

11th March, 1987

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

Before: The Bailiff assisted by Jurats H. Perrée and P.G. Baker

	—————	
Between	Guinness PLC	Plaintiff
and	Market & Acquisition Consultants Limited	Defendant
and	Michael James Damian Dee	Second Party Cited

—————

Advocate P de C Mourant for the Plaintiff

Advocate G R Boxall for the Second Party Cited

—————

BAILIFF: As a result of an Order of Justice signed by me on the 23rd February, certain orders were made against the defendant in this action, Market & Acquisition Consultants Limited, and the first and second parties cited. Representations were made to me in Chambers by counsel for the defendant and the second party cited, Mr Michael Dee, and as a result of the Representation, I struck out three of the five orders which I had made upon signing the Order of Justice so that there remained the following order in these terms:-

"Upon service of this Order of Justice, the defendant and the second party cited and each of them shall disclose to the plaintiff's advocate forthwith:

1. all dealings by the defendant or to their knowledge or belief others with or in connection with the said sum of £5,200,000 or any monies including interest or other assets representing or derived from the same;
2. the nature and whereabouts of the monies and assets referred to at A4/1 above and the names and addresses of the persons who have held or who are holding the same.

There then followed the filing of a later affidavit^t by Mr. Dee, dated the 4th March; he had previously sworn one on the 24th February, and after that, he swore a supplementary affidavit on the 10th March which did not substantially affect the contents of the earlier affidavit of the 4th March.

In the affidavit of the 4th March, he disclosed certain matters which relate to the dealings with - I use that word advisedly - the £5,200,000 which the plaintiff in this case, Guinness PLC, says the defendant had received on the 23rd May, 1986.

I pause now to consider the question of the word 'dealings'. It is suggested by Mr. Boxall, for the defendant and the second party cited, that that word ought to be defined: we disagree; it should be given its ordinary meaning, it is quite clear that the word 'dealings' has been used very often in commercial transactions and, to my mind, it does not require more than its ordinary and everyday meaning which I do not propose to define further.

Secondly, there was some suggestion that the word 'terms', when one comes to the question of a bank account, ought to be defined; I am unable, again, to agree with Mr. Boxall; the word 'terms' is a very well known commercial word and, again, does not require further refinement by this Court.

This afternoon, Mr Mourant, for the plaintiff, has urged upon the Court that the information finally disclosed by Mr Dee to the extent that he controls it and by the defendant is inadequate - and, in fact, has invited the Court to supplement its

order - or my order, because it was in Chambers - by issuing somewhat more precise instructions and, to that end, Mr Mourant has prepared a note for the assistance of the Court.

The first thing I want to say is that of course the Court is familiar with the principles applied in the English courts to Mareva injunctions, which we sometimes call 'saisie conservatoire' here, and to a tracing action and, where necessary, an Anton Piller order. This is a tracing action and it is quite clear from the judgment I gave in Johnson Matthey Bankers Limited v. Aria Holdings Limited, which is an unreported case on the 22nd November, 1985, that the Court had regard to those authorities and, particularly, the Case of A v. C reported in 2 Weekly Law Reports, 1981, and the passage at page 633 in the judgment of Mr Justice Gough, as he then was, where he said this:

"Considerations such as these, that is of course protection of the defendant's bankers in that case, point in my judgement that the conclusion that the Court should, where necessary, exercise its powers to order discovery or interrogatories in order to ensure that the Mareva jurisdiction is properly exercised and thereby to secure its objective, which is, as I have described, the prevention of abuse, that the Court has power to order discovery of particular documents, interrogatories and early stage of proceedings is, I think, not in doubt".

Again we were referred by Mr. Mourant to the case of Bankers Trust Company v. Shapiro and others which is reported in (1980) 3 All England Law Reports where the Master of the Rolls, Lord Denning (That case was slightly different by it was a case of tracing property) reviewed the earlier cases to which we were referred, (namely London & Counties Securities Limited v. Caplan and Mediterranea Reffineria Siciliana Petroli SpA -v- Mabanaft GmbH and also A -v-C, (1980 2 All E R . 347) says at page 357:

"having heard all that has been said to me, it seems to me that Mustill J. was too hesitant in this matter. In order to enable justice to be done, in order to enable these funds to be traced, it is a very important part of the Court's armoury to be able to order discovery. The powers in this regard and the extent to which they have gone are exemplified in *Norwich Pharmacal Co -v- Customs and Excise Comrs.* (1973) 2 ALL ER 943".

It seems to me that this is a very similar position particularly when we have had regard to the Orders that, in fact, were issued by the Court in the *Mediterranea Reffineria Siciliana Petroli* case. The Orders (of Mr. Justice Mocatta in the Queen's Bench Division) were extremely clear and detailed and were very precise, and we think there is much in what Mr. Mourant has said, that in order to enable the plaintiffs to know where this money has gone, where it is, through whose hands it has passed and how best, eventually, if they can to safeguard it in those hands, it is right that we should detail more precisely what we feel should be disclosed.

However, we have accepted the submission of Mr. Boxall that as regards the reasons for the transfers of these very large sums of money, we think there is merit in what he says, that the reasons do not form part of the knowledge which is essential to the plaintiff to know where this money has gone. We have removed from the proposed questions any reference to the reasons, and therefore accordingly we order as follows:-

BAILIFF: We order as follows that under paragraph 7 of the second party cited's affidavit, he and the defendant will also disclose the following information:

Under 7. (a), on those instructions and to what address was the sum of \$90,000 paid?

Under 7. (b), identify the payee and the account at the transferee bank. On whose instructions was the transfer made?

Under 7. (d), on whose instructions were the shares purchased, on what date were the shares sold, into which bank were the proceeds paid, on whose instructions was £25,000 paid to Europlan Financial Services (EFS)?

Under 7. (e), when the sum was deposited with Charterhouse, into whose account number did it go and on what terms and on whose instructions?

Under 7. (f), on whose instructions was the sum paid to EFS?

Under 7. (g), on whose instructions was the conversion and transfer made? Who was the payee and what was the transferee bank account?

Under 7. (h), on whose instructions was the conversion made and the deposit effected? Identify the deposit account number and the terms of the deposit.

(I stop here because I've omitted an order under 7. (c) which had been inadvertently omitted from the list, I added it at the bottom)

Under 7. (c), on whose instructions was the payment made, identify the account number and the terms of the deposit?

Under 7. (i), who was the payee, what was the transferee account number and whose instructions was the transfer made?

Under 7. (j)., specify the transferee account number and upon whose instructions the transfer was made.

Under 7. (k), on whose instructions were these transfers made? identify the payees and the transferee bank accounts. If any of the transfers constituted deposits, on what terms were the sums deposited?

(Under 7. (l) on whose instructions was the transfer made, to whom and what was the transferee bank account number? If the money was placed on deposit, on what terms was it deposited?

Under 7. (m), on whose instructions was the transfer made, to whom and what was the transferee bank account number? If the money was placed on deposit, on what terms was it deposited?

Under 7. (n), on whose instructions was the sum paid/

And I order that the costs of this application of this afternoon's proceedings will be the in the cause.

✓