

TRANSCRIPT OF PROCEEDINGS

Claim no BL 2020 001098

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
NEUTRAL CITATION NUMBER [2020] EWHC 2455 (Ch)**

7 Rolls Buildings
Fetter Lane
London

Before MR JUSTICE TROWER

**UMBRELLA CARE LIMITED
(In Provisional Liquidation)**

Claimant

-v-

**(1) KHAIR UN NISA
(2) USMAN KHALID RAJA
(3) EMIL CERVENAK
(4) DYNAMIC INT LTD
(5) UNIVERSAL REAL ESTATE (PVT) LTD
(6) UNIUNIVERSAL TOTAL CARE LTD
(7) FIRST INTERNATIONAL HOLDINGS LTD**

Defendants

**MR TOM POOLE appeared on behalf of the Claimant
THE SECOND DEFENDANT appeared as a Litigant in Person**

**APPROVED JUDGMENT
12th AUGUST 2020**

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MR JUSTICE TROWER:

1. I have to consider whether or not to increase the figure contained in the order which was made against the first and second defendants by Miles J on 29 July from just in excess of £16.2 million to a figure of £26,892,537.19. I have indicated that the matter will have to return for a further hearing in two weeks.

2. Miles J was satisfied at the hearing on 29 July that there was a good arguable case that the first and second defendants are liable for breach of duty to the claimant, UCL, in their application of very large sums of money paid away to themselves and their associates over a three-year period. The question for me is whether I am satisfied that there is a good arguable case that the first and second defendants are liable for additional amounts of approximately £10 million, being further liabilities which the company incurred to HMRC.

3. The additional £10 million relates to additional sums for which HMRC now claims that UCL is liable. At the moment, and unlike the £16.2 million, the joint provisional liquidators are unable to adduce specific evidence that the additional amounts of unpaid tax for which UCL is liable to HMRC, were in fact paid out of the company at the instigation of the defendants, but they invite me to draw inferences that they were.

4. Mr Raja's primary position is that he needs legal help and assistance in what is a very complicated case. He told me in forceful terms that without that assistance he is unable to present or put before me a reasoned argument as to whether or not there was a good arguable case in respect of these additional amounts. However, he said that I should not draw the inferences, which the provisional liquidators invited me to draw.

5. On the evidence that has been adduced, I am prepared to draw the necessary inferences at this stage of the proceedings. I do so in light of the strong evidence in respect of the original £16.2 million and in the absence of any immediate explanation by the defendants,

which explains the transactions described in the provisional liquidator's evidence. I take into account what Mr Raja has said about his inability to get legal advice, but in the absence of any explanation, the proper conclusion is that at this stage the provisional liquidators have shown a sufficiently arguable case of misappropriation to justify an increase in the amounts to be frozen by the order.

6. In any event, it seems to me that the joint provisional liquidators are correct to submit that, even if it would be wrong to draw an inference that these additional amounts were misappropriated, there is a good arguable case that the defendants permitted the company to continue to trade, and incur losses equivalent to those amounts at a time when by reason of the liabilities UCL was insolvent or should have ceased trading.

7. I also have to consider whether there is any challenge to the conclusion that was drawn by Miles J in relation to the risk of dissipation. I have considered that aspect of the matter afresh on the return date of this application.

8. To that end, I have considered a note of the reasons that were given by Miles J at the without notice hearing. It appears from the provisional liquidators' evidence that nothing which has occurred or come to light since changes the underlying matters which arise. There is good evidence that the nature of the misappropriations described in the provisional liquidators' witness statements of themselves demonstrate a risk of dissipation. Mr Raja gave no reassurance during the course of the hearing that these concerns were not well-founded.

9. For those reasons, briefly expressed, I consider that it is appropriate for the injunction to be continued for a short further period of time to a further return date in 13 days' time. I am also satisfied that the amount of the injunction should be increased to the extent to which Mr Poole has satisfied me there is a good arguable case, namely the sum of £26.8 million. The precise amount is contained in the draft orders and is justified by the evidence adduced by the claimant.

10. I mentioned just now that I propose that the matter should come back before the court in 13 days' time and that is an order that I will make. I will discuss the precise terms of the

order with Mr Poole and Mr Raja. Are there any further matters that need to be considered in relation to the order to be made over the return date?

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