

Representation of Publicis Graphics

Jurisdiction: Jersey

Judge: J. A. Clyde-Smith, Esq, Jurats Le Breton, Marett-Crosby, (Clyde-Smith, Commr. and Jurats Le Breton and Marett-Crosby)

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Text

[2011] JRC 89

ROYAL COURT

(Samedi Division)

Before:

J. A. Clyde-Smith, Esq., **Commissioner and** Jurats Le Breton **and** Marett-Crosby.

IN THE MATTER OF THE REPRESENTATION OF PUBLICIS GRAPHICS GROUP
HOLDINGS SA

AND IN THE MATTER OF A DECLARATION OF TRUST IN RESPECT OF SHARES IN
PUBLICIS GRAPHICS HOLDINGS LIMITED MADE BY MR MUSTAPHA ASSAD ON 29
JANUARY 2004.

Between
Publicis Graphics Group Holdings SA
Representor
and
Mustapha Assad
Respondent

Advocate R. J. MacRae for the Representor.

Authorities

Blampied -v- Thomas (Jersey unreported, 18 July 1991.

[*Union of Communication Workers -v- Le Maistre*](#) [1992] JLR N 8 b.

Sterrit Properties Inc -v- Roker Trustees (Jersey) Ltd [1997] JLR N 12 b.

Keenan -v- Timber Tech Limited [1999] JLR N 6 c.

Jersey Produce Marketing Organisation Limited -v- Hi-Ho Growers Limited, T.O.P. Produce Limited and Fairview Farm Limited [See] [\[2001\] JLR 266](#).

Halsbury's Laws of England: Civil Procedure (Volumes 11 and 12, 5th edition 2010 Reissue).

Trusts (Jersey) Law 1984, as amended.

Ritson -v- Slous [\(1973\) JJ 2341](#).

Lane -v- Lane (1985–1986) JLR 48.

THE COMMISSIONER:

- 1 On 29th March, 2011, the Court made certain orders *ex parte* requiring the respondent to transfer shares he held as nominee to the Representor and we now set out our reasons.
- 2 The background is as follows. Publicis Groupe SA is an international marketing and communications group based in Paris which operates in 104 countries and generated revenue of 5.4 billion Euros in the year to 31st December, 2010. Through a subsidiary, it acquired a 60% shareholding in the Representor from the respondent, Mr Mustapha Assad (“Mr Assad”) and others. The Representor owns 100% of a Jersey company, Publicis Graphics Holdings Limited (“Publicis Graphics Jersey”). That company owns operating companies in various countries in the Middle East, including United Arab Emirates, Egypt, Lebanon and Qatar. The Representor and its subsidiaries form a group of companies which was originally founded by Mr Assad.

- 3 The Representor's shares in Publicis Graphics Jersey are held as to 99.8% in its name as registered owner and Mr Assad is the registered holder of the remaining 0.2% of the issued shares as nominee for it. He executed a declaration of trust on 29th January, 2004, which is in the following terms:-

"I, Mustapha Assad of ... hereby acknowledge and declare that I hold the shares shown in the Schedule hereto [0.2% of Publicis Graphics Jersey] registered in my name as Nominee of and Trustee for [the Representor] (hereinafter called "the Owner") and I undertake and agree not to transfer, deal with or dispose of the said shares or any of them save as the Owner may from time to time direct. And further to give full effect to the trust hereby declared, I hereby deposit with the Owner the Certificate for the said shares together with a transfer thereof executed by us in blank (sic) and I hereby expressly authorize and empower the Owner at any time to complete such transfer by inserting the name of any transferee and the date of the transfer and to complete the same in any other necessary particular. And I declare that this authority is irrevocable by me. And I further undertake and agree to account to the Owner for all dividends and profits which may be paid to me from time to time upon the said shares and for all other money or profit which may be payable to me in respect thereof. And I further undertake and agree to exercise my voting power as holder of the said shares in such a manner and for such purpose as the Owner may from time to time direct or determine".

- 4 The remaining 40% of the shares in the Representor which Publicis Groupe SA does not own (through its subsidiary) are owned by Mr Assad as to 37.75% and by an associate of his as to 2.25%. Mr Assad was chairman and chief executive officer of the Representor until 26th January, 2011. Mr Assad and his associate are the only directors of PublicisGraphics Jersey. Mr Assad holds positions in subsidiaries of Publicis Graphics Jersey and on their respective banking mandates through which he effectively controls the management of those entities. The original declaration of trust and blank share transfer form signed by him are located in the safe of one of those entities in Beirut in which Mr Assad holds the position of sole manager.
- 5 In July 2008, Publicis Groupe SA through its subsidiary signed a letter of intent to acquire from Mr Assad and his associate the remaining 40% of the shares in the Representor that it did not already own. That letter provided that the purchase price would be determined on the basis of the audited consolidated accounts of the Representor for the years 2007 and 2008, subject to the vendors giving customary representations and warranties and non solicitation and non competition undertakings.
- 6 A dispute has arisen with Mr Assad as to the sale price which has been referred to arbitration under the auspices of the International Chamber of Commerce in Paris, which arbitration is continuing, but the dispute has led to a significant deterioration in the relationship between Publicis Groupe SA and its representatives on the board of the

Representor and Mr Assad, as a consequence of which he was on 26th January, 2011, removed from his position as chief executive officer of the Representor. He consequently resigned as chairman. The board appointed Richard Pinder as chairman and acting chief executive officer in his place.

- 7 The subsequent history of the dealings between Mr Pinder and Mr Assad are set out in the affidavit of Mr Pinder of 24th March, 2011, sworn in support of the application, but the key events for the purposes of this judgment are as follows:-
- (i) On 22nd February, 2011, the Representor requested Mr Assad and his associate to sign a written resolution appointing three new directors to Publicis Graphics Jersey. Mr Assad refused to comply with that request on the basis that he had been advised by “consultants” not to do so “until the whole situation gets clearer and solved”.
 - (ii) On 10th March, 2011, the Representor requested Mr Assad to return to it the original declaration of trust and the blank signed share transfer form attached to it by courier. He has failed to respond or to comply with that request.
 - (iii) On 14th March, 2011, the Representor wrote to Mr Assad asking him to sign a shareholders’ resolution removing himself and his associate as directors and appointing the three new proposed directors nominated by the Representor. He was also asked to sign a further share transfer form in favour of the Representor in respect of the shares he held in Publicis Graphics Jersey as nominee. He failed to respond to or comply with that request.
- 8 It is the Representor’s case that Mr Assad has refused to comply with his obligations as nominee shareholder and to give up control of Publicis Graphics Jersey in order to put pressure on Publicis Groupe SA to accept his terms for the sale of his shares in the Representor.
- 9 The memorandum and articles of association of Publicis Graphics Jersey give the directors the power to decline to register the transfer of any shares without assigning reasons therefor and they would have up to two months to inform the person registering the transfer of such refusal. Even if Mr Assad returned the executed share transfer form the Representor anticipates that Mr Assad would stymie attempts to register it by using this power of the directors. Furthermore the shareholders’ meeting is called and leaving aside the delay involved in giving the appropriate notices, there is a requirement for two shareholders to be present for the meeting to be quorate. The Representor anticipates that Mr Assad would not attend and therefore the meeting could not take place.
- 10 In the meantime, the Representor fears that Mr Assad may intend to operate the businesses and the bank accounts in a way which is detrimental to the best interests of PublicisGraphics Jersey and its subsidiaries.

- 11 In his skeleton argument, filed on behalf of the Representor, Mr MacRae sought orders *ex parte* directing the Viscount to execute a share transfer form in respect of the shares held by Mr Assad as nominee and a written resolution of the shareholders removing Mr Assad and his associate as directors and appointing new directors.
- 12 It is clear that the Court can grant mandatory orders at an interlocutory stage in an unusually strong, clear case where the Court has received a high degree of assurance that the trial court would in due course affirm that the orders were rightly granted; [Blampied -v- Thomas](#) (Jersey unreported, 18 July 1991); [Union of Communication Workers -v- Le Maistre](#) [1992] JLR N 8b; *Sterrit Properties Inc -v- Roker Trustees (Jersey) Ltd* [1997] JLR N 12 b; *Keenan -v- Timber Tech Limited* [1999] JLR N 6c.
- 13 In *Jersey Produce Marketing Organisation Limited -v- Hi-Ho Growers Limited, T.O.P. Produce Limited and Fairview Farm Limited* [See] [\[2001\] JLR 266](#) it was held:-

“To apply for an interim mandatory injunction is a very serious step. The authorities are clear that there is a very high burden upon a party that seeks an interim mandatory injunction. This is because the granting of a mandatory injunction is often decisive of the whole case and it requires the defendant positively to do something rather than simply desist from taking action. In this case, as I have already said, the interim injunction in effect requires the defendant to perform its contract. Accordingly, it would in many ways be decisive of the whole issue subject only to any claim for damages thereafter. As I have said, there is, therefore, a high burden upon a plaintiff.”

- 14 . The principles applicable in English law are stated in Halsbury's Laws of England: Civil Procedure (Volumes 11 and 12, 5th edition 2010 Reissue), paragraph 378:-

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the claimant, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which the complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application.”

- 15 It is clear that mandatory injunctions can be granted *ex parte* as indeed occurred in [Blampied -v- Thomas](#) (and see also Note 1 at paragraph 378 of Halsbury referred to above).

- 16 Whilst we were conscious of the dispute between Publicis Groupe SA and Mr Assad in

respect of which we had not heard from Mr Assad, we were satisfied that this was an unusually strong case in which it was right for us to take a strict view of his obligations under the declaration of trust. We had judicial notice of the widespread use of nominee shareholders and the reliance placed upon them. Those who have shares held for them by nominees expect to be able to deal with those shares as if they were held in their own name. Under Article 24(2) of the Trusts (Jersey) Law 1984, as amended, Mr Assad is required to exercise his powers as bare trustee only in the interests of the Representor as the sole beneficiary and in accordance with the terms of the declaration of trust under which he undertakes and agrees to deal with the same as directed. In our view, it was important to maintain confidence in the use of nominee shareholders by requiring strict and immediate compliance with the terms of the declaration of trust.

- 17 The Court was not prepared, however, on the facts of this case, to go directly to an order to the Viscount for him to execute the documents on behalf of Mr Assad. Mr MacRae referred us to the cases of *Ritson -v- Slous* ([1973\) JJ 2341](#) and *Lane -v- Lane* [1985–1986] JLR 48 where the Court had exercised its inherent jurisdiction to direct the Viscount to execute contracts on behalf of the defendant, but in each case this was in default of the defendant doing so.
- 18 Article 52 of the Trusts (Jersey) Law 1984, as amended gives the Court the power to order a document or instrument to be executed by such person as it may nominate but only where a person neglects or refuses to comply with an order directing them to execute the same. In our view, it was appropriate to order Mr Assad to execute the documents in favour of the Representor within seven days of the date of the order and should he fail to do so, then direct the Viscount pursuant to Article 52 of the Trusts (Jersey) Law 1984, as amended to execute the same on his behalf. We also ordered that there should be liberty to apply.