Judgments

Wright v Michael Wright Supplies Ltd

Company – Activities carried out on behalf company – Liability of company to reimburse for activities carried out on its behalf – Claimant selling company to defendants – Claimant continuing to work with company – Claimant claiming defendants in breach of share sale agreement and seeking sums allegedly owing and transfer of shares – Claimant alleging that entitled to recover from company sums paid as rent and a deposit for country house claimant occupied for six months – Company signing lease for country house – Claimant contending house occupied for company purposes – Whether claimant entitled to be reimbursed – Whether house occupied for business purposes

[2013] EWHC 4406 (Ch), (DAR Transcript: John Larking Verbatim Reporters)

CHANCERY DIVISION

MR DONALDSON QC (sitting as a deputy judge of the High Court)

17 OCTOBER 2013

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The Claimant appeared in person

C Wolman for the Defendant

Direct Access

MR DONALDSON QC:

[1] This case has already been before one judge, Judge Anthony Thornton QC His judgment was overturned on a procedural error arising out of his valiant but ultimately unsuccessful attempts to render the case triable. The case was returned by the Court of Appeal to first instance for retrial by another judge and subsequently transferred from the Queen's Bench Division to the Chancery Division. Both courts, *viz,* Judge Thornton and the Court of Appeal, reported on the problems caused by the lamentable state of preparedness for trial. Some Directions intended to address that were subsequently made by the Master but they were both not complied with properly and insufficient. By the end of the first day of the hearing before me the untriability of the case had manifested itself quite brutally and the following morning the parties were agreed that it would have to be adjourned. I need not deal here with the further steps that are now necessary and the further Directions which will have to be given to make the case triable – and when I say "given" I mean "given and complied with" to make the case triable. There has been some preliminary discussion on the subject between the Bench and the parties and I required the parties to report back to me later today when I have delivered this judgment with a view to advancing those discussions.

[2] In the meantime and to save wastage of costs and court time it was agreed that I should continue to deal with the single discrete claim which does not form part of and is separate from the main claim or claims. It was especially desirable that I should do so because I had at the request of the Claimant interposed in the argument or exposition of the main claim two witnesses. Though consolidated with the main claim or claims the Claimant before Judge Thornton elected not to pursue this separate claim – at least not at that stage. On 25 September this year shortly before the hearing before me he gave notice that he intended to advance it before me. Though scarcely addressed in the witness statements the parties united in asking me to deal with it and I agreed to do so, not least because, as I say, I had to some extent embarked on it by hearing the two witnesses in question.

[3] The background to this matter is set out in the judgment of Judge Thornton and the Court of Appeal, and can be read online, the relevant citations being [2012] EWHC 219 QB and [2013] EWCA Civ 234, and I shall simply restrict myself to a very short summary of the background. The First Defendant Michael Wright Supplies Ltd *(*"*MWS*") was a company which was engaged in office supplies, which I understand to be stationery and equipment, which it bought and resold down the line. MWS was founded by the Claimant Mr Colin Wright some very considerable time ago. His principal collaborator was Mr Nigel Turner and the relations between them were also ones of – as it appears to me – serious amity and considerable social contact. In 2002 when by my arithmetic Mr Wright was approaching 55 he appears to have thought that it was time to start realising the substantial value of the company and he entered into a form of long-term management buy-out by Mr Turner. This was done by selling the shares in MWS of which Mr Wright was the sole shareholder to a company newly-formed called Turner Wright Investments Ltd *(*"*TWI*"*),* a company in which Mr Wright and Mr Turner had and have one share each. But Mr Wright ceased to be a director of MWS and Mr Turner became managing director of both. The purchase price under the sale purchase agreement was to be paid over a number of years by TWI and the parties contemplated that this would be done solely out of dividends uploaded from MWS, which would as I understand it remain the effective trading company, with TWI simply as in effect a holding company. No doubt there was a considerable tax efficiency involved in this. Mr Wright had also the protection that if he was not paid in full he could require the return of the shares under a term to that effect in the SPA though I learned that the legal effectiveness of this provision may be in issue and may fall to be considered when the main claim is ultimately heard.

[4] Mr Wright ceased to be an employee of MWS but in practice he continued to work latterly and for all I know before he was in the office three days a week and perhaps engaged on company business outside the office on other days and from the evidence I have so far heard he appears to have been almost in sole charge of the sales side. I even heard that he had moved upstairs to the big office that Mr Turner occupied from the more general open plan office downstairs. Mr Turner dealt mainly with purchasing. There is an issue as to the basis on which Mr Wright worked and whether he was entitled to be paid as a consultant and whether he is now entitled to claim monies on that basis and if so how much. In July 2010 Mr Wright was told

that he was no longer to work in this way for MWS and banned – to use the expression used by everyone in the evidence – from the office.

[5] The matter with which this discrete judgment is concerned is an item debited – and Mr Wright says wrongly debited – to a NatWest Capital Reserve Deposit Account in the name of MWS into which Mr Wright paid £340,000 on 9 September 2009 at a time when the account held only a relatively nominal balance of just over £200. Though Mr Wright was not a signatory of that account and was not given signing rights in relation to it, and any payment required the signature of Mr Turner, it was agreed that no such payment would be made from that account without the consent of Mr Wright. The money was thus in effect held by MWS for Mr Wright. The reason for this unusual arrangement was that Mr Wright was in the throes of divorce proceedings and in particular a dispute about ancillary relief as to financial provision and property division and found it expedient for these monies to be held in a third party's name where – reading between the lines – it might be hoped that they would escape the attention of his wife and her lawyers. To this account there was debited on 18 November 2009 the sum of £33,923 – the £23 I think being generally accepted to be attributable to expenses of transfer – and the sum in question was a payment made by CHAPS transfer to Savills, the well-known estate agents. The money was in payment of the advance rental of £27,000 under a six-month lease of what I think was described to me as a small country house, perhaps five-bedroomed, in a gated estate at Shillingley, about 20 minutes from the MWS office at Farnham in Hampshire, together with a deposit of £6750 and an agent's administration fee of £150 inclusive of VAT, that agent being Savills. Though the documentation indicated that Savills had returned the deposit to Mr Wright at the end of the tenancy, for most of the hearing Mr Wright maintained that he had never received it. Towards the end of the hearing however he retracted this denial so that on any view his claim was reduced accordingly to £27,173. In the context of this action and indeed absolutely that was a very small claim indeed. It is therefore disturbing that its determination even without this judgment took up more than a day, the result in large part despite some fair degree of forensic skill and court craft on his part of Mr Wright representing himself. It bodes ill – very ill – for the potential duration of the main claim unless he is in future represented, particularly at trial, and represented by lawyers who are fully instructed and not short-changed in the time that they can spend on the case and in addition the matter is in future rigorously and perhaps even draconically case managed. I will however endeavour myself to ensure that the length of this judgment is in some degree proportionate to the value of the claim by restricting myself to essentials.

[6] My determination of the factual issue cannot but be influenced – at least to some extent – by my view of the two men and in particular of their apparent reliability as witnesses. So far as Mr Wright is concerned, I gained the impression of a man with a marked tendency to avoid difficult questions with an all too frequent and rarely credible resort to the mantra of non-recollection, and whose approach to testimony appeared to be shaped primarily by opportunistic convenience. I had no similar reservations about Mr Turner as a witness. He came across as direct and straightforward.

[7] The background to this lease of the house at Shillingley was that Mr Wright's marriage was on its last legs. Though he told me that he had not been positively ejected from the matrimonial home, which he indicated to me was fairly large, he was seeking somewhere else to live and to live freely – and by freely I mean without any inhibitions. When the lease commenced on 18 November 2008 he moved in immediately and remained in occupation until its expiry six months later when he rented another property, though he did tell me that there was the odd intermittent return to the matrimonial home. Against this background and having heard the two men give evidence I reject Mr Wright's suggestion that it was Mr Turner who found the house rather than he, Mr Wright, possibly with the assistance of his daughter Natalie. I am also clear that it was Mr Wright who negotiated with Savills and I am also in no doubt that to start with it was envisaged that he would be the party to the lease. That is reflected in a Savill's document dated 13 November 2008 entitled “Tenant Initial Demand” addressed to him at 1 Glebe Cottages in Liphook, which suggests to me that though it was not adverted to in the evidence that he was living at somewhere other than the matrimonial home itself. The Tenant Initial Demand also showed him as the tenant. It required and in effect invoiced him for the payment of the advance rent deposit and administration charge which I have already described. When however the tenancy agreement was produced as a document the tenant had been changed to MWS with

Mr Wright now being specified as the “Permitted Occupier”. Mr Wright was unable to explain why the Initial Demand was addressed to him and showed him as the tenant; indeed his reaction, as with many other documents, was to wish it away by saying that he could not recollect it and suggesting or tending to suggest that it might not be entirely authentic. Nor when asked to assume that it was a genuine document was he able to explain why the transition had taken place to MWS as the party to the lease.

[8] Mr Turner told me that he had known little about the house and had never seen it. He was however told about the lease which Mr Wright proposed to take. Mr Wright had told him that there was some difficulty about checking his credit and asked whether as an accommodation to him MWS could sign it and become the tenant. While in the absence of any formal employment due to the idiosyncratic structure of the SPA Mr Wright might have had some difficulty in demonstrating a regular income, though one would have thought that it would have been superable, it is open to serious doubt whether this can have been the real reason for the switch to MWS. The Initial Demand document to which I have referred coming from Savills and addressed to Mr Wright as the tenant shows that the entirety of the rent had to be paid before the keys would be released and occupation taken, and he also had to first pay a large deposit, a deposit of £6750 to which I have referred earlier presumably to cover such damage or dilapidations as might occur in such a limited period. The fact that Mr Wright did not show a regular income or might have had a little bit of a challenge in doing so and could not show it from employment would therefore appear to be unlikely to have been of importance to a lessor because the entirety of the monies were being paid upfront. A more plausible motive may have lain in the ongoing financial provision proceedings with his wife in which the payment, if it came to light, in a substantial lump sum of a high rental and deposit for a largish country house might have raised eyebrows and excited inquiries as to the source of such a payment thereby leading back to the £340,000.

[9] Mr Wright suggested that the house had been sourced and intended to be for company purposes. It was quite unclear to me why occupancy by him on an effectively full-time basis should be a company purpose or should be paid for by the company, and all the more so since he was not even an employee or director. He suggested that the house was and was intended to be used by entertaining by himself and Mr Turner. In this connection he relied on both his own evidence and that which I heard from the landlord Paul Hayward, who I understood to live nearby on the same gated estate, that Mr Turner was there most weekends and slept always in the same room and in an iron bed (which may have been a metal other than iron) which Mr Turner had brought. Mr Turner told me that he had spent the night there on only three occasions; first of all, after a nearby pre-Christmas party to avoid driving home over the limit; secondly, after an alcoholised Christmas or Boxing Day; and thirdly, after a birthday party given by Mr Wright in April 2009. On I think at least two of these occasions he told me he was with his wife. Apart from that he had been there by day on perhaps two or three occasions, once to burn a carpet which he had brought from his flat, which I think Mr Hayward suggested took place on his property. Mr Turner told me he had no key to the front door and had to be admitted by Mr Wright on the occasions when he did come.

[10] I inquired of Mr Wright what sort of entertaining would be done for company purposes and received the elusive and laconic answer “Ladies” (Mr Hayward had mentioned that ladies appeared to feature in the course of the weekends). Mr Wright's answers I observed to him appeared to conjure up the picture of the type of party reportedly thrown by a well-known Italian politician but transported to the perhaps less balmy climes of mid-Hampshire with invitees coming from the suppliers and purchasers of office stationery and equipment. Mr Wright disabused me at least as regards the invitees, who I do not think once he had disabused me it was suggested that they were company clientele or contacts. Mr Wright's case, as it ultimately came over to me, was that he and Mr Turner disporting privately in the house with ladies was a company purpose, a proposition which would surely not have passed muster with the tax authorities, I suspect, and can scarcely have been believed by Mr Wright himself.

[11] I do not doubt that there was activity of something of the sort which Mr Wright alluded to, and that it did take place on a number of – perhaps many – weekends, though its excesses in the depths of Hampshire may have been more modest than Bacchanalian. It is unnecessary for me to determine whether Mr Turner

was present at some such weekends as Mr Wright suggests. Even if that were so, Mr Turner's presence at the property for such activities would, I consider, have been entirely subsidiary to Mr Wright's occupation and at the latter's invitation. Ultimately I find that the house was sourced by Mr Wright for his occupation, not for company purposes, and that he at the last moment requested for his own purposes that MWS should sign the lease as an accommodation to him, a lease which named him and made no mention of Mr Turner as the Permitted Occupier.

[12] Mr Turner told me at a later stage of his evidence when challenged by Mr Wright to say what Mr Wright had said in express words or as close to them as Mr Turner could now get, that Mr Wright had said that the money could be taken from his £344,000 deposit, though earlier he had not referred to an explicit authorisation of this sort but suggested to me that that had been clearly understood. I consider it likely that some reference to the deposited monies was indeed made in this context whether or not the resort to them was as clearly spelled out as in the later account which Mr Turner gave me when challenged to provide the express words by Mr Wright. It does not however in my view matter. If MWS was merely providing an accommodation signature for Colin Wright it would be entitled to be reimbursed for the rental and other expenses which were incurred under the lease and could therefore set it off in any event against monies due to it. Either way the claim of Mr Wright would fail. Moreover, the fact that Mr Wright accepted the return of the deposit from Savills and did not account for it to MWS is consonant with this analysis. So too is the fact that though he undoubtedly saw a spreadsheet setting out and analysing payments from the deposit account and which payments included the £33,923 he appears to have made no challenge to it. I accordingly dismiss the claim for the £33,923 in its entirety.

Judgment accordingly.