Telia v. Hillcourt
No: 6394 of 2002

High Court of Justice Chancery Division

Ch D

Before: Mr Justice Park

Wednesday 16th October, 2002

Representation

Mr E McQuater appeared on behalf of the Applicant.

Mr S Berry QC appeared on behalf of the Respondent.

JUDGMENT

MR JUSTICE **PARK**:

1. The application advanced by Mr McQuater on behalf of Telia is for an injunction to restrain Hillcourt(?) from presenting a winding-up petition. I am going to grant that injunction. In my judgment Hillcourt had made amply sufficient threats of winding-up proceedings in this country to justify the commencement of proceedings claiming an injunction.

2. Very recently -- as I understand it some time last Friday -- it was indicated on behalf of Hillcourt that it was proposing to pursue **insolvency** proceedings in Sweden. Nevertheless, Hillcourt is not willing to give an undertaking not to pursue winding-up proceedings in this country. It has served a statutory demand, which it has not withdrawn, if indeed it would be possible to withdraw it. In the absence of an undertaking I believe that Telia is justified in pressing upon me its application for an injunction. On the merits of the matter it seems to me clear that **insolvency** proceedings could not be fought in this country against Telia under the European Union **Regulation** of 29th May 2000, which is now in force. It is to my mind clear beyond any serious argument that winding-up proceedings directed at Telia can only be brought in Sweden and that the courts of England and Wales have no jurisdiction.

3. I ought specifically to say that I do not think that there is any force in the submission that business premises of Telia's United Kingdom subsidiary company can rank as an "establishment" of Telia for the purposes of Article 3.2 of the **Regulation**. I refer also in this connection to the definition of "establishment" in Article 2.8. There are other points which could be made even on the domestic law of this country to the effect that the threat in England of winding-up proceedings was not a proper remedy for Hillcourt to pursue its case that Telia had owed rent to it and had no justification for withholding payment of it. However, what I have said, I believe, is sufficient in itself. In those circumstances I will grant the injunction which is requested.

4. The other matter is that I am invited on behalf of Hillcourt to make an order, the practical effect of which would be the giving of final judgment against Telia in respect of the rent, which it has not paid Telia under the lease. I do not believe that I can make that order, but I do wish to make it clear that the reason why not, in my mind, is entirely a procedural one and has nothing to do with the underlying substantive merits. I should state the following point provisionally only because it is possible that the matter may come back before a court hereafter. However, I can see no substance whatever in any of the grounds on which it has been tentatively suggested that Telia may have been entitled to withhold the payment of rent which it has not made. However, whether I am right on that or not I cannot accept that Hillcourt can somehow use the framework of Telia's properly constituted claim against it for an injunction restraining it from serving a winding-up petition in order to secure final judgment for its unpaid rent. Mr McQuater put it to me in terms that it can hardly be right that the interim applications court can be used by a person who attends as a respondent to another party's application, but upon doing so obtains final judgment in its own favour on short notice in respect of a claim which has not even been started.

5. Mr Berry is right that the points made in this connection are essentially procedural points; indeed, they are wholly procedural points. They do not go to the merits of the matter. Even so, the degree of violence which would be done to the procedural structure laid down under the Civil Procedure Rules would, in my judgment, be too great to justify me in making the order in favour of Hillcourt which I am asked to make. Hillcourt can certainly commence proceedings in proper form, and as it presently seems to me it would be likely to obtain the judgment which

it seeks in those proceedings. However, I feel that it is not possible for me to give to it the judgment which it seeks in the present application before me today. That, I think, is all that I am going to say.

(Discussion as to costs)

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