

THE HIGH COURT

[2008 No.30 P]

BETWEEN

THOMAS CROSBIE HOLDINGS & OTHERS

PLAINTIFFS

AND
WEBPRINT CONCEPTS LIMITED

DEFENDANTS

Judgment of Mr. Justice Hedigan delivered on 9th January, 2008.

1. The plaintiffs seek an interlocutory injunction directing the defendants to provide, in respect of the newspapers, the subject of an agreement dated 22nd April 2005 referred to as the "master printing agreement" the following services:

- (a) the inclusion of inserts into their newspapers.
- (b) the printing of supplements.
- (c) the service of trimming.

2. The background to this application is as follows: the Master Printing Agreement, hereinafter "The Agreement", referred to above was for the provision of printing services by the defendants herein to the plaintiffs in respect of their newspapers, the Irish Examiner, The Sunday Business Post, The Evening Echo and various other regional newspapers. The printing by the defendants for the plaintiffs commenced on the 20th December 2005. Prior to this printing for the plaintiffs was in-house and in Northern Ireland.

3. Disagreement has arisen between the parties in relation to the payment of charges for services due under this Agreement. In the result the defendants herein issued High Court proceedings on the 21st December 2007, Record No. 2007/9687P, claiming a sum of €11,260,699.78 due up to the 14th December 2007 and damages for breach of contract.

4. The defendants herein have indicated their intention to apply to have these proceedings entered in the commercial list. The plaintiffs herein dispute the claim and indicate that they will be seeking damages for breach of contract. Prior to issuing those proceedings the parties exchanged letters concerning the amounts allegedly due. The defendants herein threatened to withdraw their services of trimming, inclusion of inserts, publication of supplements and preprints. The position of the defendants herein was, for the purposes of this application, finally set out in a letter dated 3rd January 2008. In this letter they confirmed they would provide the services of inserts and the printing of new supplements on a without prejudice basis pending resolution of the proceedings subject to the following conditions:

- (a) In relation to inserts, the payment of €876,143.67 being the historic debt to the 14th December 2007 plus interest of 50,492.85 and agreement to discharge on a weekly basis the invoiced amounts in relation to inserts in accordance with the terms of the contract.
- (b) In relation to printing new supplements, the payment of the sum of €306,153.89 being the historic debt plus interest of €33,305.21 and agreement to discharge the costs of printing further such items on a weekly basis.

5. Further, in relation to trimming, the defendants confirmed they would provide this service on a without prejudice basis providing the plaintiffs pay for the provision of the service to date and agreed a rate going forward. This payment would be without prejudice to either party.

6. The plaintiffs herein argue that the withdrawal of these services would have a catastrophic effect on their business because without inserts and supplements or proper trimming they would be unable to provide a high quality publication and their ability to compete would be seriously and possibly irretrievably undermined. The damage they would suffer would probably be unquantifiable. Their newspapers, notably the Irish Examiner, The Evening Echo and The Sunday Business Post were high quality publications that needed the above services in order to maintain their position in the market.

7. For their part the defendants argue that in response to their above letter, the plaintiffs paid on the 4th January the sum of €800,195 being the aggregate of the amounts claimed by them and conceded as owing as at the 4th November 2007 but reduced by certain setoffs. The difference was approximately €400,000 less whatever would have been payable from the 4th November to the 14th December. No payment was made in relation to trimming.

8. The defendants argue they are ready, willing and able to provide the services in question but only if they are paid. They note the payments made are less than the amounts claimed. They further argue that the reality of this application is that the plaintiffs want to pay less than the agreed rates by making setoffs to which they are not entitled and by forcing the defendants to provide the service of trimming without payment. This service is nowhere agreed to be provided in the Agreement between the parties, although the plaintiffs argue that trimming is an essential part of the production of a quality newspaper.

9. The plaintiffs applied *ex parte* to the High Court on the 4th January 2008 and by order of Clarke J they obtained an interim order directing the defendants to provide the services, the subject matter of these proceedings until 8th January.

10. The approach adopted by the Courts in determining whether to grant a mandatory injunction on a interlocutory basis is summarised in *Delaney's Equity and the Law of Trust in Ireland*, 3rd edition, at page 497.

"On balance it would appear that in recent decisions the Courts have tended to favour the application of the traditional Campus Oil principles even in the context of mandatory relief and there has been some support for the proposition laid down by Murphy J in *Bula Limited v Tara Mines Limited* (No. 2), [1987] I.R. 95, that the granting or withholding of a mandatory interlocutory injunction should not be dependent on the strength of the Applicant's case (see *De Burca v. Wicklow County Council*, High Court [2000] No. 42 Judicial Review, Ó Caoimh J, 24th May 2000). However, it is also fair to say that it is unlikely that the balance of convenience will lie in favour of granting mandatory relief save in fairly exceptional cases and to this extent it is still accurate to assert that the Courts are more reluctant to grant an interlocutory injunction where it is of a mandatory nature."

11. It seems to me that in this case there certainly is an issue to be tried. Indeed, there appears to be a plethora of issues to be tried between the parties in relation to the printing contract referred to above. The real question for me to decide in this application is as to where the balance of convenience lies. On the plaintiff's side there is the prospect of either having to agree the proposals contained in the letter of 3rd January 2008 sent to them by the defendants or suffer the damage of having no inserts or supplements printed nor the paper or supplements trimmed. The damage caused thereby would likely be very substantial in a highly competitive market where the maintenance of quality is imperative.

12. On the defendants side there is the prospect of having to continue printing supplements, making inserts and trimming at, in the case of the first two services, substantially less money than they claim they are entitled to and in the case of the third service, i.e. trimming, with no payment at all. They argue they cannot do this on a commercially viable basis.

13. It is common case that whilst the financial position of the plaintiffs is a strong one, the same cannot be said of the defendants. Their position at the present moment is a threatened one. Were the Court to issue a mandatory order at this stage directing the defendants to provide the services required, this Order might well be in existence for a substantial period of time when it is considered that following a Commercial Court decision there might follow an appeal to the Supreme Court. It seems clear to me that the plaintiffs are in a far stronger position than the defendants to survive the financial challenge that would ensue were they to meet the demands for payment that were made by the defendants in their letter of the 3rd January 2008. In the event they do so the financial position of the defendants, as evidenced before me on this application, would be greatly improved and their position as a mark for damages in the event the plaintiffs ultimately won their case would be, in all probability, secure.

14. It is further to be noted that in relation to the third service sought, that is trimming, were the Court to order this as sought it would be ordering a service to be provided at no cost by the defendants to the plaintiffs, which it is clear is nowhere in the Agreement specified. The strongest case the plaintiffs can make at this stage is that trimming is implicit in the production of a newspaper. This may well be right but, equally, they may well be wrong. I cannot decide this matter at this stage.

15. The position of the plaintiffs in relation to the maintenance of a high quality in their publications can be secured on the basis of the payment by the plaintiffs on a without prejudice basis of certain sums of money. It seems fairer in the context of the balance of convenience that this is the way that matters should proceed. In this sense the balance of convenience and the adequacy of damages are mixed but in either or both cases, it seems to me that the balance favours the defendants.

16. I, therefore, refuse the application.