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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 2812 (Admin)



No. CO/2795/2019

Royal Courts of Justice
Wednesday, 14 August 2019

Before:

MR JUSTICE MARTIN SPENCER

B E T W E E N :

THE QUEEN ON THE APPLICATION OF
HEVER RESORT HOTEL LIMITED

Claimant

- and -

BIRMINGHAM MAGISTRATES' COURT

Defendant

- and -

AMPOWER UK LIMITED

Interested Party

MS D McCAMBLEY (instructed by Charles Russell Speechlys LLP) appeared on behalf of the Claimant.

THE DEFENDANT was not present and was not represented.

MR A CUNLIFFE (instructed by Singhania & Co LLP) appeared on behalf of the Interested Party.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

- 1 This is an application by Hever Resort Hotel Ltd (“HRHL”) for an urgent injunction requiring the interested party, Ampower UK Ltd, to reinstate the electricity supply and meter at the property situate and known as Hever Hotel, Hever Road, Hever, Edenbridge, Kent, TN8 7NP. The claimant seeks reinstatement of the electricity supply as quickly as possible, within 24 hours or shorter if appropriate.
- 2 The context of this application is as follows. On 5 December 2017, a Mr James Godwin entered into a contract on behalf of a company called Good Hotel Management Ltd (“GHML”) with Ampower for the supply of electricity to the hotel for a period of one year, that contract expiring on 4 December 2018. On 31 January 2018, HRHL was incorporated. As at the time of the entering into of the contract, GHML was owned by Mr Godwin, but by the time that the contract was entered into in December 2017, GHML was a wholly owned subsidiary of Hever Hotel Management Ltd (“HHML”).
- 3 In the course of 2018, a Mr Thomas McCarthy came on the scene, and on 30 September 2018 purchased the shares in GHML and became a director of GHML. Mr Godwin, as a result of a clerical oversight, remained a director of GHML but resigned that directorship on 1 February 2019.
- 4 In his witness statement of 15 July 2019, Mr Godwin says that it was part of his agreement with Mr McCarthy that GHML would cease its involvement at the hotel and that they agreed a six-month transition period. This is obscure, as it is unclear why Mr Godwin would have agreed with Mr McCarthy that Mr McCarthy would take over GHML and the management of the company for a six-month period only. But in any event, on 1 March 2019 a management contract was entered into for the management of the hotel between HHML, the leaseholder, and HRHL. The contract which had expired on 4 December 2018 between GHML and Ampower was not formally renewed but continued, in that Ampower continued to supply electricity to the hotel pursuant to the contract.
- 5 After 1 March 2019, by which time there were significant arrears of electricity sums due, it appears clear that there were negotiations, in particular between Miss Atlanta Boyer on behalf of Ampower and the manager of the hotel, Mr Lee Crawford, but no contract was entered into between HRHL and Ampower for the continued supply of electricity, because Ampower were making it a condition of their preparedness to agreeing to any new contract with the new management company that the arrears of electricity payments due should be cleared by HRHL. Whilst HRHL were prepared to pay reasonable sums for the continued supply of electricity after 1 March, they were not prepared to take on liability for the arrears. I am told that, as at 21 May 2019, those arrears were approximately £67,000, but that sum included some £20,000 accrued between 1 March and 21 May, the sum outstanding as at 1 March being approximately £47,000.
- 6 From the point of view of Ampower, they considered that they only had a contract with GHML, that there had been no other contract entered into, and, accordingly, given the level of arrears, they applied for a warrant for the disconnection of the electricity supply to the hotel to the magistrates’ court. The claimant, HRHL, decided to play no part in that application, a somewhat surprising decision given that the application was to cut off supply of electricity to the hotel which they, HRHL, were managing pursuant to the contract of 1 March 2019. Insofar as it was and is HRHL’s position that they could rely on the corporate veil, shrouding the position of HRHL and distinguishing it from the position of GHML, and could assert that the electricity should not be disconnected because of their

continuing interest in the hotel and need for continuing supply of electricity, it does seem surprising in the extreme that they did not attend to protect their interests.

7 Thus it happened that on 21 May two things occurred: firstly, Ampower obtained its warrant at the Birmingham Magistrates' Court for entry onto the premises and the disconnection of the electricity; and, on the same day, a liquidator was appointed in relation to GHML. Although as I understand it HRHL has made certain payments to Ampower in respect of supply of electricity between 1 March and 20 May (the last payment being a sum of £8,000 paid on 20 May, based on contractual supply rates rather than non-contractual supply rates), Ampower have never accepted those payments except as made for and on behalf of GHML, with regard to whom Ampower have always considered themselves to be in a contractual relationship.

8 It is now suggested on behalf of the claimant, HRHL, that by virtue of an email sent by Miss Boyer to Mr Crawford on 15 March 2019 there was in fact a deemed contract between HRHL and Ampower. That email, sent at 11.36 on 15 March, stated:

“I understand you have had conversation with Merthi from our accounts team in relation to an outstanding balance. If you could give me a call on either of the below options to discuss signing a new contract. At the moment you are currently on deemed rates, so by signing a new contract on fixed rates means your monthly cost will be significantly cheaper. Please give me a call at your earliest convenience.”

9 In my judgment, it is not reasonably arguable that this email from Miss Boyer can be elevated by use of the pronoun “you” to amount to a deemed contract between Ampower and HRHL: “you” was clearly a reference to Mr Crawford, who remained the manager of the hotel and had been the manager both before and after 1 March 2019, and it is not reasonably arguable that Miss Boyer was acknowledging and recognising HRHL as the party with whom she was negotiating a contract. In any event, the context, as shown by a later email of the same date but sent at 21.11 from Mr Crawford to Ampower, shows that the position of both parties was that a new contract would need to be signed by and on behalf of HRHL, and, as stated in that email “... the necessary form which acknowledges that Good Hotel Management are liable for all charges preceding 1 March 2019,” an acknowledgement which Ampower were never prepared to sign and make.

10 As I have stated, it was and has always been the consistent position of Ampower that it was a condition of any novation of the supply contract that the new contracting party, HRHL, would acknowledge and accept liability for the existing debt which had accumulated up to 1 March 2019.

11 In my judgment, for the reasons essentially stated by Mr Cunliffe in the interested party's response to the claimant's application, there is no arguable case that the warrant issued by the Birmingham Magistrates' Court was made unlawfully or in any way which makes the issue of that warrant subject to judicial review. I will not rehearse the matters set out in the interested party's response, but essentially at paragraphs 11 to 19 Ampower, the interested party, submits that the magistrates' court was right to be satisfied that the conditions of section 2(1) of the Electricity Act 1954 had been fulfilled and that the discretion to issue a warrant had arisen.

12 As stated, in the absence of the claimant by its own choice, the court was perfectly entitled to exercise the discretion to issue the warrant. If the claimant had wanted the magistrates' court to take into account all the various matters which had been urged before me and which

form the basis of this application for judicial review, then they should have attended on 21 May and made those points to the magistrates in an attempt to persuade the magistrates not to exercise their discretion to issue the warrant. Having failed to do so, they are in no position today to complain that the warrant was issued by the magistrates exercising their discretion in the way that they did.

- 13 It has been suggested that the decision by the magistrates was made in circumstances whereby the magistrates were persuaded that there was fraud at work in relation to the demise of GHML and the taking over of the management by HRHL, an allegation which had never been put forward in correspondence between Mr Crawford and Ampower and of which HRHL had not been given sufficient notice. I do not accept that submission, for the reasons again which are set out in Ampower's response. There is, it seems to me, at least a mist of suspicion arising out of the circumstances in which the management of this hotel was taken over by another company in which Mr Godwin had an interest, leaving significant debts in respect of unpaid electricity charges by another company in which he had certainly had an interest (either himself or through HHML) at the time that the contract was entered into, and in circumstances where he had divested himself of his interest in GHML in September 2018 in circumstances that do not appear to make a lot of commercial sense. But the evidence does not suggest, in my view, that the basis for the decision by the magistrates was a finding of fraud by them on the part of HRHL; it seems to me that the basis was simply the one which was put forward and has been put forward before me, namely that the contract remained at all times with GHML and that the arrears by GHML were such as to justify the cutting off of the electricity supply.
- 14 On the basis that there is no arguable case that the decision by the Birmingham magistrates was an unlawful one or one which is capable of being challenged by way of an application for judicial review, I refuse the application for permission to apply for judicial review. It follows that with the refusal of that application, the application for an interim injunction must also fail.
- 15 In those circumstances, this application is dismissed.

CERTIFICATE

Opus 2 International Ltd. Hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

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This transcript has been approved by the Judge