

Neutral Citation Number: [2022] EWHC 1811 (Ch)

Case No: BL-2022-000913

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

Royal Courts of Justice
Rolls Building
Fetter Lane
London, EC4A 1NL

Date: Friday, 8 July 2022

Before:

His Honour Judge Hodge QC
Sitting as a Judge of the High Court

Between:

**(1) Harrington & Charles Trading Company
Limited & 7 Ors**

Claimants

- and -

(1) Jatin Rajnikant Mehta & 4 Ors

Defendants

Mr Ian Wilson QC, Mr Philip Hinks and Mr James McWilliams (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimants**

Mr Andrew Hunter QC and Mr Luka Krsljanin (instructed by **Jones Day**) for the **First, Second and Fourth Defendants**

Mr William Willson and Mr Paul Adams (Mr Justin Higgs QC with them) (instructed by **Howard Kennedy LLP**) for the **Third Defendant**

The Fifth Defendant did not appear and was not represented

Hearing date: **Friday, 8th July 2022**

APPROVED RULING

Friday, 8 July 2022

HIS HONOUR JUDGE HODGE QC:

1. I am conscious that I have not yet heard all of the submissions of either Mr William Willson (for the third respondent) in relation to the claimants' substantive applications or of Mr Ian Wilson QC in reply. I have therefore not yet decided whether to make any further order, in particular in relation to the further disclosure which is sought in relation to the monetary payments identified in paragraph 13 of Mr Ian Wilson's skeleton argument. I have also not yet reached any conclusion in relation to the continuation of the passport relief in relation to either of the first, second and fourth respondents. However, it is imperative that this afternoon I should determine whether the third respondent is to be entitled to the return of his passport. The reason for that is that on 25 May, at about 4.15 in the afternoon, the third respondent concluded the purchase of tickets for himself and his family to travel on a United Airlines flight to San Francisco, California, USA, departing London Heathrow at 10.25 on the morning of Monday 11 July, and returning on a flight from San Francisco at 12.30 in the afternoon of Tuesday 26 July and returning to Heathrow at a scheduled time of 6.55 am on Wednesday 27 July. The third respondent naturally wishes to take that flight.
2. The claimant had originally secured from Mr Justice Edwin Johnson, some two days later (on 27 May), a passport surrender order in relation to all four respondents until the original return date of 10 June. By consent, that return date has now been adjourned to a hearing presently in a two day window between 5 and 7 October 2022; and it was agreed that the passport surrender provisions should continue until today's hearing, on Friday 8 July. The claimant now seeks a further extension of that order until, I think, Friday 29 July. That means that the respondents will have been restrained from leaving the country for a period, in total, of some eight weeks.

3. In relation to respondents 1, 2 and 4, their passports have not been handed over because they are presently held by the Home Office in support of some presently unspecified form of immigration application. It has today been indicated by Mr Hunter QC, representing those respondents, that his clients could ask for the return of their passports but that it is inherently unlikely that they would wish to do so, given their pending immigration applications; and, in any event, one cannot know how long it would be before the Home Office would accede to any application for the return of the passports.
4. However, Mr Ian Wilson emphasises that the third respondent is the only respondent whose passport is presently held by the claimant. True it is that the other respondents might be able to address any further disclosure obligations; but, so Mr Ian Wilson submits, they are presently realistic flight risks because their passports are not held by the claimants' solicitors; and if his passport is returned to him, the third respondent would be free to leave the country and he may not return.
5. Before the luncheon adjournment, I did raise the prospect with the third respondent's counsel, Mr William Willson, that he might offer the court some form of undertaking that, subject to any difficulties over the return flight, his client would return to this country on the presently scheduled return date of 26/27 July. Mr Ian Wilson has made the point that, if he is not in the jurisdiction, such an undertaking might not be readily enforceable, but that it would at least offer some additional comfort to the claimants. Such additional comfort has not, on instructions, been offered by Mr William Willson for his client. He takes the view that it is unnecessary to do so.
6. I have been referred to the applicable authorities on the making of passport orders, as set out in the several skeleton arguments of counsel. I have had those authorities firmly in mind. In particular, Mr William Willson has emphasised that passport orders should be granted for very limited periods, and

should normally be confined to assisting in the enforcement of another court order. An applicant for such relief must establish that there is probable cause for believing that the respondent is about to quit the jurisdiction unless he is restrained, and that the absence of the respondent from the jurisdiction will materially prejudice the claimant in the prosecution of the action.

7. In the circumstances of the present case, where it is clear that the third respondent is going to leave the jurisdiction, the issue really becomes whether he will return on the scheduled date, and whether, if he did not, his continued absence would materially prejudice the claimants in the prosecution of their claim. The continuation of the present order must be reasonably necessary and ancillary to the due performance of the court's functions. The court must pay due regard to the intrusive interference with individual liberty that such an order carries, and the court should therefore ensure that it lasts for no longer than is necessary to enable the claimants to obtain the information to which they are entitled.
8. In the present case, I am urged to have regard to the various factors identified by Mr William Wilson in paragraph 90 of his skeleton argument, indicating the third respondent's connections with this country. I bear those firmly in mind. I bear in mind, particularly, the fact that the third respondent has paid his two children's school fees for the forthcoming autumn term, that he is presently entitled to remain in England until September 2022, and that he has rented accommodation in respect of which, until after then, he would appear to have no prospect of securing a break.
9. I do bear in mind that there is some lack of clarity about the circumstances in which, as related at paragraph 30 of his witness statement, the third respondent gave up his Indian passport in 2012 and continued to move around the world before he received his Saint Kitts and Nevis citizenship and passport in the middle of June 2013. I also bear in mind the coincidence of the year 2012 as the

approximate period during which the fraud alleged by the claimant was being perpetrated and the relinquishment of the Indian passport.

10. Nevertheless, having borne all of those factors firmly in mind, together with the other points made by Mr Ian Wilson for the claimants, it does seem to me that it would be an unduly intrusive inference with the personal freedom of the third respondent, and his family, to order a continuation, for a further period of some three weeks, of his passport at a time when, before he had any notice of these proceedings, he had already booked to go on a family holiday to the United States as part of a previous pattern, post the COVID pandemic, of foreign holiday travel.
11. Looking at the various points made about the companies at paragraphs 13 and 14 of Mr Ian Wilson's skeleton, it does seem to me that, with the possible exception of JRD International Limited, which is said to have received about US\$4.5 million on or about 14 December 2012, other family members should be in a position adequately to provide any further disclosure that may be ordered without recourse to the third respondent.
12. In those circumstances, it seems to me that the appropriate order to make is to order the return of the third respondent's passport for him to undertake his foreign holiday. So I will make an order for his passport to be returned to the third respondent on condition that, on his return to this country, it is returned to his solicitors to be held in accordance with any order that the court may make on Monday, in relation to all four respondents, for the continuation of the passport restraints until the date proposed by the claimants, although, in the case of the third respondent, that will only apply for the limited period until that date as from his return to this country.

13. What I will do is to continue the existing restraints in relation to respondents 1, 2 and 4 until after I have concluded my judgment on the other applications on Monday.