day in order to copy the information on the server which contained his records, etc.

- 15 The response by the defendants and the third defendant in particular was extremely unhelpful. She faxed back a copy of the fax of 20th December on which she had written "The directors of Coke-Wallis Jones de Polignac Trustees will meet next week to decide when we can afford to write off morning/afternoon." Later on she faxed a further copy of the original request from Mr Tomes on which she had written "*we decide when it suits us OK!!!*"
- 16 Various further exchanges followed but no proposal to meet the request of the plaintiff was put forward by the defendants.
- 17 On 10th January Mrs Coke-Wallis wrote saying that she understood that the remote link could be severed forthwith. As a result Jenners, acting for Mr Tomes, faxed back the same day saying that, as the defendants were not willing to allow access to the premises in order to copy the relevant part of the data which would apparently have taken one hour, the process would have to be done via remote link. This, it was said, would take some two days and Jenners requested the defendants not to interfere with the information or to sever the remote access link before that task was done. They warned that if the link was severed they would apply for an immediate injunction. This plea fell on deaf ears. By a fax dated 11th January Mrs Coke-Wallis said that they were severing the link and they did just that on that day. Jenners immediately replied making it clear that Mr Tomes only required access to information concerning his business and his clients but the link was not restored.
- 18 On 18th January, 2001, Mr Tomes applied for an *ex parte* injunction concerning the computer link and the change in trustee. I granted the *ex parte* injunction concerning the computer link in the following terms:

"THAT service of this Order of Justice upon each of the defendants shall operate as an immediate interim injunction strictly ordering them:

1. At their own cost immediately to procure the reinstatement of the plaintiff's remote computer access link to the defendants' computer server, and not to interfere with that link until the copying process referred to at 2 below is completed.

2. Forthwith to allow the officers of Itex (Jersey) Limited to attend at the defendants' office premises (or so soon as such officers can attend) and to allow them to take copies of all of the documents and information found on the file called "Docs" on the 1 drive of the computer server known as "Coke-Wallis 01", alternatively on any other computer or disc to which such information has been transferred by the defendants or any of them."

19. I declined to grant *ex parte* mandatory injunctions concerning the execution of the trusts in the terms now requested but ordered that there should be an early *inter partes* hearing which was fixed for yesterday.

20. We remind ourselves that this case arises out of an agreement dated 5th

August whereby Mr Coke-Wallis agreed to procure that in respect of CPT clients, Cototrust should resign as trustee in favour of Mr Tomes or his entity. Mr Coke-Wallis had been in practice with Mr Tomes for many years. If he had harboured doubts at that time about Mr Tomes' suitability as a trustee he should not have signed the agreement. But he did sign the agreement. He then became legally committed to co-operate in the transfer of CPT clients to Mr Tomes.

21. The Court has read carefully all the correspondence produced to us. We are in no doubt as to where the blame for the present position lies. The only interpretation of the correspondence is that the defendants, led by the third defendant, were determined to put every obstacle in the way of Mr Tomes assuming control of his clients' affairs. The letters were designed to prevaricate, obfuscate and generally cause difficulty when none should have existed. As Mr Fielding put it *"the letters kept moving the goalposts"*.

22. Our view of the correspondence was confirmed by the conduct of the defendants and particularly the third defendant during the hearing. We would instance the following examples:

(i) Mrs Coke-Wallis asserted before us that she had not asked for the consent of the settlors/beneficiaries of the trusts to the change in trustee. She said that she had only asked for proof that the person with power to appoint new trustees, where that person was not the retiring trustee, had agreed. This assertion is completely contradicted by her letter of 19th December. When the conflict was put to her she simply could not bring herself to answer the point directly.

(ii) When asked why she needed all the files of the trusts as she had requested, she asserted that she needed to see the letter of wishes in case some beneficiaries had been changed or in case there had been a request to terminate the trust prematurely. When pressed what relevance this had to a decision on whether to retire as trustee in favour of Equinox she had no answer. She was unable to put forward any satisfactory reason for requiring such a document.

(iii) The only reason given for acquiring all these extra documents was that alarm bells had begun to ring because of the back-dating of the Rimu Trust document to 5th August by Mr Tomes, coupled with the fact that Mr Quinn, an employee of the former practice and now an employee of Mr Tomes, had, when applying for a job in the partnership in 1995, possibly made a misleading statement in his CV in implying that he had passed PE 1 of the examinations of the Institute of Chartered Accountants, whereas, it was said, that he had in fact only sat but not passed the exam and this had appeared in a CV which came to the attention of Mr Coke-Wallis in June, 2000. In our judgment these two matters come nowhere near entitling the defendants to renege on the agreement of 5th August.

(iv) As the hearing progressed Mrs Coke-Wallis accepted that the

defendants did not require all the information which they had been insisting upon up until then. Ultimately she accepted that Cototrust would execute the deeds of retirement and appointment subject to the following matters:

(a) The deed had to be in the form originally provided for in the Rimu Trust as backdated to 5th August by the plaintiff. For reasons which are not clear to us, the defendants rejected the additional indemnity offered by Equinox concerning actions of Equinox between 31st July and the date of the change in trustee. The plaintiff indicated that he was quite content with a deed in such form.

(b) Certified copies of the trust deeds of the trust should be provided so that Cototrust could ascertain the correct appointor. The plaintiff had at an early stage agreed to this request.

(c) Mr Tomes was to provide a personal indemnity for the actions of him and his staff in relation to the trusts between 31st July and the date of change in trustee. The form of indemnity was agreed during the hearing. Despite Mrs Coke-Wallis' assertion that an earlier request for appropriate indemnities was to be understood as a request for a personal indemnity from Mr Tomes, we find that no request for a personal indemnity had been made in correspondence before the hearing.

(d) The defendants wished to see a copy of the licence under the Regulation of Undertakings and Development (Jersey) Law which showed that Equinox was entitled to carry on business under that law. Mr Tomes agreed to provide this, although it appears that the licence is in the names of Mr Tomes and Mr Quinn personally and Equinox would therefore be included as an ancillary business of theirs.

(e) The defendants required to see minutes of the appropriate meeting of the directors of Equinox authorising the execution of the deed of retirement and appointment in connection with the relevant trust.

If all these were forthcoming, the defendants would drop their demands for additional information such as the files of the trusts, all the information supplied by Mr Tomes and/or Equinox to the Industries Committee in respect of his application under the Regulation of Undertakings and Development Law and the need for the consent of the settlors/beneficiaries.

(v) Mrs Coke-Wallis asserted that Mr Tomes had brought these proceedings not because he had to, but because he wanted to cause the maximum inconvenience and trouble to the defendants. We are firmly of

the view that this was not so. Mr Tomes was driven to issue proceedings because the defendants had cut off his computer link, would not allow him to copy his data and would not resign as trustee of the trusts as promised in the agreement of 5th August.

(vi) In her submission concerning the computer link, Mrs Coke-Wallis asserted that the plaintiff should have copied the data by remote link and that she had encouraged this course of action. This assertion is flatly contradicted by the fact that, as set out in the correspondence to which we were referred, she cut off the computer link whilst, to her knowledge, the plaintiff was attempting to download the data on to his computer.

- 23 On behalf of the plaintiff Advocate Fielding agreed to provide all the documents which we have listed at (a) to (e) above. To that extent the matter can ultimately proceed by agreement. We note that Mr Tomes is willing to provide these documents and nothing we say is intended to release him from his assurance that he will do so. We understand why he agreed to do so; he was no doubt desperate to make progress. But we have no difficulty in saying that there was no legal obligation on Mr Tomes to comply with the conditions imposed by the defendants except for two. It was reasonable for the defendants to ask for sight of the certificate of incorporation simply to show that Equinox existed as a legal entity and it was also reasonable for them to ask for sight of copies of the trust deeds in each case in order to ascertain who had the power of appointment of new trustees.
- 24 We are satisfied that all the other conditions which they sought to impose were not reasonably imposed in the light of the agreement. We have come to the reluctant but clear conclusion that, far from Mr Tomes being out to make difficulties for the defendants as Mrs Coke-Wallis asserted, they (and Mrs Coke-Wallis in particular) were determined to make life as difficult as possible for Mr Tomes as he endeavoured to reconstruct his business following the separation.
- 25 We remind ourselves of the high hurdle which a plaintiff must surmount if he is to be granted an interim mandatory injunction. Megarry J made clear in [*Shepherd Homes Ltd -v- Sandham* \[1971\] Ch 340](#) at 351 that a “court must feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted.” We have not heard anything from the defendants which raises any doubt in our minds as to the obligation set out in the agreement for Cototrust to resign as trustee of the trusts. We feel a very high degree of assurance that Mr Tomes is entitled to demand that Cototrust resign in favour of Equinox as promised in the agreement.
- 26 Moreover, there is clearly considerable urgency. At present Mr Tomes cannot act for the CPT clients of which Cototrust remains trustee. He will suffer irreparable damage to his business if the stalemate continues. Furthermore the clients will suffer as no one will be looking after their affairs. That is not in their interest nor is it in the public interest having regard to the international reputation of the island.

- 27 We are, therefore, satisfied that this is one of those exceptional cases where the grant of interim mandatory injunctions is justified.
- 28 In the circumstances, whilst noting Mr Tomes' assurances, we do not intend to incorporate them in any order. We think that the plaintiff is entitled to injunctions in the form requested, subject to a minor amendment to (a) to reflect the wish of the defendants that the deed should be in the form of that which was back-dated to 5th August rather than in the form subsequently submitted with the additional indemnity. Accordingly we suggest — although if counsel wish to suggest alternative wording that is acceptable — replacing the words “submitted pursuant to the Plaintiff's letter to the First Defendant of 27th December, 2000”, by “in the form of the deed dated 5th August, 2000”. Subject to that change we grant the injunction set out in paragraphs 1 and 2 of the prayer of the Order of Justice.
- 29 Having carefully considered the injunction set out at paragraph 3, we understand why the plaintiff felt compelled to ask for it. Nevertheless we think that it is too general and unspecific and we therefore decline to order it at this stage. However, we remind the defendants and Mrs Coke-Wallis in particular that the agreement is in place. It creates legal obligations. It is in the best interests of all parties to put it into effect and get on with their respective lives. The Court will look unsympathetically at parties who make unnecessary difficulties in connection with the implementation of the agreement.
- 30 We turn now to consider the question of the allegation of contempt of court on the part of the defendants. This relates to the *ex parte* injunction in connection with the computers, the text of which we have set out earlier in this judgment. Mrs Coke-Wallis, on behalf of the defendants, admitted that they were served with the injunction on Thursday, 18th January, but that they did not immediately restore the link, or allow ITEX on the Friday to copy the relevant files referred to in the order. As a result the plaintiff had to bring the matter back before the Court on the afternoon of Friday, 19th January. Following a hearing the Court amended the order slightly so as to make it clear that it was information which related to the plaintiff's clients and business which could be copied. The injunction was carried out on Monday, 22nd January as ordered by the Court.
- 31 The defendants therefore admit to a contempt of Court. In mitigation they say that they were unrepresented and they felt that the order was in terms which were too wide. They tried to get advice from the Judicial Greffe and thought that they could properly raise the matter at the hearing on Wednesday. They also suggested that it was not wholly clear that they had to comply with the injunctions concerning the computer immediately.
- 32 In our view the order was unambiguous. Nevertheless the delay caused by their breach was minimal. Mr Tomes suffered no prejudice. The matter is now resolved and the *ex parte* injunction has been complied with. We therefore confine ourselves to reprimanding the defendants for their breach and pointing out to them that it is their duty to obey orders of the

Court even if they do not agree with them. Any future contempt of Court on their part is likely to attract material punishment.

- 33 We are, however, satisfied that the costs of the hearing on Friday were incurred wholly because of the defendants' breach of the injunction. Any data which went beyond that strictly required by the plaintiff was protected by the undertaking that he had given to the Court as a condition for obtaining the injunctions in the first place. Furthermore, if the order was in wider terms than was strictly necessary, this was because the defendants had given no assistance whatsoever prior to the proceedings in explaining which files could and should properly be copied.
- 34 In the circumstances I order the defendants jointly and severally to pay the costs of and incidental to the hearing on Friday. I remind myself that it is exceptional to order costs on an indemnity basis, but in my judgment the circumstances, which have been described earlier in this judgment, surrounding the hearing on Friday are such that it would be unfair and unreasonable to expect the plaintiff to bear the difference between standard and indemnity costs. In the circumstances I award costs on an indemnity basis.