

Neutral Citation Number: [2023] EWHC 1215 (Ch)

Case No: BL-2021-001116

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

7 Rolls Building,
Fetter Lane, London,
EC4A 1NL

Date of hearing: 19 April 2023

Before:

THE HONOURABLE MR JUSTICE RICHARD SMITH

Between:

**OLD PARK CAPITAL MAESTRO FUND LIMITED
(A CAYMAN ISLANDS COMPANY IN LIQUIDATION)**

Claimant

- and

**(1) OLD PARK CAPITAL LIMITED
(2) MR HUGO VAN KUFFELER
(3) MR BRUNO PANNETIER**

Defendants

MR J. COHEN KC (instructed by **GREENBERG TRAUIG LLP**) for the **Claimant**
The **First Defendant** did not attend and was not represented.

MR W. EDWARDS (instructed by **FIELDFISHER LLP**) for the **Second Defendant**

The **Third Defendant** appeared **In Person**

APPROVED JUDGMENT

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Mr Justice Richard Smith :

Witnesses testifying overseas

1. In the course of today's pretrial review in this matter, having dealt with a number of matters that are agreed and having approved the parties' agreement, it now falls to me to decide whether to permit certain remote evidence in respect of three witnesses on the claimant's side. That is Ms Ludgate in New York, Mr Collin in Switzerland and Mr Burt in the Cayman Islands. In respect of Ms Ludgate, there is no issue between the parties that she can give her evidence remotely from New York. In respect of Mr Collin, as I understand it, there would be no objection in principle to him giving evidence from Switzerland but all parties are very much alive to the fact that doing so may render Mr Collin, and potentially other people as well, in breach of Swiss law, subject, I am told or has been indicated to me, to the rules of the relevant canton in which Mr Collin might be giving evidence. Therefore it has been proposed that to the extent permission be given in respect of Mr Collin, it should be subject to that contingency of no one being in breach of Swiss law. The second defendant suggests instead that we should have practical measures in place now, bearing in mind that Mr Collin can take a short journey over the border to France and more safely give his evidence from that jurisdiction. I am going to give permission in relation to Mr Collin in principle to give evidence from Switzerland but subject to further investigation as to the legal risk described. The claimant is very much alive to that risk and will not wish to put Mr Collin in breach of Swiss law. Therefore, subject to the appropriate wording, that is the order I make.
2. In respect of Mr Burt, I have heard more argument in relation to him. It is proposed by the claimant that he, a former non-executive director of the fund, should give

evidence from Cayman. The reason put forward is that he has certain commitments in Cayman. In particular, there is apparently a board meeting which he will be unable to attend remotely by reason of the requirements of Cayman law or the relevant articles of the company, it is not entirely clear to me which. As to his status as a witness in these proceedings, the defendants will wish to cross-examine him for half a day or so, so he is not an insubstantial witness. Nevertheless, based upon the pleadings, it does not seem that, in terms of Mr Burt's relevant knowledge of the facts and matters said to give rise to the claim, when one might ordinarily be more eager to hear the evidence in person, the parties have sufficiently 'locked horns' so as to require Mr Burt to travel from the Cayman Islands. Having conducted enough trials now by video-link, yes, sometimes one does experience technical difficulties but, likewise, that occurs when witnesses too are present in court. I am satisfied that it is appropriate for him to give evidence from Cayman.

(See separate transcript for continuation of proceedings)

Security for costs

3. I have heard a further submission in relation to the 'final phase' of security for costs. The parties have agreed in principle that security should be provided and, indeed, since I think last year the amount of security that should be afforded in this final phase, which is in the region of £190,000. The essential difference between the parties today is when that final tranche of security should be given, whether within seven days from today, as suggested by the second defendant, or whether it is given by 9 May 2023 which is, I think, just shy of three weeks, as suggested by the claimant.

4. I have heard various submissions but, to summarise briefly the claimant's position, time is needed to transmit the funds through the various elements of the payment process, first into Cayman and then out into the Court Funds Office, which does take longer. The claimant is concerned that, were I to make an order the timing of which was too constrained, I would place the claimant, in effect, in breach of that order. Moreover, it is said as against the second defendant that no application compelling the provision of the final tranche of the security has been made. It is also said that, once one takes into account bank holidays in this May 2023 Coronation period, and with weekends as well, 9 May is effectively only in eleven days time. Thirdly, the claimants says it exercises no control over Mr Sherwin who apparently provides the security to the claimant liquidator and, fourthly, although there has been agreement in principle and, indeed, agreement as to the amounts that are to be paid, there has been no agreement in relation to the payment date on any previous occasion.

5. I have also heard from the second defendant. Having heard all of the parties' submissions, it seems to me that the appropriate period of time for security to be provided is fourteen days from today, which is 3 May 2023. I come to that view going back to the claimant's four points. Firstly, it is said no application has been made. Well, the reality is we are here at a pretrial review. It has been raised in correspondence and there was, I think it is fair to say, an established understanding that security was to be paid in this final phase and it is somewhat unfair to suggest that the second defendant was somehow late in making a request in circumstances where it was known what phases the relevant security covered and when those phases were initiated.

6. As to the second point about there being only eleven effective days between now and 9 May 2023, it seems to me that the period until 3 May affords ample opportunity even given the somewhat circuitous route through which these funds have to travel for them to hit the Court Funds Office for the security to be given. Particularly bearing in mind the previous periods of time for getting the security together, which I understand to have been fourteen days or so, I consider that is the appropriate period on this occasion too. I hear the argument that there is no control over Mr Sherwin but he is, as I understand it, funding these proceedings and, come what may, it is incumbent on the liquidator against whom the order is made to put up that security if it wishes to pursue them.

7. As regards the point about there being no previous determination of the payment date, we are well within the final phase for which security is to be paid and therefore no more than fourteen days should be allowed. I think that is 3 May.

(See separate transcript for continuation of proceedings)