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ROYAL COURT
(Samedi Division) 140

27th September, 1991

Before: F.C. Hamon, Esq., Commissioner, and
Jurats Hamon and Herbert

Between:	**Gerard Lawrence Nolan**	Plaintiff
And:	**Desmond Nylande**	Defendant

Contempt of Court

Advocate A.P. Begg for the plaintiff;
Advocate P.C. Harris for the defendant.

JUDGMENT

COMMISSIONER HAMON: On 12th September, 1991, the Plaintiff summoned the Defendant to appear before this Court to answer the allegation that he was in breach of the terms of certain interim injunctions contained in an Order of Justice served on the Defendant on the 9th August, 1991.

This Court is not concerned with the merits of the pending proceedings - although as the hearing proceeded we were almost inexorably drawn into much of the detailed dealings between the parties. We had to remind Counsel, on more than one occasion, that we are not concerned with the merits and whether the proceedings are good, bad or indifferent is not in any material way relevant. We need to go into some of the background but we will refrain, as far as we are able, to make any remark about the merits of the case.

We do not believe that the matters that we have to decide are as complex as Counsel for the Plaintiff led us to believe.

The Representation accompanying the summons asks the Court to order:

"1. that the Defendant shall be required to answer for his contempt in disobeying the terms of the interim injunctions, set out in the Order of Justice; and

2. that the Defendant shall be ordered to comply with the terms of the said injunctions".

There are then two supplemental prayers as to costs and any consequential orders that the Court considers just.

Contempt of Court is, if proved, a most serious offence. It attacks the whole fabric of justice and the Court has wide powers to deal with it. Because the Court has powers to show its displeasure at such conduct by imprisoning or fining the recalcitrant we are firmly of the view that such powerful weapons in the Courts armoury should only be invoked for grave and serious reasons and on real and substantial grounds.

Again, because of the view that a Court will take of any attempt to oust its jurisdiction we have no doubt that we must be completely satisfied that the terms of the injunction are clear and unambiguous, that the Defendant must have proper notice of the terms of the injunction and that the breach must be proved beyond reasonable doubt (in this latter point see Manning -v- Le Marquand née Normand (1987-88) JLR. N.13.

Let us for a moment examine the facts of the case. The Plaintiff in this action commenced a business known as Channel Islands Plaster Design in or about February, 1991. There is a dispute as to the terms of the oral agreement between the Plaintiff and the Defendant. The Defendant worked in the business and was paid by the Plaintiff.

The business makes all types of things out of fibrous plaster such as fireplace surrounds, niches, columns, archways, coving and cornices. Its method is to counterfeit. It orders, for example, from established English firms (whose catalogue warns against such practices) a plaster ceiling rose. It makes a mould and then produces exact replicas which it then sells. We questioned the practice which struck us as distasteful but were assured by Mr. Begg that no copyright or patent was infringed.

The business was conducted from premises known as the Better Homes Centre, 14 Castle Street, St. Helier. This is a large building with an area on two floors of some 21,000 square feet. The business rented a small part of those premises.

The relationship between the Plaintiff and the Defendant was shortlived. It commenced in April, 1991, and was terminated by notice on the 29th July, 1991.

The action concerns, in part, items which the Plaintiff alleges were stolen by the Defendant or otherwise removed from the premises by him.

There is some doubt in our mind as to the precision of drafting in the Order of Justice which defines "the Premises" as premises for the business at Better Homes Centre, 14 Castle Street. The premises were, in fact, that part of the Better Homes Centre rented by the business.

The Order of Justice contains injunctions. They restrain the Defendant from dealing with "the Equipment" in any way and seeking information as to any of "the Equipment" that may already have been disposed of. The Defendant is prohibited from calling at the premises. There are other injunctions but we need only deal with these.

"The Equipment" is defined in the Order of Justice as "all the Equipment, get-up and assets of the Business, including (but without prejudice to the generality of the foregoing) the following items:-

(i) 7 Silicon Moulds together with accompanying supports
(ii) Circular Saw valued at £350
(iii) Drill valued at £70
(iv) All materials including a roll of hessian
(v) All the books of the Business including cheque books, paying-in books, receipt books and invoices...."

It was, in our view, confusing to itemise five pieces of equipment when there were added by correspondence "a plaster centrepiece, brochures relating to the design, two bags of fine casting plaster, three lengths of cornice, a red account book and some moulding tools".

The Order of Justice was served on the Defendant by the Viscount at the Better Homes Centre on the 9th August. Mr. Robert Davidson, a Viscount Substitute, explained the meaning of the injunctions to the Defendant and their gravity, but told us that he found the Defendant very helpful and co-operative. He wrote in his Record of Service "The said Mr. Desmond Nylande confirmed that there are only 5 silicon moulds, he does not know of the other two round ceiling moulds and claims new ones are to be made. He does claim that he does not know of the whereabouts of any hessian, except that it had all been used up. The said Mr. Desmond Nylande also claims that he has lost the keys and has been instructed that if he finds them he must hand them into the Viscount's Department".

There then proceeded an almost inexhaustible flood of correspondence (mainly one sided) between the parties' legal advisers.

As a result of that correspondence certain items of equipment filtered back. The end result is shown in a letter of the 16th August, 1991, from Mr. Harris to Mr. Begg.

"Our ref: PCH1/CAP/20028-1.01
Your ref: APB/JP/Nolan

16 August, 1991

Advocate A.P. Begg,
20 Britannia Place,
Bath Street,
St. Helier,
Jersey.

Dear Advocate Begg,

NOLAN -v- NYLANDE

We write with reference to your letter dated 13th August, 1991, upon which we have now received our client's instructions.

We are instructed by our client that he has returned all of the equipment to the premises of Channel Islands Plaster Design. There were however only ever six silicon moulds and not seven. Of those six moulds, one, together with the plaster centre piece, are at the Better Homes Centre waiting to be collected by Mr. Nolan. Our client will return the red account book to the premises.

We are also instructed by our client that he has not removed any brochures relating to Channel Islands Plaster Design and all of the fine casting plaster was used in the course of making moulds for the business. The wooden moulding tools are the personal property of our client and therefore will not be returned. The two plastic columns were made by our client before Channel Islands Plaster Design was set up for a different job. We are instructed that Mr. Nolan already has the fire-place and that our client has no knowledge of the three lengths of cornice.

Given that we have now dealt with all of the matters raised in your letter, and as our respective clients are now engaged in separate enterprises, we feel that this action could be withdrawn. Alternatively, we would suggest that the action be adjourned sine die this afternoon on reciprocal undertakings to reappear on 48 hours' notice, with the injunctions to remain and each side to bear its own costs.

Yours sincerely,
MOURANT DE FEU & JEUNE

P.C. Harris".

What concerns us is that at the time that the Viscount was talking to him on the 9th August the Defendant knew perfectly well that some of the equipment was secreted away by him in a separate part of the Better Homes Centre. To put no finer point upon it, he lied.

In open Court he apologised to us and because of the explanation that he gave (and of what later transpired) we are prepared to accept his apology. If we had not accepted his

apology our reaction would have been most severe. We would not want him to understand that we view what he did other than with grave disquiet. A breach of injunction, if culpable, is a most serious matter and not one that the Court will, in usual circumstances, tolerate.

We heard the Representation for the first time in the afternoon of the 12th September. Despite his emphatic denial that there were only five silicon rubber moulds, by the 16th August the Defendant had recalled that there were now only six and had returned one.

The Plaintiff impressed us with his evidence. He told us how certain other items had filtered back but he was emphatic that certain items such as the three lengths of cornice were at the premises when the injunction was served. We are now satisfied, having heard the Defendant and the owner of the premises, Mr. Robert James Ainscough, that the Plaintiff was correct, but these cornices were later broken and dumped.

He told us of the tools having been made by the Defendant. We are prepared to accept the Defendant's explanation that these tools were specifically made to carve out the plaster columns and, once used, were dumped. He was particularly concerned about the remaining (or seventh) mould. His statement to us was emphatic:

> "The main thing I'm bothered about is a big expense, is the actual centrepiece mould that is missing. Mr. Nylande, as far as I'm concerned, whatever he's done with them, with all the bits and pieces, they're nothing, they can easily be reproduced, it's the actual centrepiece I'm after. That's why I'm here today. It's just a question of this centrepiece".

And again:

"The main thing is I want this centrepiece returned".

We had reached a point where the Defendant was to give his evidence on oath.

We called for a short adjournment, with the agreement of Counsel. We wanted the Defendant to have time to reflect before he gave his evidence. We viewed the question of contempt with a very grave concern.

Counsel saw us in Chambers. As a result Mr. Harris addressed us in open Court and said that while his client still insisted that there were only six and not seven moulds, he had recalled making a mould of the same size and similar pattern which might "fit the bill". He also told us that the columns were in situ in another part of the premises and that the three lengths of cornice were now at the premises with other goods stockpiled there. All these latter items were dumped.

We left Counsel to arrange to attend at the premises in the anticipation that matters might resolve themselves, but holding ourselves ready to reconvene at short notice.

At the resumed hearing (the Court lost one afternoon through some misunderstanding between Counsel) the Defendant at last explained his apparently recalcitrant attitude to the seventh mould.

Firstly, we need to cite from Mr. Begg's letter to Mr. Harris of the 13th September (the day after the adjourned hearing),

> "The silicon mould which, yesterday afternoon in Court (on instructions from your Client) you said was not the "seventh mould" belonging to my client's business but was a similar one (although of a different pattern) subsequently made by your client, had been left (by your client) with Mr. Ainscough in his office. I am bound to say that I was not terribly surprised when my client identified it as being "the seventh mould" which had been at the Premises (as defined in the Order of Justice) right up to the day when your client quit his employment (on 29th July, 1991). Furthermore, it was quite clear to me (notwithstanding my inexpert eye) that the mould was as perfect as could be; that there was no sign of it having been "put together from bits and pieces" - as (again on instructions) you informed the Court yesterday. Since the mould is his, my client has taken it home with him".

We might well have shared Mr. Begg's views. Matters are not, however, always as they seem.

The Defendant made the seventh mould. While it was still setting, the template ceiling rose (made by a firm in England) and despite his protestations was taken from the business premises and fitted at a customer's home. When he turned the mould out it was defective. He carved the defects out of the cast plaster and destroyed the worthless rubber silicon mould by dumping it.

On the 11th August a friend of his hired a van in his name from a local car hire firm. Permission was given to take the van out of the Island. The friend paid for the van. In return the Defendant delivered a bath to an area of Liverpool known as Kensington. The Defendant purchased for £151.19, 6 kilogrammes of silicon mould. He returned to Jersey on the 14th August. He recast his remoulded plaster ceiling rose and recast some lengths of cornice. He produced documentary evidence by way of tickets and receipts. We accept his explanation.

He told us that he had deliberately held back on the two moulds because he was shocked and disturbed at the offer made by the Plaintiff to sell the business (which was in effect the business name) and by the attitude of the Plaintiff towards him. This dispute is not for us to adjudicate upon. The Plaintiff instructed Mr. Begg to continue the action, certain that the Defendant's contempt of Court was "blatant and exacerbated". (He also wished to pursue other matters such as the plaster centrepiece the tools and the columns) but the seventh rubber mould was uppermost in his mind and the main thrust of his attack. He was certain that the seventh mould was, and always had been, his. We disagree.

For the reasons that we have stated we do not find the Defendant's attitude so contumacious that we have to punish it. He lied to the Viscount. Fortunately, he apologised to the Court. He gave us explanations. We do not in the light of those explanations and of the apology, deem it necessary to make use of our salutary power which should in our view be exercised only when there is a real contempt and, of course, where there are serious grounds for its exercise.

AUTHORITIES.

Manning-v-Le Marquand (née Normand). (1987-88) JLR. N.13.