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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
[2021] EWHC 3665 (QB)



No. QB-2021-004701

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 29 December 2021

Before:

MR JUSTICE BOURNE

B E T W E E N :

CDW LIMITED

Applicant

- and -

(1) LEE DAVID BIRD

(2) ALAN BIRD

Respondents

MR L. KRSLJANIN (instructed by McDermott Will & Emery UK LLP) appeared on behalf of the Applicant.

THE RESPONDENTS were not present and were not represented.

J U D G M E N T

(via Microsoft Teams)

MR JUSTICE BOURNE:

- 1 This is a without notice application for an interim injunction. The order sought prohibits the respondents from continuing with an unlawful course of conduct, requires them to deliver up goods wrongfully obtained from the applicant and contains a freezing injunction against the respondents. I have decided to grant the order in the terms sought and will state my reasons briefly.
- 2 The applicant is a company which sources information technology equipment and solutions for customers. Its customers order equipment from it, it buys the equipment from third parties, and it then sells it on to the customers.
- 3 The first respondent was employed by the applicant as a senior account manager until 21 October 2021. The applicant has discovered that between, at least, 15 March and 20 October 2021, the first respondent, Mr Lee Bird, generated and processed some seventy-six orders for 331 items, including computers, telephones and watches, in the name of one of the applicant's longstanding customers, a company called "Playdemic Limited", which is a subsidiary of Warner Bros, and that the goods in question were delivered to a residential property which is owned by the second respondent, Alan Bird, who is believed to be Lee Bird's brother. That property has no apparent connection with Playdemic, and the types of goods ordered are not the types of goods normally ordered by that company. The goods were signed for upon delivery in various names, including but not limited to, "Mr Bird" and "A. Bird".
- 4 The applicant has also discovered that, in or around November 2021, similar orders in Playdemic's name, for delivery to the same address, were placed by another individual, a Mr Powell, who remains employed by the applicant and against whom there are currently no proceedings. Those most recent orders appear to be for larger quantities of goods than most of the orders placed by the first respondent. Mr Powell's activity provides reason to believe that the alleged fraud, if not restrained, could continue. As Mr Krsljanin, counsel for the applicant, says, one cannot assume that no other employee will be enlisted to participate in the alleged fraud in future. There is also evidence that at least one of the items ordered, since being delivered, has been sold on eBay.
- 5 The value of the goods which have been delivered is just under £300,000. Orders worth a further £187,000-odd have been placed but not delivered.
- 6 According to the affirmation of Mr Airey, on behalf of the firm representing the claimant, this came to light when Warner Bros queried some of the transactions on 15 December 2021. In the short time since then, the claimant appears to have acted promptly in investigating the matter and seeking relief. The exhibits to that affirmation set out a document trail which, on the face of it, demonstrates that the relevant orders must have been placed by the first respondent or by Mr Powell, as the case may be.
- 7 The applicant may or may not prove its case in due course. There may be a technical question over title to some of the affected goods. The claim may be put in the tort of deceit and/or unlawful means conspiracy and/or trespass and/or conversion.
- 8 Be all that as it may, the applicant appears to have a strong case against the respondents on the evidence which I have seen. Meanwhile, given the size of the alleged fraud, it may well be that the respondents will not be in a position to satisfy any money judgment if the fraud is

proved. Not much is presently known about their financial position. The first respondent, when employed by the applicant, received a salary in the region of £35,000. Sales of the affected goods by the respondents at an undervalue would logically yield a deficit.

- 9 In my judgment, there is good reason for the applicant to make this application without notice, as notice of the application clearly could prompt the respondents to dispose of the goods in question or to dissipate their assets. Moreover, the grant of speedy injunctive relief may well stop the disposal of some of the goods, and that, of course, may ultimately be in the interests of all parties.
- 10 Applying the usual *American Cyanamid* approach, I have no hesitation in concluding that the balance of convenience favours an order that the respondents must not sell or otherwise dispose of or procure the disposal of the goods listed in the order. I also consider it just and convenient to order that the goods be delivered up to the applicant's solicitors for safekeeping, pending the return date. If there is any reason why goods should not be delivered up, it is open to the respondents to make an application but, from what I have been told, there should be no prejudice to them in complying with this order.
- 11 I agree with Mr Krsljanin that, on the evidence which has been obtained so far, it is possible to feel a high degree of assurance that an order of this kind would be obtained by the applicant at trial, if indeed that heightened test is applied to the case.
- 12 Slightly more debatable is the application for a freezing order restraining the respondents from dealing with their assets up to the value of £300,000 each. The key question for me is whether there is any real risk of any assets being dissipated so as to prevent enforcement of any judgment if the order is not made. Mr Krsljanin reminds me that the risk is not to be inferred simply from the fact that the respondents are accused of acting dishonestly. He took me to the summary of the relevant principles by Haddon-Cave LJ in *Lakatamia Shipping v Morimoto* [2019] EWCA Civ 2203. In that regard, he relies on four factors: first, the use of another's address, minimising risk of detection of the first respondent, second, the use of false names, third, apparent escalation of the fraud and, fourth, the involvement of another person, namely a junior employee, Mr Powell.
- 13 It does seem to me that, applying the test of good arguable case or plausible evidential basis, there is a real risk of unjustified dissipation. As I have said, the evidence currently available puts forward an apparently strong case, and that case is based on types of conduct which include disposing of goods, the falsifying of accounts, acting in conspiracy and engaging in concealment, for example, in the first respondent using the second respondent's address and in false names being used to sign for goods. Unjustified dissipation of assets and/or concealment of assets would be directly consistent with conduct of that kind. It seems to me that the alleged conduct, over an extended period, in breach of trust and using the methods to which I have referred, is sufficient to identify a real risk that the same individuals will attempt the unjustified dissipation of any assets.
- 14 Then, turning to the question of whether it is just and convenient to make the order, the freezing order is sought for a short period, and is made subject to the usual undertakings and, quite properly, it permits each respondent to spend up to £750 per week on ordinary living expenses and to meet legal expenses. On the return date, or possibly earlier if there is an application to vary, the need for a freezing injunction and/or the terms of the freezing injunction can be revisited. I therefore consider it just and convenient to make the order as sought.

- 15 As to the terms of the order, Mr Krsljanin has taken me through the details, and I am content with those. In particular, it should be noted that the applicant undertakes to file a claim form and particulars of claim within fourteen days from service of the order, and I will order a return date seven days after that. It is important to emphasise that, in any event, the order empowers the respondents to apply as soon as they may wish to vary or discharge the order, so they are not committed to waiting for the return date. Equally, all parties have liberty to apply if they need more time before the return date.
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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge.