

# Jonathan Nicholas Ogden v Voice Commerce Group Ltd

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	J. A. Clyde-Smith
<b>Judgment Date:</b>	05 May 2015
<b>Neutral Citation:</b>	[2015] JRC 92
<b>Reported In:</b>	[2015] JRC 92
<b>Court:</b>	Royal Court
<b>Date:</b>	05 May 2015

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## Text

[2015] JRC 92

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, **Esq., Commissioner, sitting alone.**

Between  
Jonathan Nicholas Ogden  
Plaintiff  
and  
Voice Commerce Group Limited  
Defendant

**The Plaintiff appeared on his own behalf.**

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**Advocate O. J. Passmore appeared for the Defendant.**

### **Authorities**

*Ogden -v- Voice Commerce Group Limited* [\[2015\] JRC 041](#) .

*Watkins -v- Egglshaw* [\[2002\] JLR 1](#) .

*Flynn -v- Reid* [\[2012\] \(2\) JLR 226](#) .

*Dalemont Limited -v- Senatorov and Others* [2013] (2) JLR N 35 .

*Milner -v- Milner Laboratories* [2000] JLR 226 .

Companies — application by the defendant for costs on indemnity basis.

### **THE COMMISSIONER:**

- 1 On 19<sup>th</sup> January, 2015, I discharged the interim injunction that had been obtained by the plaintiff ex parte and dismissed his order of justice. The reasons are set out in my judgment of 20<sup>th</sup> February, 2015 ( *Ogden -v- Voice Commerce Group Limited* [\[2015\] JRC 041](#)). The defendant now seeks its costs on the indemnity basis arising out of those proceedings.
- 2 I accepted in that judgment that this was a serious case of non-disclosure. Quoting from paragraph 19 of the judgment:—

***“I accepted that this was a serious case of non-disclosure.*** Indeed, it went further than that in that Mr Ogden made the positive assertion that he was an employee of Voice Commerce, an assertion that simply could not stand in the face of his own conduct, in particular in applying to the Huntingdon Employment Tribunal for unfair dismissal as a former employee. He conceded before me that at no stage after receiving the notice of 19<sup>th</sup> June, 2014, that Voice Commerce was implementing the compulsory transfer of his shares pursuant to Article 47.1 of the articles of association on the basis that he was a former employee, had he or his advisers gone back to Voice Commerce denying that status. On the contrary, he had participated in the valuation ***process on the basis that he was a former employee.*** It was clear that it was the result of that process that he wanted to challenge.”

- 3 Furthermore, I accept Advocate Passmore's submission that the gravity of the non-disclosure is compounded by the allegations contained in the plaintiff's affidavit that he must have known to be untrue. Those parts of his affidavit are as follows:—

*“...at no stage has my employment or service agreement with the company*

*been terminated, either verbally or in writing...*

*For the absolute avoidance of all doubt I have never received any written notice or communication regarding the termination of my service agreement."*

- 4 I have been reminded of the general principles to be applied in relation to costs, namely those set out in *Watkins -v- Egglshaw* [2002] JLR 1 as endorsed by the Court of Appeal in *Flynn -v- Reid* [2012] (2) JLR 226 and the principles to be applied in considering indemnity costs as summarised in *Dalemont Limited -v- Senatorov and Others* [2013] (2) JLR N 35. Mr Ogden has made one or two points of detail in respect of the affidavit of Mr England, a director of the defendant, but has not given me any substantive reason why costs should not follow the event. He informs me that he has substantial claims against the Voice Commerce Group which he will be pursuing shortly in England but the existence of any such claims cannot be relevant to the issue of costs arising out of these proceedings. He submitted to me that costs should be awarded, if at all, on the standard basis and stayed pending the outcome of his claims in England. I can say immediately that I can see no basis for justifying a stay of any order that I may make.
- 5 Obtaining an order ex parte interfering with the legal rights of another is a serious matter and is an exception to the rule of natural justice that no order should be made against a party without giving that party an opportunity to be heard, see *Milner -v- Milner Laboratories* [2000] JLR 226 at 270, hence the requirement for full and frank disclosure. The way in which the plaintiff obtained an ex parte injunction in this case was nothing short of an abuse of process and therefore justifies the imposition of costs on the indemnity basis.
- 6 Having regard to the information obtained in Mr England's affidavit I have no doubt as to the ability of the plaintiff to meet such an order or to have access to family trusts established by himself and his wife for that purpose. The plaintiff has not filed any evidence, despite the opportunity of doing so, and has not questioned the accuracy of much of the substance of what Mr England has said about his means. I have been reminded by Advocate Passmore of this passage from the judgment of Beloff JA in *Flynn -v- Reid* at paragraph 40:—

***"In my view, costs awards should be based on two major considerations: the merits of the case (as adjudicated upon by the court) and the conduct of the parties in the litigation (as appraised by the court)."*** These are not the only considerations. A court may, for example, properly decline to make a costs order which might aggravate the relationship between the parties and for that reason be undesirable in the public interest or one which would be futile because the party against whom it would otherwise be made is impecunious. But, save it may be in exceptional cases (whose existence or extent we do not need to consider in these proceedings), the means of the parties are, in our view, outwith the matrimonial field, not relevant. No one after all is compelled to bring a claim or to defend one. The potential exposure to costs, if unsuccessful, is itself a salutary discipline against maintaining from either perspective an untenable position."

- 7 I am satisfied from what I have heard that an order for indemnity costs would not make the plaintiff impecunious and I therefore judge this matter on the basis of the merits of his claim and his conduct. On that basis I award the defendant its costs of and incidental to these proceedings on the indemnity basis.