

NOTES REGARDING MR ARTHUR'S APPLICATION

- 1 Mr Arthur had wanted Judge Parish take the hearing as it was the same Judge that Mr Arthur told the Police had awarded him the Fabric Rolling Machine (FRM) at the earlier 17 June 2003 hearing.
- 2 The Judgement of the Court dated 17 June 2003 that Mr Arthur refers to as "*confirming the claimants have title to the rolling machine*" does nothing of the sort. The Judgement was found in the Defendant's favour and does not even mention the rolling machine. Mr Arthur habitually tells everyone that he won Court cases when in fact he lost them.
- 3 The tenant had owed the Landlords about 18 months rent. The tenant had paid some but about £13,000 was still owed. We had confiscated the contents of the shop in lieu of the outstanding rent. Mr Arthur had our permission to try and recover the outstanding rent from the tenant. Mr Potts was not the tenant that owed the rent. Mr Arthur describes him as the "erstwhile tenant" to confuse. Mr Potts had been the tenant but had passed control of the shop to Mr Farr and Mr Amour and it was these tenants that owed the rent but since there was no lease with them and the lease with Potts had expired Mr Arthur threatened litigation against Potts on the grounds that he had not formally cancelled the expired lease. Mr Potts in turn put pressure on Farr and Amour to pay up.
- 4 Farr and Amour settled out of Court for £10,000 + the contents of the shop. Thus Mr Arthur's statement "that the litigation against the "erstwhile tenant" was settled in terms that gave the "claimants" title to "it" is correct. The "it" being the entire contents of the shop (which included the fabric rolling machine) and the "claimants" being the Landlords (Arthur+Layte 50/50) in the landlords-v-tenant threatened litigation.
- 5 The problem we had was that Mr Arthur had not told us about the litigation against our joint tenants nor that we were joint claimants in a threatened Court action.
- 6 Mr Arthur also kept the fact that the tenants had settled "out of Court" from us so we were unaware that we were £5000 better off and owned 50% of the contents of the shop.
- 7 Subsequent to having secretly settled with the tenants Mr Arthur volunteered to move the contents of the shop belonging to the tenant provided that we gave him permission. The tenant's property was being jointly held by the Arthurs and us in lieu of the outstanding rent and we were thus jointly responsible for someone else's property which we had valued at more than the outstanding rent.
- 8 Mr Arthur was lying. What he called the tenant's property was in fact the landlord's property (following the settlement) but we gave him permission to clear the shop of the tenant's property (as he had requested) unaware that 50% of it we owned.

NOTES REGARDING MR ARTHUR'S FIFTH AFFIRMATION

Paragraph 1. Nonsense - as was proved when Mr Arthur's application was heard.

Paragraph 2. Nonsense - as was proved when Mr Arthur's application was heard. Mr Arthur had cleared the property of stock (without telling us we owned half of it). There was quite a bit of rubbish still to clear (which included the FRM) and when our solicitors informed us (by phone) that one of the two interested buyers had won the Court Ordered contract race (confirmed by letter [Dated Friday 8 August 2003](#)) and wished to complete the sale by the next Friday we tried to contact the Arthurs by phone and left a message "Have you cleared the shop of the rubbish + have you signed the draft contract?" because someone had to clear it otherwise the new buyers could charge the sellers for its removal the solicitors had informed us. The Arthurs did not return the phone message so J.Layte hired a van and two helpers (£135) to remove the FRM on Sunday 10 August 2003. The rest of the rubbish could be cleared using J Layte's estate car during the week before the new buyers completed on the Friday. On the Monday the Arthurs refused to sell to the new buyers but would sell to the other one who they said had won the contract race (contradicting the solicitors letter) so the rest of the rubbish was not removed as planned as it was no longer urgent.

Paragraph 3. Following Mr Arthur clearing the shop of our stock (which he forgot to tell us we owned 50% of) what remained in the shop was the FRM, a large quantity of rubbish (mainly in bin liners) and estimated to be about 6-10 trips to clear in J Layte's estate car, 3 or 4 fire extinguishers and an old display cabinet. There were no trolleys visible so these are thought to be part of Mr Arthur's vivid imagination to demonstrate what a reasonable chap he is. Mr Arthur mentions that the rolling machine is fitted with an electric cutter. As removed there was nothing on the machine that looked like a cutter and It is suspected that Mr Arthur has the cutter (if one had ever been fitted) and he only mentions this so that if the Defendants were ordered to "deliver" the machine to the Claimants then Mr Arthur would accuse the Defendants of stealing the cutter.

Paragraph 4. Whereas the fabric rolling machine may well have cost £5,730 when new this one had been stored amongst rubbish in the alleyway alongside the shop for several years in a position only partly protecting it from the weather (similar

to a car port with a door that had a 3 foot gap above it). Its condition had deteriorated to such an extent that its value was a fraction of its new price. Mr Arthur's affirmation at 4 mentions that the litigation against the "erstwhile tenant" was settled in terms that gave the "claimants" title to it is deliberately confusing in that one naturally assumes the "claimants" are Mr and Mrs Arthur as in the Arthur-v-Layte litigation but in this litigation the claimants were Mr and Mrs Arthur + Mr and Mrs Layte (landlords) – v – F.Potts ("erstwhile" tenant). Mr Arthur had not told the Laytes about the litigation so we were not aware we were co-Claimants. Mr Arthur wanted to benefit from the settlement 100% and not share it with us thus he kept the settlement secret. This is fraud according to the Police but they couldn't do anything about since the Judge had ruled that whilst he had concealed the settlement he didn't think Mr Arthur had deliberately concealed it. (an accident perhaps?).

Paragraph 5. The Defendants did not delay the sale. Mr Arthur did by refusing to sell to the winners of the contract race. The removal of the FRM was urgent because the new buyers wanted to complete in a few days time. At the time of the removal it was not known that Mr Arthur would refuse to sell to them the next day and thus delay the sale for what turned out to be another four months. It is true that Mr Arthur visited the shop on 9 September 2003 following a break in. Mr Arthur attended with PC Silver. Mr Arthur states he noticed the FRM missing on this date. Although there was a Police officer present and Mr Arthur had noticed the FRM missing he did not report it missing to the Police officer on the day he admits to noticing it missing but waited over three months before doing so.

Paragraph 6. Despite admitting having noticed the FRM missing on 9 September 2003 Mr Arthur did not report it missing (believed stolen) until three months later on 19 December 2003. He told the Police that he had not visited the shop since January 2003 and that he had no idea who may have stolen it. It was worth about £6,000 and he owned 100% of it. **Every single statement to the Police was untrue.** He had visited the shop since January 2003 (on 9 September 2003 with a Police officer present). He knew that we had removed it and had even demanded we return it by letter dated 25 November 2003 (a month before reporting it stolen by persons unknown). It was not worth £6,000 (He subsequently told the Judge at the hearing of his application that it was worthless or perhaps £10 (see [extracts from the Judgement](#))) and his statement that he owned 100% of it (as opposed to 50%) was proved to be untrue at the hearing of his application. At the hearing Mr Arthur also told the Judge he reported it missing to the Police on 9 September 2003 (see [extracts from the Judgement](#)) and it was the fault of the Police that they took over four months investigating (and considerable time communicating with him) to discover that J. Layte had stolen it and arrest him in January 2004.

Mr Arthur's statement "*The first Claimant has made statements to the police which are clearly untrue*" is a classic example of Freudian projection in that it is Mr Arthur who lied to the Police, not the First Defendant. His mention that "*No prosecution is pending although I am told a PACE notice has been served on the Defendants*" is designed to give the impression the Police will be prosecuting and the PACE notice (being a criminal notice) proves the Police believe the First Defendant at least partly guilty and the Judge will be influenced by the existence of a PACE notice against the Defendants in his verdict of the application. As it was the Judge was not convinced with Mr Arthur's testimony said it was an affront to Justice to say the entire contents of the shop was worthless at the former hearing and then claim one item to be worth £5,730 in the application and then back to worthless - £10 at this hearing. He described Mr Arthur as vexatious. (see [extracts from the Judgement](#)).

Paragraph 7. The Defendants did not admit to having seized the FRM. The First Defendant said he had removed it from the shop when he did for the reason stated above and that one of the owners had to because of the impending completion date. If anything the Arthurs owed the Laytes half of the £135 paid to hire the van and two helpers.

Application Notice

You should provide this information for listing the application

1. How do you wish to have your application dealt with

a) at a hearing? } complete all questions below

b) at a telephone conference? }

c) without a hearing? complete Qs 5 and 6 below

2. Give a time estimate for the hearing/conference 30 minutes

3. Is this agreed by all parties? Yes No

4. Give dates of any trial period or fixed trial date _____

5. Level of judge REGISTRAR PARISH

6. Parties to be served DEFENDANTS

In the PENZANCE COUNTY COURT TRURO	
Claim no.	PZ 200604
Warrant no. (if applicable)	
Claimant (including ref.)	DAVID JOHN AND ANNETTE ARTHUR
Defendant(s) (including ref.)	JOHN HOWARD AND KATHRYN MICHELE LAYTE
Date	04 NOVEMBER 2004

Note You must complete Parts A and B, and Part C if applicable. Send any relevant fee and the completed application to the court with any draft order, witness statement or other evidence; and sufficient copies for service on each defendant.

I, David John Arthur, the first claimant intend to apply for an order that:-

Enter your full name, or name of solicitor

State clearly what order you are seeking and if possible attach a draft

Briefly set out why you are seeking the order. Include the material facts on which you rely, identifying any rule or statutory provision

- the defendants forthwith deliver to the claimants the Measuring Machines Limited rolling machine model CC1MM serial number 11097 in the same condition as obtained when it was removed from 52 Fore Street, Redruth during 2003 or in default within 14 days pay to the claimants £5,730.00 in liquidated damages
- within 14 days pay to the claimants damages consequent upon the unlawful removal of the machine by the defendants
- within 14 days pay to the claimants interest under S.69 C.C.A.1984 at 8% per annum on the sum of £5,730.00 from 09 September 2003 until delivery or payment in default
- pay the claimants the costs of and incidental to this application on an indemnity basis

because a judgment of the court dated 17 June 2003, which has been served on the defendants, confirmed that the claimants have title to the rolling machine

the claimants wish to rely upon:-

the attached affirmation of David John Arthur of 04 November 2004

If you are already a party to the proceedings, you must provide an address for service of documents

Signed



Applicant

Position or office held

(if signing on behalf of firm or company)

Address to which documents about this claim should be sent (including reference if appropriate)^(*)

DJ ARTHUR PO BOX 42 TRURO Tel. no. 01209 861444	Postcode	if applicable	
		fax no.	
		DX no.	
		c-mail	

the court office at

open from 10am to 4pm Monday to Friday. When corresponding with the court please address forms or letters to the Court Manager and quote the claim number

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DEPONENT:- DAVID JOHN ARTHUR
NUMBER OF AFFIRMATION:5
FILED ON BEHALF OF THE CLAIMANTS
DATE OF AFFIRMING 04.11.2004

IN THE PENZANCE COUNTY COURT

CLAIM NUMBER: PZ200604

BETWEEN:-

DAVID JOHN ARTHUR (1)
ANNETTE ARTHUR (2)

Claimants

-and-

JOHN HOWARD LAYTE (1)
KATHRYN MICHELE LAYTE (2)

Defendants

FIFTH AFFIRMATION OF DAVID JOHN ARTHUR

I, David John Arthur of Kennall Vale Mill, Ponsanooth, Truro declare as follows:-

1 The gist of the counterclaim judgment of 17 June 2003 is that the defendants agreed with the claimants that the claimants would clear the subject property 52 Fore Street, Redruth. The consideration was that the defendants would have no claim on or risk in the contents or involvement in litigation with the tenant.

2 The claimants had already honoured the agreement by clearing the property and the local authority had accepted it to be empty for business rates purposes.

3 All that remained were two trolleys and a fabric rolling machine, the former because I believed that the new owner would find them useful, and the latter because it is heavy and I proposed to offer it for sale for direct delivery. The rolling machine was manufactured by Measuring Machines Limited and is model CC1MM with serial number 11097 and is fitted with an electric cutter.

4 The manufacturer of the machine confirms that it was bought by the erstwhile tenant Mr Frederick Potts who paid in full. The litigation against him was settled on terms that gave the claimants title to it. The manufacturer also states that an identical machine on 09 September 2003 would have cost £5,730.

5 Due to the defendants delaying the sale of the property the disposal of the rolling machine was not urgent. On 09 September 2003 I visited the property following a break-in. The rolling machine had been removed.

6 The disappearance of the rolling machine was reported to the police and the claimants spent significant time communicating with the police to try to establish who had stolen it and thereafter trying to recover it. The first defendant has made statements to the police which are clearly untrue, but no prosecution is pending although I am told a PACE notice has been served on the defendants.

7 At a hearing before his honour Judge Overend on 28 July 2004 the defendants admitted having seized the rolling machine.

AFFIRMED AT TRURO
ON 04 NOVEMBER 2004
BEFORE ME



OFFICER OF THE COURT
APPLIED FOR
J. K. 1