# TRANSCRIPT OF PROCEEDINGS

**NEUTRAL CITATION NUMBER: [2020] EWHC 3655 (Ch)**

**IN THE HIGH COURT OF JUSTICE** **G90BS339**
**BUSINESS AND PROPERTY COURTS IN BRISTOL**
**BUSINESS LIST (ChD)**

**Before HIS HONOUR JUDGE PAUL MATTHEWS**

**IN THE MATTER OF AN INTENDED CLAIM BETWEEN**

**NICHOLAS RAMSAY (Intended Claimant)**

**-v-**

**NICHOLAS HACKET PAIN (sued on his own behalf and on behalf of all other members of MONMOUTH CONSERVATIVE ASSOCIATION except the Intended Claimant) (Intended Defendant)**

**MR J FRACZYK (instructed by Sanders Witherspoon LLP) appeared on behalf of the Claimant**
**MR G CALLUS (instructed by astraea legal) appeared on behalf of the Defendant**

**JUDGMENT**
**20th NOVEMBER 2020**
**(AS APPROVED)**

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JUDGE PAUL MATTHEWS:

1. This matter began as an application by Mr Nicholas Ramsay, who is the member of the Welsh Parliament for Monmouth and is also currently the prospective candidate for that constituency for the next election of the Welsh Parliament. He made an application before issuing a claim form. The application notice is dated 16 November 2020 (but issued on 17 November). It was for an injunction to restrain a meeting of his party's constituency Association, which has been arranged for Monday 23 November to consider a petition which has been put forward. But it was also for an order for the provision of information about the petition, including the reasons for it, the text of it, the reasons why it has been put in place.

2. As I say, no claim form has yet been issued, although the draft claim form that I have seen intimates a claim for breach of contract and for breach of data protection rules. The prayer in that draft claim form asks for (i) a prohibitory order on the special general meeting of the Association going ahead until it can be done lawfully, (ii) a mandatory injunction requiring certain information to be disclosed, and then also (iii) damages.

3. The draft order put in front of me for the purposes of this hearing was simply concerned, or mainly concerned at any rate, with the holding of the special general meeting ("SGM"). This application was supported by a witness statement on the part of the intended claimant, Mr Nicholas Ramsay, made on 16 November, and opposed by a witness statement from the Chairman of the Association, Mr Nicholas Hacket Pain, made on 18 November. Then there was a shortish second witness statement made yesterday by Mr Nicholas Ramsay, the intended claimant, concerning undertakings to issue this claim.

4. As it happens, in the skeleton argument which was served last night at 5 o'clock, it was made clear the intended claimant has abandoned his claim for an injunction, and now simply seeks his costs. The application that he has abandoned was for the quia timet injunction which was to hold the ring until the trial. And of course, when you seek a quia timet injunction you need to show, according to the authorities, that there is imminent danger of very substantial damage. The question for me would have been therefore whether there was such imminent danger of very substantial damage.

5. The intended claimant's argument was that this hearing on 23 November was going to deselect the intended claimant, and that was important to him, as he would suffer very serious damage. That was answered by the intended defendant by saying that actually this was only ever going to be a meeting about a meeting. I have been referred to a letter from the intended

defendant's solicitors dated 13 November 2020, which makes exactly that point. In other words, what is being asked in the petition is that the Association should resolve to have an SGM at a later date to reconsider the adoption of the intended claimant as their candidate.

6. As I understand it, the intended defendant goes on to say that, even if the second SGM *were* to "deselect" the intended claimant, under the rules he would still be included in the selection SGM at a later stage. Therefore, there have to be three votes which go against the intended claimant before he is actually deselected. And in that case, the argument runs, it can hardly be said that any damage he might suffer would be something that is in imminent danger of occurring.

7. The intended claimant accepts that the letter of 13 November does say that the meeting on Monday will be a meeting to call another meeting. So, it seems to me that there is some force in the quia timet injunction objection put forward by the intended defendant.

8. The next point is whether the test for any interim injunction, apart from the quia timet aspect, would be that in the well-known decision in *American Cyanamid* (which is what the intended claimant puts forward). I note in passing that, in *Lewis v Heffer* [1978] 1 WLR 1061, Geoffrey Lane LJ said that the balance of convenience aspect of *American Cyanamid* was not appropriate for political cases like this. It works in commercial cases, but not in political ones. But in any event the intended defendant's point is that the application notice was seeking a mandatory injunction as to the information, the reasons, the text of the petition, and the test for that may well be higher. It was set out, I think, by Treacy J in *Seecomm Network Services v Colt Telecommunications* [2002] EWHC 2638 (Ch) as "a high degree of assurance" that the claimant would win at trial.

9. It seems to me that there are therefore some difficulties in seeking interim relief of this kind on this application. The intended defendant also refers to the Human Rights Act, and also points out that this is not a claim under the Data Protection Act section 157 or under the *Norwich Pharmacal* jurisdiction. Accordingly, these are not sources of right for the intended claimant to be able to make good his claim.

10. So far as any claim under the GDPR and the Data Protection Act is concerned, the claim that the intended claimant would put forward would be that there was no lawful basis for the processing of data that was carried out. But it seems to me that there is some force in the intended defendant's point that there is indeed a lawful basis for tasks carried out in the public interest, which in the UK includes activity supporting or promoting democratic engagement. As Sir Richard Scott, the then Vice-Chancellor, pointed out in *Gardner v*

*Newstead*, Ch D, unreported, 18 February 1997, this is exactly what political parties are all about (transcript, page 10). They are providing candidates for election to Parliament, and that is certainly promoting democratic engagement.

11. Thus there seems to me to be some difficulty in the way of a claim that there was no lawful basis for the processing of this information. I should say that there may be other points as well about what the extent of the data was, but I do not think I need to deal with those in the context of this application.

12. So far as the contractual claim is concerned, it is clear on the authorities that the members of an unincorporated association such as this one have a contract between them, that is contained in the rules. There are numerous authorities to that effect. What is equally clear is that membership, and the benefits of membership, flow from that contract. It is said here there is a factual point about whether, at the material time, the intended claimant was in fact a member of the Association. I do not think that I can deal with that on the material before me (and nor do I need to), and so I put it on one side. Instead, I simply look at what claim the intended claimant might have had, assuming that he was a member and that it was clear that he was entitled to the benefits of membership. It does not seem to me that, because he is also the prospective candidate at the next election, he has some kind of contractual right to that candidacy. That seems to me to be a much more difficult argument to make, and indeed inconsistent with what Sir Richard Scott said in *Gardner v Newstead* (transcript, page 6).

13. I am also very doubtful about the extent to which public law principles can be implied into this kind of contract. It may well be that, where there is a discretionary power in these rules, that power will have to be exercised in good faith and in a rational way. But that does not mean that *all* public law principles (including natural justice) should be implied. In any event, however, there is a further important point which I think is in danger of being obscured here. This is that it is said that the decision to hold the SGM on Monday was a decision of the Chairman of the Association.

14. I do not think that this can be right. Rule 10 is the relevant rule, and it is under paragraph 10.1.2 that this meeting is summoned. Yet that sub-paragraph does not refer to the Chairman. Instead, it refers to a request by more than 50 members. In my judgment therefore the meeting on Monday is *not* summoned by the Chairman, but by the members. It is the duty of the officers to give effect to it by making arrangements for it to take place, just as the Chairman might summon a meeting of his own motion and it would then be the duty of the

officers also to give effect to that. So, in my view the members have a contractual right to summon a meeting, and it is not a discretionary decision by the Chairman or by the Association as a whole.

15. Therefore, in my judgment, on the face of it, there is not really any room for the implication of terms on the principles identified by the Supreme Court in *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661. But, even if you import the *Braganza* principles, as I say that does not mean that *all* of the public law principles, including natural justice, must be incorporated. In most cases where a discretionary power is given by contract to one party to that contract, it is not necessary in the exercise of that power to imply the restrictions imposed by the doctrine of natural justice in addition to those imposed by the need for honesty and rationality.

16. An obvious example that comes to mind is that of the mortgage lender under a fixed-term, variable rate mortgage, where the contracting parties have agreed that the mortgage lender will have the right to change the rate of interest. No one can possibly suggest that, even though the lender might have to behave honestly and rationally in exercising that power, there has to be a hearing or that the borrower has to be heard in some way or being allowed to make submissions before there can be a valid increase in the mortgage loan interest rate.

17. I agree that the disciplinary cases go further, and that they do imply some sort of right to a hearing, although it may be just by paper submissions. But as far as I can see the selection of a parliamentary candidate is not a disciplinary process and, again, I refer to the decision of the Vice-Chancellor in *Gardner v Newstead*. Overall, it seems to me that the underlying contractual claims and the data protection claims are very weak.

18. Accordingly, it seems to me there is no imminent danger of very substantial damage. The intended claimant has already got the text of the petition and has been assured that there were no reasons to impart. This is confirmed by the evidence of Mr Hacket Pain. All he lacked were the names and addresses of the petitioners. But I see no basis upon which either the contractual or the data protection claims would have entitled the intended claimant to these in any event. So, my conclusion is that this application for a quia timet injunction, had it been pressed, would have failed.

19. Turning therefore to the costs question, costs are of course in the discretion of the court under CPR rule 44.2. However, the general rule is that, if the court decides to make an order about costs, the losing party should pay the successful party's costs. So, for that purpose I would have to ascertain who was the unsuccessful party. But the rules also enjoin me, in

deciding whether to make an order about costs and what order to make, to look at all the circumstances of the case, including the conduct of the parties, their success or otherwise, whether there were any offers to settle and so on.

20. Now, when I look at this case, first of all I am satisfied that it is appropriate for the court to make an order about costs. Secondly, I must decide who is the successful and who the unsuccessful party. In my judgment the successful party here is the intended defendant and the unsuccessful party is the intended claimant. So, prima facie, the intended claimant should pay the intended defendant's costs of this application.

21. Is there any reason why I should depart from the general rule? Mr Fraczyk for the intended claimant says Yes, because no undertakings were offered by the intended defendant that the meeting on Monday would not be a meeting to unseat the intended claimant. I am not sure that I follow why the presence or absence of undertakings should make all the difference. It was stated in the correspondence on 13 November, well before this application was issued, that the meeting on Monday was not going to be a meeting to unseat the candidate, but was simply going to be a meeting to call another meeting. If there had been any reason to doubt that then (and such a doubt should have been expressed, but there has been none that I have seen in the evidence), it has also been confirmed again in Mr Hacket Pain's witness statement, which he made subject to a statement of truth. So, I do not think the fact that there were no undertakings is a good reason for making a different order.

22. As to the arguments about action by the Chairman and the processing of data, I have already said that I think that the argument on data processing is weak, but in any event it was not the Chairman who was calling this meeting. I think that is a fundamental misapprehension; it is the 50 plus members who have requested it under the terms of rule 10.1.2.

23. And there is a third point which Mr Fraczyk urges on me. This is that there was some urgency about access to this data. I accept that the meeting is within a short timescale, but even so I cannot see that that justifies a different order being made in relation to costs. Accordingly, in my judgment the appropriate order to make in this case is that the intended claimant should pay the intended defendant's costs of and occasioned by this application.

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*We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.*