IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Claim No. PT-2018-000641

[2020] EWHC 281 (Ch)

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday 23 January 2020

Before:

HIS HONOUR JUDGE HODGE QC

Sitting as a Judge of the High Court

B E T W E E N :

NICHOLAS PRINSE

Claimant

- and -

(1) LANDMASTERS (OVERSEAS) LTD
(2) LANDMASTERS DEVELOPMENTS LTD
(3) GEORGE NICOLAIDES
(4) CHRISTOPHER NICOLAIDES
(5) CHRISTOPHER TAKIS CHRISTOFOROU

Defendants

MR RICHARD BOWLES (instructed by Royds Withy King) appeared on behalf of the Claimant.

MR RUPERT BUTLER (instructed by Lawrence Stephens Solicitors) appeared on behalf of the Defendants.

J U D G M E N T

JUDGE HODGE QC:

1 This is my extemporary judgment on two interim applications in pending proceedings concerning the affairs of two companies: Landmasters (Overseas) Ltd, which is incorporated in Cyprus, and Landmasters Developments Ltd, which is incorporated in this jurisdiction.

2 The claimant is Mr Nicholas Prinse. He, in July 2018, took a transfer from his grandfather, Mr Costas Nicolaides, of an 85% shareholding in the first defendant company, incorporated in Cyprus. The remaining 15% shareholdings are held, as to 5% each, by the third and fourth defendants, respectively Mr George Nicolaides and Mr Christopher Nicolaides, together with Mrs Helena Prinse, who is the claimant's mother.

3 George and Christopher Nicolaides and Helena Prinse are the three children of the claimant's grandfather, Mr Costas Nicolaides.

4 The first defendant, a Cypriot Company, holds 90% of the shares in the second defendant company, with the remaining 10% being held, as to 5% by George and 5% by Christopher Nicolaides. George and Christopher Nicolaides are the two directors of the second defendant company.

5 The principal assets of the defendant company within this jurisdiction are two residential investment properties, 39 Camden Mews NW1, which is owned by the first defendant company, and 65 Inverness Terrace W2, which is owned by the second defendant company.

6 The third and fourth defendants, in their capacity as directors of the second defendant company, assert that another company, owned and controlled by the fourth defendant, has been acting as the managing agent of the two UK properties. That company is not a party to the present proceedings and is called Luxury Collections (UK) Limited.

7 The dispute between the parties is a bitter family dispute over the validity of the transfer by the grandfather of his 85% shareholding in the first defendant company to the claimant. Effectively, the third and fourth defendants have been disinherited by their father in favour of their nephew (the claimant) and they say that is wrong and was not done with the full capacity of their grandfather. There are proceedings on foot in Cyprus, which is the seat of the first defendant company, in which the two sons are challenging their father's transfer of the shares to the claimant, and the claimant is seeking to wrest control of the companies from his uncles and bring them to account for what he says are breaches of duty on their part as directors of the Cypriot company.

8 Fearing that the Inverness Terrace property was going to be charged by his uncles in favour of the fourth defendant's company, Luxury Collections (UK) Limited, the claimant launched these proceedings to seek to prevent any disposition of, or dealing with, the Inverness Terrace property in favour of Luxury Collections (UK) Limited or any other entity under the control of the third and fourth defendants. There is a fifth defendant, but he is of no relevance for the purposes of the present applications.

9 The injunctive proceedings first came before Zacaroli J and then, on an early return day, before Fancourt J in the summer of 2018. Those proceedings were ultimately compromised by way of a consent order, approved by Morgan J on 30 August 2018. At that hearing the claimant and the defendants were both represented by leading and junior commercial counsel. The consent order was thrashed out over the course of a full day outside court and went

through two or three iterations during the course of the discussions. Essentially, the consent order provided for the regulation of the proceedings in this jurisdiction pending the resolution of the proceedings before the Cyprus Courts. The provisions are extremely detailed but for present purposes it is sufficient to refer to the provisions of sub-paragraphs 2(a) and 2(d) and paragraph 4. Paragraph 2 was prefaced by the words "From the date of this order" and then ". . . until discharged or varied by agreement in writing between the parties or further order", and then sub-paragraph 2(a) provided:

> "The claimants and the defendants must not sell or otherwise dispose of and/or charge or otherwise encumber any of the assets of the first and/or second defendant, in particular the following estates in land . . ."

and then details were given of the title numbers and descriptions of the Camden Mews and Inverness Terrace properties. Sub-paragraph 2(d) provided:

> "The claimant and the defendants must not transfer or assign any property of the first or second defendant to any of the following:
>
> (i) The claimant, or the third, fourth and fifth defendants (or any of them);
>
> (ii) Any company or other entity owned in whole or in part by the claimant, or the third, fourth and fifth defendants (or any of them);
>
> (iii) Any company or other entity controlled either alone or with others by the claimant, or the third, fourth and fifth defendants (or any of them)."

10 For the sake of completeness, sub-paragraph 2(e) provided that the prohibition in sub-paragraph (d) above should not prohibit the first defendant from transferring property to the second defendant or vice-versa if necessary or desirable in the interests of the first and second defendants' business. Paragraph 4 provided for all further proceedings in the claim to be stayed except for the purpose of enforcing the terms of the order for which purpose the parties were given permission to apply without the need to issue fresh proceedings.

11 It is pursuant to paragraph 4 of that order that the first of the applications which is before me today was brought by an application notice issued by the claimant on 8 April 2019. The claimant sought, further to that consent order:

> (i) a declaration that the third, fourth and/or fifth defendants had breached the consent order;
>
> (ii) an order for the third, fourth and/or fifth defendants to repay all money jointly and severally that has been transferred from the first and/or second defendant in breach of the consent order; and
>
> (iii) an account of moneys transferred from the first and second defendant since the consent order

because the claimant was said to be desirous of enforcing the terms of the consent order.

12 That application would appear to have been issued at a time when the claimant – who has during the course of these proceedings instructed, I think, a total of four firms of solicitors – had been acting as a litigant in person and the form of relief sought was somewhat less focused than is now the case on the hearing of this application. That application was supported by the second witness statement of the claimant, dated 8 April 2019, together with a lengthy exhibit, NP2.

13 That application spawned a cross-application by the defendants dated 19 July 2019. That application seeks the rectification or variation of the consent order, effectively to limit the scope of sub-paragraphs 2(a) and 2(d) to real property assets. Alternatively, it sought a variation to make it clear that nothing in the order was to prevent either of the two companies from making payments in the ordinary course of their business to companies or other entities not controlled by the defendants, or to Luxury Collections (UK) Limited in respect of management fees at certain specified rates.

14 That application was supported by three witness statements. There was the first witness statement of Mr Lawrence Patrick Kelly, dated 8 July 2019, together with exhibit LPK1. He is a solicitor and partner in Lawrence Stephens Solicitors who act for the defendants. The second supporting witness statement was the second witness statement of the fourth defendant, dated 19 July 2019, together with exhibit CN2. The fourth defendant is not only the fourth defendant, but also the sole director of Luxury Collections (UK) Limited. Finally, there was the first and only witness statement from Mr Paul Sinclair QC (of Fountain Court Chambers) who had acted as leading counsel for the defendants on the negotiations for and agreement of the consent order approved by Morgan J. In response to those witness statements the claimant made his third witness statement, dated 30 July 2019, together with exhibit NP3.

15 The applications came before Mr Murray Rosen QC, sitting as a Deputy Judge of the Business and Property Courts, on 31 July 2019. A consent order was agreed on that day, essentially to regulate the position until the effective contested hearing of the applications. The claimant (and applicant) had indicated that he wished the opportunity to put in further evidence in response to that served on behalf of the defendants. In accordance with an agreed procedural timetable, the claimant made a fourth witness statement, dated 14 August 2019, exhibiting various documents as NP4. Within exhibit NP4 there were various bank statements that the claimant had obtained in relation to the bank accounts of the second defendant company, the company Luxury Collections (UK) Limited, and also the apparently joint bank account of the fourth defendant and his wife, Mrs Hiroko Nicolaides. Despite repeated requests in correspondence for the claimant to disclose how he had obtained those bank statements, no such explanation was forthcoming, at least in the form of any witness statement.

16 The defendants filed a third witness statement from the fourth defendant dated 28 August 2019, together with exhibit CN3, and more recently Mr Kelly has made a second witness statement dated 21 January 2020, exhibiting as LPK2 copies of various communications passing between his firm and the solicitors acting for the claimant directed, unsuccessfully, to seeking to establish the provenance of those bank statements.

17 For the purposes of today's hearing, the claimant (and applicant) is represented by Mr Richard Bowles (of counsel) and the defendants (and respondents and cross-applicants) are represented by Mr Rupert Butler (also of counsel). Neither counsel was involved at the time of the hearing before Morgan J. Both counsel had prepared helpful written skeleton arguments which I had the opportunity of pre-reading yesterday, together with all of the

evidence, although it was not presented in quite the form of the bundles that counsel were to deploy before me.

18 Mr Bowles addressed me for just under an hour, Mr Butler then responded for about a similar period of time, and Mr Bowles then replied. His submissions concluded just after 1 p.m. I then adjourned over lunch until 2.15 when Mr Butler briefly addressed me on two additional authorities referred to for the first time in Mr Bowles's reply and also upon the late revelation, made just after 1 p.m., on instructions to Mr Bowles, as to how his client had obtained the bank statements. That explanation was something for which the defendants have been pressing for over four months. At the outset of this hearing I had inquired of Mr Bowles how the bank statements had been obtained and Mr Bowles had indicated he did not have any instructions on that matter, although I observed to him that Mr Bowles's client appeared to be sitting behind him and was someone from whom Mr Bowles could take instructions if he thought fit.

19 Just after 1 o'clock Mr Bowles indicated, on instructions, that the bank statements had been obtained after his client had spoken to Barclays Bank which had freely provided the bank statements to him. Mr Bowles made it clear that his client had done nothing illegal; he had simply asked for the bank statements and Barclays Bank had given them to him. When I queried how that could have happened, particularly in relation to personal bank statements relating to a joint account apparently not only held by the fourth defendant, but also jointly with his wife, Mr Bowles indicated, again on instructions, that the claimant had been accompanied by his grandfather (the father of the fourth defendant) who had been the person who had asked Barclays Bank for the account statements. That explanation is not presently formally in evidence before me, and it will be a condition of this order that that explanation is reduced to writing by the claimant and confirmed in a witness statement verified by a statement of truth; that is only right if I am being asked to rely on that.

20 Against that background, I turn to the two applications that are before the court. Logically, I should deal first with the second of those applications since it seeks a variation or rectification of the consent order approved by Morgan J. Mr Butler emphasises that it is quite clear that something has gone wrong with the original order. As Mr Bowles acknowledges, the order should have contained a carve-out in relation to expenditure in the ordinary course of the business of the two companies, so as to enable them to continue as trading entities by renting out the units within the two residential properties, receiving rents for them, and managing them. Mr Bowles made it clear that his client had always been content for the order to be varied so as to allow the two companies to spend money in the ordinary course of business so long as no moneys were paid over to any entity owned or controlled by either of the third or fourth defendants. That exclusion would apply, in particular, to Luxury Collections (UK) Limited.

21 However, Mr Bowles made it quite clear that his client had always intended and understood that there should be no payments to any entity owned or controlled by either of the third or fourth defendants and, specifically, Luxury Collections (UK) Limited. Mr Bowles pointed to the fact that sub-paragraph 2(d) of the order had appeared in its first iteration in precisely the terms it now does and that it was only sub-paragraph 2(a) that had ever been amended to extend it beyond its original scope of application only to the two London real properties so as to apply to all of the assets of the two companies. The explanation for that in evidence was that during the course of discussions as to the terms of the consent order, it had become clear that the two companies owned, or might have owned, assets in Cyprus, the precise nature of which was not then known; therefore the words: "any of the assets of the first and/or second defendants, in particular . . ." were inserted into sub-paragraph 2(a). Mr Bowles points to the

fact that Mr Sinclair's witness statement addresses the genesis of the present sub-paragraph 2(a), but nothing is said whatsoever in Mr Sinclair's witness statement about sub-paragraph 2(d).

22 Mr Butler's submission is that it was always the intention of the parties that nothing should prevent any payment being made by either of the two companies in the ordinary course of its business and that that would apply to any payment, even to an entity owned or controlled by the third or fourth defendants and, in particular, to Luxury Collections (UK) Limited.

23 The defendants' application is put on two alternative bases. I can deal very quickly with one of those, namely any application to vary the terms of the order. There is, of course, jurisdiction under CPR 3.1(7) to vary an interim order but that jurisdiction has to be exercised in accordance with established authorities, notably the leading case of *Tibbles v SIG Plc* [2012] EWCA Civ 518, reported at [2012] 1 WLR 2591, and the other authorities discussed in the commentary to the current (2019) edition of vol.1 of *Civil Procedure* at para. 3.1.17.1. In essence, the power to vary an order should only be exercised where either (a) there has been a material change of circumstances since the making of the order, or (b) where the facts on which the original order was made were mis-stated, whether innocently or otherwise. On the evidence in the present case, there is no question of either of those circumstances applying here: there has been no material change of circumstances since the order was made, and there was no suggestion of any mis-statement of the facts on the basis of which which the original order was agreed. Therefore, I need say nothing more about any variation of the order under the jurisdiction conferred by CPR 3.1(7).

24 So far as rectification is concerned, I accept that this is a case where the consent order was a true consent order in the nature of a contract between the parties to the litigation. In those circumstances, rectification is only available in the case of common mistake in accordance with the principles identified by Slade LJ in the case of *The Nai Genova* [1984] 1 Lloyd's Law Reports 353 at p.359 (column 2) and in the judgment of Peter Gibson LJ in the case of *Swainland Builders Limited v Freehold Properties Limited* [2002] EWCA Civ 560, reported at [2002] 2 EGLR 71 at paragraph 33. The burden of proving that a document should be rectified rests upon the party – in this case the defendants – seeking rectification. In substance it must be shown that both parties had a common continuing intention, even though it need not amount to a final agreement, in respect of a particular matter in the instrument to be rectified, and that such intention was accompanied by an outward expression of accord. Recent Court of Appeal authority has made it clear that such an outward expression of accord must cross the line between the parties to the document.

25 In the present case I am entirely satisfied that the defendants have not established that the consent order, as drafted, did not represent the common intention of the parties. Whatever the position with regard to the defendants themselves, I am entirely satisfied that the claimant always intended the consent order to contain a provision in the terms of sub-paragraph 2(d) and for that provision to mean exactly what it says.

26 Reliance is placed by Mr Butler on the terms of the suitably skeletal skeleton argument that was prepared by Mr Simon Farrell QC and Ellis Sareen, as counsel for the claimant, at the hearing of 30 August 2018, which was dated the previous day. It is true that paragraphs 8 and 13 of that skeleton argument clearly demonstrate that the emphasis of the claimant's interim application was upon the restriction of any dealing with the real property located in England belonging to the two corporate defendants. However, paragraph 14 did, in terms, refer to the heightened general cause of concern entertained by the claimant as a result of evidence concerning the relationship between the second defendant, the UK company, and Luxury

Collections (UK) Limited, a company owned and controlled by the fourth defendant. It referred in terms to substantial sums having been paid by the UK company to Luxury Collections (UK) Limited.

27 Mr Butler also refers to paragraph 18 of the skeleton, emphasising that the purpose of the interim application was simply to preserve the *status quo*, without materially impacting upon the operation of the companies; but the claimant's supporting evidence made it clear that he did not accept that payments to Luxury Collections (UK) Limited were part of the ordinary course of the first and second defendant companies' business. Whilst the claimant never intended to impede the continuing operations of the first and second defendant companies, he was concerned to prevent any payments out by either of those companies to Luxury Collections (UK) Limited as an entity owned and controlled by the fourth defendant. I am entirely satisfied that the defendants have not demonstrated any mistake on the part of the claimant in relation to the present and true meaning and effect of sub-paragraph 2(d) of the consent order which, so far as he was concerned, was always intended to take effect according to its literal terms and not to be restricted in any way to the real property of the two companies. Had it been so intended, as Mr Bowles pointed out, there would really have been no need for sub-paragraph 2(d) as a provision separate and distinct from sub-paragraph 2(a). Moreover, even if there were a mistake, I cannot see that there was any outward expression of accord in relation to that which crossed the line between the claimant and the defendants. Nor is there any evidence of a case for rectification on the grounds of unilateral mistake because there was absolutely no evidence whatsoever that, even if the defendants themselves were mistaken, the claimant was aware that they were entertaining any such mistake. Therefore, there is no conceivable basis for a claim for rectification on the grounds of unilateral mistake in accordance with the principles so clearly articulated in the case of *Thomas Bates & Son Ltd v Wyndham's (Lingerie) Limited* [1981] 1WLR 505.

28 For those reasons, therefore, I would dismiss the defendants' application to rectify or vary the agreed order, save to the extent contemplated and accepted by Mr Bowles in the form of order which, subject to modification, was discussed and agreed during the course of this hearing. He has proposed to address the need for payments to be made otherwise than to entities owned or controlled by either of the individual defendants in the ordinary course of the business of the two corporate defendants. I therefore dismiss the defendants' application.

29 I turn then to the claimant's application. On its face, this seems to me to be a fairly short and clear application. The claimant expressed concerns in his second witness statement in support of the application that £25,000 had been paid out by the second defendant to Luxury Collections (UK) Limited. That was accepted at paragraphs 34 and 35 of the fourth defendant's second witness statement. It is clear that, since the fourth defendant is the sole director and shareholder of Luxury Collections (UK) Limited, those payments, totalling £25,000, were made in breach of the terms of sub-paragraph 2(d) of the agreed order. It would appear from the bank statements that equivalent sums - indeed sums in excess of that amount - have been paid out by Luxury Collections (UK) Limited, after the dates of the payments into that company's bank account by the second defendant, to the third and fourth defendants and that is clear on the evidence. What the claimant seeks is the restitution of those moneys so as to restore the position to that which it should have been under the terms of the agreed order. The moneys should never have been paid out and, therefore, they should be returned. Mr Butler has expressed practical concerns as to how that is to be done since the second defendant appears to have no operating or functioning bank account. Mr Bowles has suggested that the appropriate solution may be for the moneys to be paid over to the newly appointed managing agents, Dexters. Mr Butler has expressed concern as to whether Dexters will be content to accept those moneys. Mr Butler also raises the concern that those moneys, if returned, should

not effectively be frozen, but should be capable of being applied in the ordinary course of the second defendant company's business. Mr Bowles, as I understood him, accepted that that would be appropriate; and, even if he did not accept that, it seems to me quite clear that those moneys, if returned, should fall into the general pot of the second defendant company to enable it to discharge its expenses and obligations as and when they fall due. Clearly, they should not simply be frozen.

30 Mr Bowles had originally, as one of his alternative forms of order, sought an unless order whereby if the moneys were not returned, then the individual defendants' defence to the derivative claim should be struck out and they should be debarred from defending it. However, Mr Bowles accepts the point made by the court that, in fact, there is going to be no defence to the derivative claim, or any further progression in that litigation, because, under the terms of the order approved by Morgan J, all proceedings in the derivative claim have been stayed. Seizing upon that, Mr Bowles submits that that provides added reason why the money should be returned because otherwise there would be no effective sanction for what is accepted to be a breach of the court order agreed before Morgan J on 30 August 2018.

31 Subject to a further argument, advanced forcefully by Mr Butler, it does seem to me clear that, having been paid out in breach of the order, the £25,000 ought to be returned to the second defendant company, to form part of its general assets to be applied in the proper course of that company's business. In the absence of a functioning company bank account, the money should be paid over to the manging agent or in some other way. But it should simply fall into the general company pot, to be capable of being applied so as to discharge the company's ongoing obligations. However, Mr Butler submits that the court should not do that because to do so would be to allow the claimant to rely upon the bank statements which he has obtained apparently by some unlawful subterfuge, and in breach of all the principles of confidentiality applying to bank statements.

32 Mr Butler invites the court to treat with some reserve the explanation that has been so belatedly supplied as to the provenance of the bank statements. He submitted, in his brief reply, that the most recent revelations are lacking in integrity. I have already indicated that they need properly to be evidenced by way of a witness statement from the claimant. I find it surprising that a reputable clearing bank should have been prepared to hand over bank statements merely on the say-so of the father of one of two personal account holders. Clearly, issues still arise as to whether the bank statements were properly obtained, and as to the lawfulness of that exercise. I am in no position to make, and do not make, any express findings as to how the bank statements were obtained in the absence of any oral evidence (and cross-examination) from the claimant. Even if I were to assume that those bank statements had been obtained unlawfully, I do not consider that it would be appropriate to exercise the court's undoubted power under CPR 32.1(2) to rule them inadmissible in evidence.

33 I was taken by Mr Butler extensively through the seminal judgment of Lord Neuberger MR, speaking for the Court of Appeal, in the leading case of *Tchenguiz v Imerman; Imerman v Imerman* [2010] EWCA Civ 908. Mr Butler referred to many passages in the Master of the Roll's judgment. He submitted that the claimant could not be allowed to ride roughshod over the established legal rights of the second defendant company, of which the claimant was not a director nor even directly a shareholder, or of the fourth defendant and his wife personally, or of the fourth defendant's company, Luxury Collections (UK) Limited, which was not even a party to the instant litigation. Mr Butler pressed upon me the fact that the court should not sanction what would appear to have been illicit activity on the part of the claimant, possibly extending to fraud or impersonation in the obtaining of the bank statements. Mr Butler also referred me to two further authorities: The first was the decision of Mostyn J in the case of *L*

v K (Freezing Orders: Principles: Safeguards: Standard Examples) [2013] EWHC 1735 (Fam), reported at [2014] Fam 35. He referred in particular to the passage at paragraph 56. He finally took me to the Court of Appeal's decision in the case of *Arbili v Arbili* [2015] EWCA Civ 542 and, in particular, the observations of Macur LJ at paragraph 35.

34 Mr Bowles took me to the judgment of Lord Woolf MR in the case of *Jones v Warwick University* [2003] EWCA Civ 151, reported at [2003] 1WLR 954 and, in particular, to paragraphs 25 through to 28 in support of the submission that whether or not the bank statements should be admitted in evidence was essentially a matter for the discretion of the court, to be exercised in accordance with the overriding objective but bearing in mind any apparent breach of the rights of the fourth defendant and his wife under Article 8 of the European Convention on Human Rights. He also referred me to observations of the Competition Appeal Tribunal in *Agents' Mutual Limited v Gascoigne Halman* [2017] CAT 5 at paragraph 11(2)(i) where it was held that any "potential illegality is a material factor to take into account, but not an overwhelming one".

35 In his brief reply Mr Butler pointed out that *Jones v Warwick University* was dealing with an entirely different situation and involved the creation of evidence rather than the obtaining of existing documents illicitly. He also pointed to the context of the observations in the *Agents' Mutual Limited* case where one was concerned with competition proceedings which involved an entirely different context and procedural rules.

36 I am satisfied on the authorities that the court should not in any way be seeking to condone the obtaining of bank statements illicitly or improperly. I acknowledge that one of the elements of the overriding objective is outward facing, and looks to the implications of conduct in the instant case on other cases proceeding before the court. I fully acknowledge that the court should not be seen to be condoning unacceptable practices. I also acknowledge the importance of preserving confidentiality and human rights. I acknowledge that a person should not be entitled to derive a benefit in litigation from any wrongdoing. A litigant should not be entitled to rely upon any apparent misconduct, still less any unlawful conduct. However, ultimately the question whether these bank statements, which are clearly admissible in evidence, should be excluded as inadmissible involves the court in exercising its discretionary procedural and case management powers in accordance with the overriding objective of dealing with the case justly and at proportionate cost, bearing in mind the need to ensure that parties are on equal footing and that the application is dealt with fairly. On that basis, it does seem to me that I should allow reliance upon the bank statements in the circumstances of the present case.

37 The bank statements are being relied upon against the context of an admission on the part of the defendants that they were in breach of the letter of sub-paragraph 2(d) of the agreed order. It is not clear whether or not that breach would have come to light but for the bank statements. That breach was asserted, and admitted, before the bank statements had been deployed in evidence. The court is alive to the possibility that it was the obtaining the bank statements that enabled the claimant to formulate his application and second witness statement, identifying the payment of £25,000 to the company owned and controlled by the fourth defendant. But, even if it was the bank statements that did enable the claimant to identify and articulate that breach, it does seem to me that that should not prevent that breach, which is now admitted, from being properly placed before the court. If the bank statements were necessary to enable the claimant to identify and articulate the breach, which is now admitted, then, clearly, he was on an unequal footing in relation to the defendants, who knew all about what had happened. The reason why reliance is placed on the bank statements is to identify and establish a breach of a court order. It seems to me that there is a clear public interest in

such matters being placed before the court, which has a clear interest in ensuring that its orders are observed. That also is an outward-facing matter of public interest that has resonance in cases other than the instant case.

38 I note that in one of the authorities referred to by Lord Neuberger MR in *Tchenguiz* (at paragraph 75), Lawrence Collins J had refused to grant an injunction in aid of the invocation of the court's equitable confidentiality jurisdiction on the ground of the public interest in the disclosure of wrongdoing and the proper administration of justice. In my judgment, those considerations apply in the present case, where the court is being invited to effectively enforce the provisions of an order made by the court, albeit with the consent of the parties.

39 Given the purpose for which the bank statements are deployed, namely the enforcement of a court order, and the public interest that the court has in seeing that its orders are enforced, it does seem to me that it would be wrong to refuse the application brought by the claimant in its present and modified form. Mr Butler says that the claimant is effectively relying upon his own inequitable conduct in asserting relief on the basis of bank statements that would appear to have been improperly obtained. Equally, however, it can be said that the defendants would be seeking to avoid their own breach of a court order in seeking to exclude evidence of such breach in reliance on those bank statements; in this case, there would be an element of each side seeking to come to court with not entirely clean hands. Therefore, even if I were to accept that the bank statements had been improperly obtained, I would not, for that reason, refuse to admit them in evidence in support of what is an admitted breach of a court order.

40 In my judgment, it is appropriate that the court should take steps to seek to put the parties back into the position in which they would have been had that court order not been breached. As Mr Butler, I think, accepted, issues of whether payments to Luxury Collections (UK) Limited are proper payments in the ordinary course of the company's business are not a matter that can properly be resolved in the context of interim proceedings of the present kind. In my judgment, the appropriate course is to require the third and fourth defendants to procure the return to an appropriate bank account of the second defendant company of the £25,000 paid out in breach of subparagraph 2(d) of the court's order. Having come in, however, that money will then be capable of being applied as part of the company's general pot in the payment of expenses and outgoings in the course of the company's usual business. So, in that sense I will accede to the application by the claimant.

41 I think both parties are in agreement as to what modifications need to be made to Mr Bowles's proposed draft order. In paragraph 2 there will be reference, in the prefatory words, only to the Cypriot proceedings, and no reference to the final determination of the derivative claim because the derivative claim has been stayed. The proposed modified sub-paragraph 2(b) should make it clear that the first and second defendants are to be acting by their respective boards of directors, and that Dexters has already been instructed as independent property management company, with the default provisions in the second sentence and sub-paragraph 2(d) only applying in the event of Dexters, or any replacement property management company, ceasing to act, and then sub-paragraph 2(d) applying to the selection of any such replacement property management company. Other than that, I think that the terms of the draft, other than as to costs, were not seriously in dispute.

42 For those reasons I accede to the claimant's application and dismiss the defendants' cross-application. I will leave counsel to finalise a minute of order that can be referred to me for approval in due course.

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