Case No: BL-2020-000952

Neutral Citation Number: [2022] EWHC 926 (Ch)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

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

Date: 14/4/2021

Before:

CHARLES MORRISON
(sitting as a Deputy Judge of the High Court)

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Between:

(1) MR FADHEL SALMAN HUBAIL ALNAJJAR
(2) DR ABDULSHAHEED EBRAHIM FADHUL ALI
Applicants

- and -

(1) DX9 PROPERTY LIMITED
(A COMPANY INCORPORATED UNDER THE LAWS OF THE BRITISH VIRGIN ISLANDS)
(2) SL2 PROPERTY LIMITED
Respondents

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Stuart Hornett (instructed by Charles Russell Speechlys) for the **Claimants**
Michael Phillis (instructed by Bloomsbury Law) for the **Defendant**

Hearing date: 31 March 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.30 am on 14 April 2022.

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Charles Morrison (sitting as a Deputy Judge of the High Court):

Introduction

1. At the conclusion of the trial of what I will refer to as the main action, which involves the Applicants and two defendants being a Mr Majeed and his wife Mrs Ismail, I made a Freezing Order in respect of certain assets which I indicated I was prepared to hold were Partnership Assets, as alleged by the Applicants. Mr Seyed Gilani now comes before me, by Mr Phillis of counsel, complaining that certain assets which had been brought within the ambit of the Freezing Order are not in fact Partnership Assets, and are owned beneficially by him. He says he knows nothing about the dispute that was the subject of the main action; all he knows is that he bought two companies from Mr Majeed for a fair value and in good faith. Accordingly he asks that the companies, being the Respondents, and the properties that they own, be released from the captive web of the Freezing Order.

2. Mr Hornett who appeared for the Applicants, as he did at the trial of the main action, submitted that there was sufficient material before the court to persuade me that there is good reason to suppose that the Respondents and their properties are truly Partnership Assets, perhaps, though he does not need to nail his colours to any particular mast, conveniently parked by Mr Majeed with Mr Gilani, who is in fact very well known to him. At any rate, in light of the wealth of material upon which he relies, there is sufficient to make the court concerned as to the true ownership and at this interim stage, the assets should remain subject to the Freezing Order.

3. Having heard both Mr Hornett and Mr Phillis, I indicated to the parties that I was prepared to continue the Freezing Order generally, and that it would continue to apply in respect of the Respondents and the relevant properties; I also indicated that my reasons for continuing the order in respect of the Respondents, would follow.

The law relied upon by the Claimants

4. In arriving at the decision to make the Freezing Order, I accepted the submission of Mr Hornett that the court has jurisdiction to make a Freezing Order which is effective against non-parties, in respect of whom the applicant has no substantive cause of action, provided the request for the order is "ancillary and incidental" to the claim itself. I agreed that the decision in *TSB v*

Chabra [1992] 1 WLR 231, was relevant insofar as it pointed to cases where non-parties hold assets of the defendant. None of this was controversial at the hearing on 31 March.

5. My attention was also invited to passages in *Gee on Commercial Injunctions* 7th Ed at 13-021, where it is said that a Freezing Order may extend to assets where:

> "*The defendant to the substantive claim has caused assets to be held by or vested in a third party who is acting as a nominee for the defendant. The nominee is simply holding assets which fall within the scope of "his assets," i.e. assets owned beneficially by the defendant.*"
>
> And further,
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> "*The defendant has some right in respect of, control over, or other right of access to the assets, and there is* ***good reason to suppose*** *that the assets can be reached through one route or another and made compulsorily available to satisfy the claim or a judgment based on it. If a defendant has set up, or operates a network of off-shore trusts and companies to hold assets over which he has de facto control, this can be an appropriate case for the granting of Mareva relief against the relevant non-party, pending inquiries into whether the assets can be compulsorily applied to the claim. The non-party may be engaged in a scheme with the defendant and associated persons or entities to strip out assets so as to defeat enforcement of a judgment against the defendant, which may subsequently be challenged enabling the judgment to be satisfied. There may have been a transfer of assets by the defendant to the third party liable to be set aside under s.423 of the Insolvency Act 1986.*" (emphasis added)

6. Mr Hornett invited me to have in mind the stage the proceedings had reached. The question before the court was merely whether to continue the injunction. In his submission it was the "good reason to suppose" test that was relevant. This was not, as I put it to him, the stage of determining the property rights of the parties. That, necessarily had to come later and could not be resolved by way of these summary proceedings.

7. My attention was invited to a further helpful passage in *Gee*, at [13-22]:

> "*Cases can involve more than one category of route for reaching the assets, and whether there is "good reason to suppose" does not involve subjecting a case to a category by category analysis, or identifying precisely how the assets may be reached. In order to enable the court to evaluate whether there is good reason to suppose that the assets can be reached through one route or another, the applicant should identify what assets are to be preserved and why there is good reason to suppose they may be reachable. It is the non-party who will know how he acquired assets and normally have documents relating to this, and the applicant depending on the circumstances may be relying on evidence about the connections between the defendant with the non-party, and may not be able to identify particular routes with confidence until after disclosure of documents and information about the acquisition of the assets. This is a flexible discretionary jurisdiction. The court is not required to decide "the ultimate rights of the parties" in the underlying assets which are to be preserved. The injunction holds the position, and the substantive rights may be decided on trial of an issue or in enforcement proceedings" (emphasis added).*"

8. This seemed to me to be the correct way to approach the matter and Mr Phillis did not disagree. The question for me to address was then, had the Claimants done enough to cast sufficient doubt over Mr Gilani's claim to ownership, unconnected to the Defendants, such that I should continue to "hold the ring" until the true property rights of the parties could be determined by the court?

Mr Gilani's purchase of the assets

9. I have to confess that upon reading the evidence, I was immediately troubled as to the circumstances surrounding the transaction that Mr Gilani claims to have entered into with the Defendant, Mr Majeed. The case put was that he had come upon the properties through an agent, a Mr Mojaveri. No valuation evidence or independent evidence of negotiations was relied upon but that was because Mr Gilani had relied upon his own expertise in order to arrive at a view as to the value of the assets. Businessmen such as Mr Gilani often take their own counsel, Mr Phillis observed to me.

10. Albeit that there was no evidence of due diligence of any recognisable form, Mr Gilani explained in his evidence that his solicitor had raised the usual due diligence enquiries. Mr Gilani knew he was taking risks but trusted his own judgment. This evidence in itself however gives rise to some concern. This is so when it is contrasted with the evidence given by Mr Gilani's solicitor, Mr Argyrou, who in his statement claims that:

> "*When I was approached to act on behalf of Mr Gilani in relation to his acquisition of the Properties (via the shares in each SPV) I knew this was within my area of competency and I advised him that my firm would not be advising on any tax issues or carrying out any company due diligence on either of the SPVs and that he should instruct his tax advisors or accountants to do this for him. My advice centred around the properties that I was told by Mr Hoffman that each SPV owned.*"

11. At any rate I should not be too concerned, submitted Mr Phillis, as there was simply no evidence of due diligence either way. Thus, I should not read too much into the point.

12. Mr Gilani knew that he was buying companies, but there has been no disclosure of any accounts or balance sheets of those companies that he, or any of his advisers, applied his or their mind to, at the time of the transaction. He was happy to assume the debt of those companies, and the value of it as being, as disclosed to him by the agent. There was certainly no substantive evidence before me of due diligence on the extent of the liabilities of the companies or the level of debt being assumed; as Mr Phillis accepted, when I enquired into this aspect of the transaction, Mr Gilani was content to believe what he was told by the agent. This on one view appears to reveal what may be considered an unusually trusting businessman, but might have been because of his faith in the contractual warranties that Mr Gilani explains in his witness statement that he was relying upon. He could, he says, recover under these warranties on a pound for pound basis. This in my judgment is a surprising position to take when paying over £1.7m for real property assets.

13. Mr Hornett made much of the fact that the publicly available accounts he has seen appear to disclose a liability of SL2 Property Limited (**SL2**) that ought to be reflected in the value of DX9 Property Limited (**DX9**), but if it was, it would cast doubt on the commerciality of the

consideration paid by Mr Gilani for the ownership interest in DX9. Mr Phillis had no, or at any rate no good, answer to this.

14. The Claimant's case was also grounded on the claim that no cogent evidence was put before the court pointing to the source of the funds used by Mr Gilani to complete the purchase. There was evidence. It was in the form of a statement from a solicitor of 29 years standing, Mr Argyrou. At paragraph 13 of his statement he says:

> "*I feel it important to note that all funds relating to the payment of all consideration in the SPVs were paid for directly by Mr Gilani, from his personal bank account, directly into my firm's client account.*"

15. If this is true, asked Mr Hornett, where did the funds come from? He stopped short of a submission that the evidence from Mr Argyrou was otherwise than based on fact, but he argued, in proceedings such as these, the Claimant is entitled to better evidence in order to deal with the issue. Taken together with the other peculiarities of the transaction, Mr Gilani really has to put the point beyond peradventure by disclosing clear evidence of the source of the funds.

The A2B Agreement

16. What Mr Hornett says was certainly peculiar was the so-called "side deal concerning the Stoke Land". At the first Return Date hearing on 2 March, he had been handed copies of two Sale and Purchase Agreements (**SPA**/**SPAs**), which Mr Phillis explained had been provided to him by his client. At the end of the SPA for SL2, there was a two-page agreement between Mr Gilani, 77K Limited (**77K**) and A2B Property Investments Limited (**A2B**), for the sale from Mr Gilani of land on the South Side of Woodhouse Street, Stoke on Trent (**the A2B Agreement**). The latter two companies are also enmired in this litigation and are subject to the Freezing Order.

17. My attention was invited to certain features to the A2B Agreement, as I set out below.

    a) It had not been disclosed or referred to at all in the evidence filed on behalf of DX9/SL2. No explanation or disclosure has been offered in relation to its provenance, its relationship to the SL2 SPA and whether any consideration was paid.

    b) It is dated 28 January 2021, the same date as the SPA for the SL2 shares. The Office Copies confirm that the transfer was effected on this date.

    c) The price stated is £600,000 plus VAT – a sum, so far as Mr Hornett sees it, very similar to the consideration of £550,000 said to have been paid for the shares in SL2.

    d) The solicitor for the Defendants signed the agreement on behalf of A2B.

    e) The agreement was made supplemental to a series of previous agreements dated 15 August 2019, 31 January 2020, 10 July 2020, 20 August 2020 and 25 November 2020, which have not been disclosed but, Mr Hornett says, it can be inferred that one or more of them assigned the benefit of the contract from 77K to A2B. Mr Majeed was appointed a director of A2B on 1 April 2020, and was therefore a director when three of the supplemental agreements were entered into (the first being 10 July 2020).

18. From this platform, Mr Hornett submits that:

a) the failure to disclose or refer to the A2B Agreement in the evidence, which is in itself remarkable, points to deliberate concealment, probably in ignorance of the fact that the A2B Agreement had already been disclosed in court by counsel;

b) the A2B Agreement is part of a wider, "linked deal", that has not been disclosed or explained; and that

c) absent full and complete disclosure, which manifestly has not been forthcoming, there is a serious question as to whether any consideration passed under either of these agreements, whether payment was indeed made for the SL2 shares, and whether the Stoke Land was transferred for nothing (or at an undervalue) such that no or no proper value was given.

19. It is without doubt odd that Mr Gilani makes no reference to the A2B Agreement. This is in part because of his evidence that "prior to commencing this transaction" neither Defendant was known to him and he had never spoken to nor met them.

20. By December 2020, three separate supplemental agreements had been entered into between Mr Gilani, 77K and A2B, all after Mr Majeed had been appointed a director of A2B on 1 April 2020. In all the circumstances of this case, it would seem unlikely, though not impossible, that Mr Gilani did not by that point, know of Mr Majeed. Mr Hornett quite fairly poses the question, to which I did not hear any convincing response from Mr Phillis, "who did Mr Gilani think he was dealing with when selling the Stoke Land?"

The Agent

21. It is of course Mr Gilani's case that an agent, Mr Mojaveri, was the introducer of the properties, but it does appear likely that Mr Majeed (or his solicitors) had been in regular contact with Mr Gilani since July 2020 (possibly earlier) negotiating the terms of the Stoke sale; why, it might easily be asked, would he need an agent to introduce any sale of SL2 and DX9?

22. As to the agent Mr Mojaveri, it appears that a company operated by him, AMAK Management, had leased flats in Harrow Road from 77K, and has subsequently been appointed to manage the properties by Mr Gilani. The existence of all these relationships the Claimants say, deserves explanation; but nothing has been volunteered or explained in the evidence put before the court by the Respondents.

Conclusions

23. In seeking to arrive at a decision on whether to continue the Freezing Order in respect of assets that I have already found to be Partnership Assets but are claimed to be the assets of a third-party who purchased those assets in good faith, at arms-length and without notice of the Claimants' interests, I cannot ignore the background to and circumstances of this action. Because of those circumstances, it seems to me that the third party must put before the court at the very least, credible, reasonably convincing evidence of the purchases that were, and can be seen to be, wholly unconnected to the Defendants.

24. As I commented during the hearing, the Claimants are not Her Majesty's Revenue and Customs. They have no right to demand of Mr Gilani full disclosure of his income, earnings and assets, but if he is going to put forward a factual explanation of how the purchases came about, which on any fair assessment is unusual to put it in its most favourable light, then it is incumbent upon him to provide cogent and transparent evidence of how the purchases were

conducted, including how it was that he had the funds available. Evidence that the funds came from his account is in my judgment, in the circumstances of this case, insufficient.

25. I find myself driven to the conclusion that the Claimants are right to be concerned about whether what are *prima facie* Partnership Assets, over which Mr Majeed may or may not have full or complete *de facto* control, have been stripped out by means of a scheme, with Mr Majeed and Mr Gilani acting in concert. The facts and matters which I have recited in this judgment lead me to the firm conclusion that the ring must be held until the property rights of the parties can be finally determined in substantive proceedings.

26. Whilst I find myself sympathetic to the bulk if not all of the various matters put before me by Mr Hornett, I would mention in particular that I am not a little troubled by the peculiarly insouciant approach to the transaction demonstrated by Mr Gilani, the evidence of his conveyancing solicitor notwithstanding. The allegation that it lacked commerciality seems to me to be an observation carrying a great deal of weight. It also seems to me that some explanation is required of the facts and matters surrounding the sale of the land at Stoke on Trent: this, together with the not altogether well explained role of the agent Mr Mojaveri, goes to the heart of the question, just how well was and is Mr Majeed known to Mr Gilani.

27. For all of these reasons I am prepared to continue the Freezing Order in respect of the two corporate Respondents.