

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

Claim No. BVIHC (COM) 173 of 2020

**In the Matter of the BVI Business Companies Act 2004 (as amended)
In the Matter of the International Business Companies Act (Cap. 291)
In the Matter of Nice Management Corp
And in the Matter of an Application for the Restoration of Nice Management Corp. to
the British Virgin Islands Register of Companies**

BETWEEN

NICE MANAGEMENT CORP.

Claimant

And

THE REGISTRAR OF CORPORATE AFFAIRS

Defendant

No appearances, the Court acted of its own motion

2021: February 2

JUDGMENT

[1] **JACK, J [Ag.]**: On 11th January 2021, I heard an application for the restoration of Nice Management Corp to the register. Ms. Monique Peters of Travers Thorp Alberga appeared for the company; Mr. Stephen Grayson appeared for the defendant.

[2] I made the order sought. I initialled the draft order that same day and indicated my approval of it. After the heading of the draft order, it recited:

“Before his Lordship the Honourable Justice Adrian Jack
Dated: the 11th day of January 2021
Entered: [left blank]”

- [3] Subsequently Travers Thorp Alberga submitted the requisite number of engrossed copies of the order to the Registry for sealing. These orders read:

“Before his Lordship the Honourable Justice Adrian Jack
Dated: the 11th day of January 2020
Entered: the day of 2020”

- [4] The learned deputy registrar, Ms. Spann, corrected this last line to “Entered: the 13th day of January ~~2020~~ 2021”, but did not notice the mistake in the previous line, so that the order was ostensibly made in January 2020.

- [5] Once Travers Thorp Alberga noticed the error in the engrossed order, it asked the deputy registrar to reissue the order with the date of its making amended. For reasons which are unclear to me, it did not want the order to be expressed to be made under the slip rule, CPR 42.10. The deputy registrar was concerned that this would be a breach of the rule that an order cannot be amended after it has been sealed, except under the slip rule.

- [6] Ms. Peters’ submission to Ms. Spann was:

“The slip rule only applies where the error was made on the part of the Court or the Judge. The Judge’s approved order (which I attach) was correct in all aspects so an application shouldn’t and can’t be made to him to correct something he actually didn’t do. The error was in not crossing out 2020 to replace it with 2021. His order clearly states 2021. I see that the correction was made by you (in ink) on the second line but not the first.

I respectfully submit that the Registrar is in a position to and has the authority to correct his/her own omissions and kindly ask that you reconsider your position on this matter.”

[7] Ms. Spann referred the matter to me. In my judgment, she was quite correct to do so. The rule that a perfected order cannot be changed save under the slip rule is a key requirement for the preservation of the integrity of the Court record. Indeed it might be described as sacrosanct. As the UK Supreme Court held in **Re L and B (Children)**:¹

“16. It has long been the law that a judge is entitled to reverse his decision at any time before his order is drawn up and perfected.

17. The modern story begins with the **Judicature Acts 1873 and 1875**,² which amalgamated the various common law, Chancery and Doctors' Commons jurisdictions into a single High Court and created a new Court of Appeal for England and Wales. In **In re St Nazaire Company**,³ the Court of Appeal decided that there was no longer any general power in a judge to review his own or any other judge's orders. Sir Richard Malins VC had permitted a petition to proceed which sought to vary an earlier order which he had made and which had been unsuccessfully appealed to the Court of Appeal. The Court of Appeal held that he had no power to do so. Sir George Jessel MR explained that the **Judicature Acts** had changed everything. Before they came into force, the Lord Chancellor, Vice-Chancellor and Master of the Rolls had power to rehear their own decisions and, indeed, the decisions of their predecessors. He remarked⁴ that 'the hope of every appellant was founded on the change of the judge'... But such an application was in the nature of an appeal and jurisdiction to hear appeals had now been transferred to the Court of Appeal. Thesiger LJ added that, 'whatever may have been the practice in the High Court of Chancery before the Judicature Act as to the review of their decisions or the rehearing of their decisions, nothing can be clearer than that there was nothing analogous to that in the Common Law Courts'.⁵ The court's conclusions harmonised the practice in all Divisions of the newly amalgamated High Court.

18. Nothing was said in **In re St Nazaire** about the position before the judge's order was perfected. In **re Suffield and Watts, Ex p Brown**,⁶ a High Court judge had made an order in bankruptcy proceedings which had the effect of varying a charging order which he had earlier made under the **Solicitors Act 1860**.⁷ All the members of the Court of Appeal,

¹ [2013] UKSC 8, [2013] 1 WLR 634.

² 36 & 37 Vict c 66 and 38 & 39 Vict c 77.

³ (1879) 12 Ch D 88.

⁴ At p 98.

⁵ At p 101.

⁶ (1888) 20 QBD 693.

⁷ 23 & 24 Vict c 127.

citing **In re St Nazaire**, agreed that he had no power to do this once his order had been drawn up and perfected. Unlike the bankruptcy jurisdiction, the **Solicitors Act** gave no power of variation. As Fry LJ put it:⁸

‘So long as the order has not been perfected the judge has a power of re-considering the matter, but, when once the order has been completed, the jurisdiction of the judge over it has come to an end.’

Strictly speaking, the reference to what may be done before the order is perfected was *obiter*, but that this was the law was established by the Court of Appeal no later than the case of **Millensted v Grosvenor House (Park Lane) Ltd**,⁹ where the judge had revised his award of damages before his order was drawn up and the court held that he was entitled to do so.

19. Thus there is jurisdiction to change one’s mind up until the order is drawn up and perfected. Under the Civil Procedure Rules (rule 40.2(2)(b) [our CPR 42.4(2)]), an order is now perfected by being sealed by the court. There is no jurisdiction to change one’s mind thereafter unless the court has an express power to vary its own previous order. The proper route of challenge is by appeal.”

- [8] The error in this case can in my judgment only be corrected under the slip rule. CPR 42.10(1) provides: “The court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.” Whether the current misdating is properly categorised as a clerical mistake or an error from any accidental slip is a question which it is unnecessary to answer. However, it is in my judgment undoubtedly one or the other. There is no requirement in the rule that the mistake or error be that of the Court. An error on the part of the engrosser of the order can be corrected under the slip rule. Moreover, Ms. Peters is wrong to treat the draft order initially by me as the order of the Court. Until the order is sealed, the wording of the draft is a thing writ on water. It is the perfecting of the order by passing the Court’s seal over it that constitutes the formal recording and finalisation of the Court’s order.

⁸ At p 697.

⁹ [1937] 1 KB 717.

[9] Accordingly, I direct that the word “Order” be altered to read: “Order as amended pursuant to CPR 42.10(1) on 2nd February 2021”; and that the following correction be made:

“Before his Lordship the Honourable Justice Adrian Jack
Dated: the 11th day of January ~~2020~~ 2021
Entered: the 13th day of January ~~2020~~ 2021”

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar