5 pages.

ROYAL COURT
(Samedi Division)

28th November, 1994. 238.

Before: The Bailiff, and
Jurats Orchard and Rumfitt.

Between:	Mayo Associates S.A.	First Plaintiff
	Troy Associates Limited	Second Plaintiff
	T.T.S. International S.A.	Third Plaintiff
And:	Anagram (Bermuda) Ltd	First Defendant
	Robert Young	Second Defendant
	Maureen Young	Third Defendant
	Lionrock Ltd	First Party Cited
	Edgefield Properties Ltd	Second Party Cited
	Box Ltd	Third Party Cited
	Starshield, Ltd	Fourth Party Cited
	Cantrade Private Bank Switzerland (C.I.) Ltd	Fifth Party Cited
	TSB Bank Channel Islands Ltd	Sixth Party Cited

Application by the Plaintiffs for leave to cross-examine the Second and Third Defendants on the contents of their Affidavit of Means, and that such cross-examination should follow immediately the hearing of this application.

Advocate P.C. Sinel for the Plaintiffs.
Advocate D.F. Le Quesne for the Defendants.

JUDGMENT

THE BAILIFF: On 24th December, 1993, the plaintiffs obtained orders from the Bailiff against the defendants and, to some extent, the parties cited, who are not concerned with today's application, containing a Mareva injunction and an Anton Piller Order, both in very wide terms.

It is not necessary for the Court to examine the Order of Justice; sufficient to say that the imposition of the Mareva injunction and the subsequent obtaining of the documents under the

Anton Piller Order resulted in a number of hearings before the Court, culminating in the decision of this Court, on 10th August this year, to lift substantially the Mareva injunction. The Court also granted the plaintiffs leave to appeal.

Following that decision, indeed on the next day, the 11th August, the Bailiff sat as a Single Judge of the Court of Appeal and adjourned until 18th August, 1994, an application for a stay of execution of the order of 10th August, pending determination of an appeal. It was hoped that the matter of the stay pending appeal would be fully argued between counsel on 18th August and an interim stay was granted until that date.

For reasons it is not necessary to go into counsel for the defendants was unable to appear and nothing was done, and therefore, by agreement we were told, the interim stay has continued.

It will therefore fall either to a Single Judge to continue the adjourned hearing, or for the Court of Appeal when it deals with the substantive appeal, to have the matter fully argued before it, always assuming that the stay is not continued by any further order of this Court.

The first question the Court has to ask itself is this: does this Court have power to order the examination of a party. It is that part of the summons to which the Court is now addressing its mind. Mr. Sinel has presented two summonses for the plaintiff, the first asking that Dr. Young be cross-examined on his affidavit. There were, I would add, two affidavits put in by Dr. Young, one was also put in in March relating to the application to lift the injunctions. However the question before the Court today is: do we have the power to order an examination?

The second summons relates, in effect, to a request for discovery arising out of a second, more detailed, and conclusive affidavit which we are not dealing with at the moment. The Court is confining itself to the first summons.

The Court is quite satisfied that it does have the power in its inherent jurisdiction to make such an order. The Rules of the Supreme Court makes it clear that, so far as the English Courts are concerned, they have such power both statutorily and by virtue of inherent jurisdiction. This Court cannot find that it has other than the same inherent jurisdiction. The question now therefore is, having decided that the Court does have the power, whether we should grant the application this afternoon.

The main thrust of the plaintiff's case, as the Court understands it, is that Dr. Young's main affidavit is flawed inasmuch as he has not disclosed all his assets and has hardly touched on his liabilities.

Mr. Le Quesne suggests that the Order of the Court related only to assets and that Dr. Young was therefore under no liability to disclose any debts which he might have. The Court rejects that argument. The assets must include liabilities otherwise it is impossible for a plaintiff to know if there are any net assets available to satisfy any claim in which he might be successful. Indeed, Dr. Young himself discloses one liability of £200,000 but does not depose as to the remainder. This Court is quite satisfied that a full and frank disclosure was required.

The plaintiff says that all the assets have not been disclosed and has submitted to us an affidavit of Mr. Coke-Wallis, a chartered accountant, in support of that allegation. This Court is satisfied, after reading that affidavit, that there are a large number of questions which remain unanswered.

In CBS (UK) Ltd -v- Perry & Ors. (1985) FSR 421 @ 426 Falconer J, referring to the judgment which was under appeal, said this:

> *"The learned judge then asked himself: "What evidence then is there in the present case to show that the defendants do have further information which has not been revealed despite the order of the court"?"*

It is important to stress the words "despite the order of the court". The fact is that, although the Court in August lifted the injunctions, the Order of the Court is still in force for reasons it is not necessary to go into and will not really be disposed of until the Court of Appeal has had an opportunity to consider the substantive appeal in January.

We have asked ourselves what evidence there is and we have found a number of matters, of which we need mention only one or two. For example a cheque was issued by Dr. Young in the sum of £200,080.03 on 24th December, 1993, and he deposed in his affidavit in March that he hoped he would have some funds which would cover these amounts. No explanation beyond that is given; if he had other funds why then were they not deposed to earlier on. Also in Mr. Coke-Wallis' affidavit, to take but one example, there is a paragraph which states that the balance of funds owing to Anagram Econometrics Ltd was transferred to Kite Trade Limited and further that Kite Trade Limited was bought for personal trading by Dr. Young. This information emerges from the documents seized following the Anton Piller Order and we need only observe that there is no mention of Kite Trade in the affidavit of Dr. Young.

It is not necessary to enumerate the other matters relied upon by Mr. Sinel. There are sufficient grounds, in our view, to justify the Court's making the order, if we so decide to do.

The Court should, however, refer to a case cited by Mr. Le Quesne which, in turn, considered a similar case, that of House of Spring Gardens et al -v- Waite et al [1985] FSR 173, where there had been a consent order for the examination. In Bayer A.G. -v- Winter & Ors. No. 2 (1986) 1 WLR 540, the House of Spring Gardens case was considered and distinguished and on p.544 of the judgment, Scott J had this to say:

> *"In the House of Spring Gardens case, the defendant had consented to the order for his cross-examination. So the court did not have to decide whether, as a matter of discretion, the order was one which it would be right to make. For my part, I find it very difficult to envisage any circumstances in which, as a matter of discretion, it would be right to make such an order as is sought in the present case and as was made by consent in the House of Spring Gardens case.*
>
> *Star Chamber interrogatory procedure has formed no part of the judicial process in this country for several centuries. The proper function of a judge in civil litigation is to decide issues between parties. It is not, in my opinion, to preside over an interrogation".*

That is the opinion of a very learned Judge and there are a number of *dicta* to the effect that an order of this sort should not be made lightly and that the Court should be slow to make such a draconian order. It is fair to point out, also, that the position in the Bayer A.G. case is not entirely on all fours with the present one. In that case, the cross-examination was sought in advance of the statement of claim. Here this is not the position, except it is true to say that as a result of the Royal Court's Judgment in August and the admissions made by the plaintiffs' counsel, an amended Order of Justice is in course of being prepared.

It seems to us that it would be right to make the order for Dr. Young to be cross-examined on his affidavit but that that order should not come into effect until the Appeal Court has made its decision and given its judgment on the substantive appeal, and we so order.

The Court also makes the order that - conditional upon the Plaintiffs' succeeding in the Court of Appeal - leave is granted to the Defendants to appeal against the Order I have just made that Dr. Young be cross-examined; the Defendants' application for a stay of the cross-examination pending determination of their appeal is, however, refused, though time will be abridged to allow for an application by the Defendants for such a stay to be heard by the Court of Appeal.

Authorities

R.S.C. (1995 Ed'n): Vol 1: 29/1/27.

House of Spring Gardens et al -v- Waite et al [1985] FSR 173.

Z Ltd -v- A and others [1982] 1 All ER 556.

A.J. Bekhor & Co Ltd -v- Bilton [1982] 2 All ER 565.

A and another -v- C and others [1980] 2 All ER 347.

Hennessy -v- Wright (No. 2) (1890) 24 QBD 445.

British Leyland -v- Wyatt Interpart (1979) FSR 39.

CBS (UK) Ltd -v- Perry & Ors (1985) FSR 421.

Bayer A.G. -v- Winter & Ors (No. 2) (1986) 1 WLR 540.

Mayo Associates & Ors -v- Anagram & Ors (10th August, 1994) Jersey Unreported.

Mayo Associates & Ors -v- Anagram & Ors (11th August, 1994) Jersey Unreported C.of.A.