

THE HIGH COURT

[2015 No. 122 P]

BETWEEN

NURENDALÉ T/A PANDA WASTE SERVICES

PLAINTIFF

AND

STARRUS ECO HOLDINGS LIMITED T/A GREENSTAR

DEFENDANT

JUDGMENT of Mr. Justice Gilligan delivered on the 5th day of February, 2015

1. This application comes before the court by way of the plaintiff seeking interlocutory relief in the following terms:-

(i). An injunction restraining the defendants its servants or agents from removing any wheelie bins owned by the plaintiff from customers or former customers of the plaintiff without the prior written agreement of the plaintiff.

(ii) An injunction requiring the defendant to immediately return to the plaintiff any of the plaintiff's wheelie bins which the defendant its servant or agents have taken from customers or former customers of the plaintiff and which are being wrongfully withheld by the defendant from the plaintiff.

2. The background circumstances are very fully set out in a series of affidavits as sworn on the plaintiff's behalf by Brian McCabe, Andrew Moag and Jurate Miodisaukeene and on the defendant's behalf by Mark Keough, which affidavits I have read and considered.

3. In essence, both the plaintiff and the defendant are companies involved in the domestic waste collection market in the greater Dublin region, and elsewhere within the State.

4. The plaintiff welcomes competition in the market and both companies operate under much the same circumstances where they provide customers with three wheelie bins for general domestic, dry recyclable, and composting food and garden waste, and the bins are collected by the waste collection provider on a period basis in consideration for a charge usually calculated on a per lift basis.

5. There is no dispute between the parties that the bins as supplied by Panda to its customers are and shall remain the property of Panda.

6. Over the 2014 Christmas period the defendant company commenced an extensive campaign to recruit new customers from existing waste collection providers in the Fingal and Dun Laoghaire Rathdown areas, and the defendant is offering new customers free waste collection for the first six months and leaflets to this effect have been circulated to various homes within these areas on the defendant's behalf.

7. The plaintiff contends that normally where a change of service provider occurs, the existing service provider is contacted by the customer and the account is closed and the service provider retrieves the bins supplied to the customer at the inception of the contract, and then the matter takes its course with the new provider furnishing the customer with their bins. The plaintiff contends that it has always been the case within the Greater Dublin market that no waste provider has ever taken possession of other waste providers' bins.

8. The central issue that arises in this application is that following its marketing campaign, where a Panda customer expresses an interest in changing from Panda to Greenstar so as to avail of the offer, Greenstar enter into an agreement with the householder or occupier to take possession of the three Panda bins and bring them to a central location where they can be collected by Panda in due course and, in turn, provide the householder with three Greenstar bins and the customer having entered into the agreement has a fourteen day cooling off period.

9. In practice, despite having a number of contractual obligations with Panda, the customer gives over its three Panda bins to Greenstar who then immediately continue the waste collection service pursuant to a new agreement, and Panda have no effective knowledge as to what is occurring between their previous customer and Greenstar and inevitably, well after the fourteen day cooling off period, they get to collect their bins at the central location where the Panda bins have been taken by Greenstar.

10. Panda contends that as the bins are their property, Greenstar are trespassing on their property by removing the bins from the householders' residence to their central location.

11. It is submitted on behalf of Panda that the benefit of this arrangement to Greenstar is that the fourteen day cooling off period has inevitably expired before Panda become aware of the fact that their customer has changed to Greenstar and entered into a new agreement with them, inevitably ignoring their own contractual terms whereby the customer accepts and agrees, *inter alia*, that the bins are and shall remain the property of Panda, and that the customer shall not, without written permission from Panda, transfer the agreement to a third party.

12. "Customer" is defined in the definitions section of the agreement as meaning the person or entity to whom the service is provided and shall include any person acting on behalf of and with the authority of such person or entity.

13. In these circumstances Panda contend that Greenstar do not have the authority or right to take possession of Panda's wheelie bins which are their property, and Greenstar contend that they are a person acting on behalf of and with the authority of the customer to take the bins away.

14. Following upon the judgment of this Court (Keane J.) in *Keating & Co Ltd v. Jervis Shopping Centre Ltd* [1997] 1 I.R. 512, it is clear that a person whose title is not in issue is prima facie entitled to an injunction to restrain a trespass, and that this is also the case when the claim is for an interlocutory injunction only. However, the principle is subject to the following qualification explained by Balcombe L.J. in the English Court of Appeal in *Patel v. W.H. Smith (Eziot) Ltd* [1987] 1 W.L.R. 853 at p. 859:-

“However, the defendant may put in evidence to seek to establish that he has a right to do what would otherwise be a trespass. Then the court must consider the application of the principles set out in *American Cyanamid Co. v. Ethicon Ltd.* [1975] A.C. 396 in relation to the grant or refusal of an interlocutory injunction.”

15. Keane J. at p. 518 of his judgment in *Keating* went on to state:-

“In the present case it is perfectly clear that the developer and the builder are asserting a right by virtue of the agreements to which I have referred to move the jib of the crane over the licensed premises at least to the extent that this is required for the implementation of the agreement for the erection of the party walls. I am satisfied that there is a serious question to be tried between the parties as to whether this is so or not, and it follows that Keating would not be entitled to an interlocutory injunction unless it could satisfy the court that damages would not be an adequate remedy.”

16. In the particular circumstances of this case, the plaintiff establishes its title to the three wheelie bins and is entitled to the injunctive relief as sought, unless the defendant can satisfy this Court that there is a serious question to be tried as between the parties as to whether or not the defendant had a right to take the plaintiff's wheelie bins in a situation which would otherwise constitute a trespass.

17. In this regard the onus shifts to the defendant to satisfy the court on the balance of probabilities, and in the particular circumstances of this case, I am not satisfied taking into account the entire background circumstances to the situation that arises and, in particular, the complete terms of the contract which each individual customer has entered into with the plaintiff's that the defendant's raise a serious question to be tried that they are entitled to take possession of and remove the plaintiff's bins to a location of their choice.

18. Even if I am incorrect in this view, the court is entitled to resolve the issue in the alternative on the basis of the *Campus Oil* principles as laid down in *Campus Oil v. Minister for Energy* [1983] I.R. 88, and in this regard the onus rests with the plaintiff to satisfy the Court as the owner of the wheelie bins in question that they raise a serious issue to be tried against the background circumstances as already outlined herein. In my view, they do raise such a serious issue to be tried.

19. I do not consider that damages would be an adequate remedy because the two parties to these proceedings are main competitors in the same business, and the plaintiff has built up considerable goodwill with its customers and is the market leader, and the defendant is seeking to entice its customers away from them, and in these circumstances issues of goodwill and reputation arise and damages may not necessarily be an adequate remedy in the particular circumstances.

20. I am further satisfied that the balance of convenience in the particular circumstances favours the granting of the injunctive relief, particularly against a background where neither party has any objection to competition on a lawful basis, and neither has any objection to the other promoting a marketing campaign which may involve a free service for a period of six months, save only that the plaintiff objects to its property being removed from its customers' premises to a location owned and controlled by the defendant.

21. Accordingly, applying the *Campus Oil* principles, I am satisfied that the plaintiff is entitled to injunctive relief.

22. In these circumstances, I will hear the submissions of counsel as to the form of the order to be drawn up.