TRANSCRIPT OF PROCEEDINGS

Ref. BL-2018-002691

Neutral Citation Number: [2019] EWHC 1430 (Ch)

IN THE ROLLS BUILDING

Fetter Lane
London

Before THE HONOURABLE MRS JUSTICE FALK

IN THE MATTER OF

VNESHPROMBANK LLC

-v-

GEORGY BEDZHAMOV (Applicant) AND OTHERS

Sam Goodman appeared on behalf of the Claimant
Tom Richards appeared on behalf of the First Defendant

JUDGMENT
22nd MAY 2019
(AS APPROVED)

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

MRS JUSTICE FALK:

1. I have listened carefully to what you have both said. I accept that this is not an application for relief from sanctions, and that the principles applicable to relief from sanctions do not apply. It is an application that was made just in time for an extension of time. The ordinary principle (which is not in dispute) is that the court will grant reasonable extensions of time sought prior to expiry of a deadline if they do not imperil hearing dates or otherwise disrupt proceedings: *Hallam Estates v. Baker* (2014) 4 Cost LR at 26.

2. What has happened here is that the first defendant is asking for an extension of time to make an application, if so advised, to set aside or vary a freezing order and search order originally made ex parte on 27 March 2019. The current deadline is 17 May and a 14 day extension is sought, to 31 May. The application was made on 17 May.

3. The background is that at the return date hearing on 10 April, Mr Justice Fancourt included in one of the orders he made a provision that any application to set aside or vary must be made by 10 May 2019. That date was proposed by Leading Counsel for the first defendant.

4. By that stage, Counsel would have been aware of the very significant affidavit evidence that had been served in support of the freezing order. That evidence, in fact, would have been available for around two weeks, and on the face of it there would have been adequate time to assess the scale of the task involved in deciding whether to make, and if so to prepare, a set aside application.

5. The 10 May date ordered by Fancourt J was subsequently extended by one week, to 17 May, by an order made by Mr Justice Morgan on 29 April. It is important to note that Morgan J's order was made in response to an application that the deadline should be extended to 31 May. Morgan J did not grant an application in those terms. He granted a much shorter extension to 17 May. The transcript of his judgment says that he thought it important that the parties know at an early date whether an application to vary or discharge the freezing order was going to be pursued or not pursued, and for that reason he gave a shorter extension of time than the one sought.

6. What I have before me now is an application to make an extension to 31 May, which is the date that was first put to Morgan J, but which he declined to agree. Counsel for the first defendant submits that in the circumstances, a further extension is appropriate. He says the first defendant does not need to show a change of circumstances, but he relies on the extent of the affidavit evidence in support of the freezing order which needs to be considered in order to determine whether it is appropriate to apply to set it aside.

7. Counsel also indicated that there were potential legal arguments which might be determinative of a set aside application, including matters as to Russian law, and also suggested that there might have been material non-disclosure in the application for the freezing order. But, understandably at this stage, he was not in a position to provide details.

8. More substantively, the first defendant relies on the amount of work that has been necessary on other aspects of these proceedings since the order was granted, including seven hearings in April in connection with the disclosure and search order and now five further orders or matters to work on, together with a need to work on preparation of the defence. His

Counsel submits that the fact that an application to extend time further has only now been put in reflects the strain under which the first defendant's legal team have been acting. They have been focussing on priority matters relating to compliance with the disclosure and search orders.

9. Morgan J's response to these points was to grant a one week extension. The first defendant says that before Morgan J, both parties proceeded on the basis of an assumed completion date of 2 May for a planned share sale transaction which would release funds to enable the first defendant to pay his legal team, which would in turn allow his solicitors, Mishcon de Reya, properly to engage. However, as it turned out the sale did not complete until 9 May, and funds were only received by Mishcon de Reya a few days after that.

10. It appears from the evidence that, in fact, Mishcon de Reya reengaged in full on 8 May and indeed, were working to a considerable extent without funds from the sale before that date. I was shown evidence indicating that very significant fees were incurred during April. Although it was suggested that they might have had to cease acting if the sale had not gone through, they did not at any stage come off the record. They carried on acting, but the first defendant's position is that they had to focus on the disclosure requirements and the search order, which it was clearly appropriate to do and that is why this matter has been returned to somewhat later, and why there remains to be undertaken a very significant amount of work. The first defendant's position is that there would not be substantial prejudice to the claimant if a short further delay is granted.

11. I am concerned that in all the circumstances, the request made is not a reasonable one. The principle is that the court will grant *reasonable* extensions of time which do not imperil hearing dates or otherwise disrupt proceedings.

12. I accept that the scale of the task is a very significant one, but it is one that the first defendant and his advisers have been aware of for nearly two months. I must also take account of the fact that the original deadline of 10 May was proposed by the first defendant's own counsel, after they had had around two weeks to consider the affidavit evidence.

13. The first defendant has already obtained a short extension from Morgan J. Morgan J granted that on 29 April, so the first defendant and his legal team have had since then to consider their position. Mishcon de Reya did not come off the record. It appears that at least by 8 May they were fully engaged again, and they also did some work prior to that.

14. Mischon de Reya did not seek consent for a further extension of the deadline until, I understand, a letter sent on 13 May to the claimant's solicitors, which is the same letter that first informed the claimant's solicitors about when completion of the share sale had actually taken place. But the first defendant would have been aware some time earlier, by 2 or 3 May, that the share sale had not completed at the time envisaged before Morgan J. In the meantime, Mischon de Reya have continued to do significant work on other aspects.

15. When the claimant made it clear on 14 May that it was not going to agree to a further extension to the deadline, it also indicated that it would not object to the application being dealt with at a previous hearing before me on another aspect, on 17 May. That suggestion was not taken up and the first defendant's legal team in front of me on 17 May were not instructed to deal with the matter.

16. If this application had come before me without the history I have just described, and without the previous attempt to extend the deadline, which was only partially successful, I might well have been inclined to grant the application. But I think that in all the circumstances it is an unreasonable second bite at the cherry, made at the 11th hour rather than being made promptly on becoming aware of any difficulties not apparent at the hearing before Morgan J.

17. I take account of the fact that by dismissing this application, I am not preventing the first defendant from either seeking relief from sanctions, or putting the points that he might have wished to rely on in any application to set aside the freezing order into his defence, or indeed, applying for any sort of alternative relief appropriate if, for example, the first defendant is considered to have a watertight defence.

18. I have also taken into account that I think there would be some prejudice to the claimant in granting an extension. The continued uncertainty in such an important matter as a freezing and search order is undesirable. I do take account of the fact that if the application were made, it is likely to be a substantial application and would not necessarily be able to be dealt with quickly, and it might even be delayed until after the long vacation. The continuing uncertainty seems to me to be inappropriate and unfair as between the parties.

19. I think in the circumstances, an application to extend time made very promptly when it became clear that the sale would not complete when originally anticipated might have been dealt with in a different way, but I think the factual history, the extent of the delay, and the lack of detail as to exactly what the legal team has or has not been focussing on that is said to have prevented Mishcon de Reya from dealing with this application earlier when they continued to deal with a number of other matters and stayed on the record, weighs against granting an extension of time.

20. Accordingly, I refuse the application.

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

This transcript has been approved by the Judge