Claim No: CFI 046/2023
ENF 022/2023
ENF 023/2023

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

BETWEEN

GTC TRADING S.A.

Claimant/Applicant

and

(1) HAZEM ABDOLSHAHID MAHMOUDI RASHED
(2) H.M.R INVESTMENT HOLDING LIMITED

Defendants

and

(1) ROYAL VIEW TRADING DMCC
(2) ROYALTY BUSINESS MANAGEMENT DMCC
(3) MS HALA REFFAT MOHAMED MANSOUR
(4) FAM REAL ESTATE BROKER
(5) FAMCO VACATION HOMES RENTAL LLC

Respondents

ORDER WITH REASONS OF JUSTICE SIR JEREMY COOKE

UPON the First Defendant's Application No. CFI-046-2023/4 dated 11 July 2024 for an order that these proceedings be stayed pending the final outcome of (i) the First Defendant's renewed application for permission to appeal the order of Justice Sir Jeremy Cooke dated 19 December 2023 and (ii) the First Defendant's referral of these proceedings to the Joint Judicial Committee (the "Stay Application")

AND UPON the First Defendant's Application No. CFI-046-2023/5 dated 12 July 2024 for an order revoking the consent order dated 8 July 2024 (the "Consent Order") between the Claimant and the Second Defendant, pursuant to which the worldwide freezing order over the Second Defendant was varied (the "Consent Order Application")

AND UPON the Second and Third Respondents' Application No. ENF-022-2023/13 dated 23 July 2024 to discharge the worldwide freezing orders and disclosure orders made against them on 27 May 2024 (the "Discharge Application")

AND UPON a hearing before Justice Sir Jeremy Cooke on 13 September 2024 where Counsel for the Claimant and Counsel for the First Defendant, and Second and Third Respondents were in attendance

AND UPON reviewing documents filed on the case file

IT IS HEREBY ORDERED THAT:

1. The WWF Injunctions and disclosure orders to be continued on the same terms as before.

2. The Stay Application, the Consent Order Application and the Discharge Application shall be dismissed.

3. D1 shall pay the Claimant's costs of the Stay Application and the Consent Order Application to be the subject of submissions in writing, if not agreed

4. R2 and R3 shall pay the Claimant's costs of the Discharge Application to be the subject of submissions in writing, if not agreed.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 18 September 2024
At: 10am

SCHEDULE OF REASONS

The Application for discharge of the WWF injunctions

1. These are the brief reasons for my decision on the application by the Second and Third Respondents (R2 and R3) to discharge the WWFOs and Disclosure orders made against them and for their removal from the Proceedings. In these reasons, the First Defendant is referred to as D1,

the Second Defendant as D2 and the Respondents by the numbers which appear in the title to the action, namely as R1, R2 and R3.

Other Applications

2. The Court had no similar application from R1, which on the evidence, is owned by D1 and for which R3 was and maybe still is, an administrative manager. In the light of the unpurged contempt of D1, the Court was not prepared to listen to arguments on behalf of D1 in relation to the applications that D1 made for a stay or for revocation of a consent order. The order complained of was a variation of the WWFO which enabled D2 to incur ordinary business expenditure as an exception to the WWFO which had previously been granted and D2, nor D1 could therefore not be prejudiced by the order, to which, under its new management D2 had consented.

Full and Frank disclosure

3. I am satisfied that there was no material misrepresentation or non-disclosure or failure by the Claimant to make full and frank disclosure to the Court on seeking the ex parte orders:

(a) The Court was fully alive to the stance taken by the onshore Dubai Court that execution should not be levied against D1's shares in D2, with new or different translations of the onshore Court orders.

(b) The Court was also fully alive to the need for the Claimant to show that there was good reason to suppose that the assets held by R2 and R3 would be susceptible to a procedure leading to compulsory satisfaction of the judgment entered against D1, in accordance with the English Court of Appeal decision in *Lakatamia Shipping v Morimoto* [2019] EWCA Civ 2033 and the principles set out in paragraph 88 of the judgment in *Broad Idea International Ltd v Convoy Collateral Ltd*[2021] UKPC 24.

(c) The nature of the business relationship between D1 and R3 was close and on her own evidence she knew the family well. She had wide ranging powers of attorney, was company secretary to D2 which was owned by D1, administrative manager of another of D1's companies, R1, and owned R2 which acted, on her own evidence as a manager of D2's properties (as well as for others). D2, R1 and R2 were referred to in audited accounts as related parties, meaning that D1 was a related party's shareholder. This can only mean that all the companies were owned by or under the control of D1. Furthermore, the nature of the relationship was such that R2 was disclosed as funding the defences of D1 and D2 without any agreement for reimbursement, which speaks for itself. Whilst a suggestion was made on instructions but without evidence as to a closer relationship, that, being unsupported and explicitly stated to be without evidence, was not a matter which the Court could or did take into account, being immaterial to the decision the Court had to make.

Delay in Serving the Injunctions

4. There was discussion at the ex parte hearing about the problems inherent in serving the injunctions because of the need to do so in onshore Dubai and for them to be recognized as enforceable there. It seems that this process was complete by 12 June but service did not occur until 21 June, the reasons for which are not apparent. Apart from the shock of having her account blocked before service took place and the discovery of the orders made which restricted R3, it cannot be said that there was any serious prejudice resulting from the delay and, although it would be a factor going to any exercise of discretion, it cannot play a significant part in the present circumstances. The usual exceptions for living allowances were part of the orders.

Assets available for a process of Execution

5. The most significant issue between the parties turned on the question whether or not there were assets in the hands of R2 and R3 which fell within the definition set out in the authorities to which I have already referred. Reliance was also placed by the Claimant on an article by Stephen Gee in CJQ 2024 43 (3) in relation to the decision in the English Commercial Court of Mr Justice Foxton in *Civiello v Brodahl* [2024] EWHC 707 (Comm). It did not appear to me that the decision in that case impacted upon the issues which I had to decide, since it was essentially concerned with the effect of the form of a WWFO and what assets were caught by it. It did not touch upon the Enforcement principle as enunciated in *Lakatamia Shipping* (ibid) or the principles set out in *Broad Idea* (ibid). The dicta make it plain that the test that the Court must apply is whether or not there is good reason to suppose that the asset in the hands of a third party is beneficially owned by a defendant against whom the claimant has obtained judgement or whether the asset is or would be available to satisfy a judgement by some process of enforcement that is available. Thus the test could be satisfied where the judgement debtor has a right of indemnity against the third party which could be enforced by a receiver; or where a transaction by which the judgement debtor transferred assets to a third party might be avoided under the provisions of the Insolvency Act; or where enforcement of a judgement against the judgement debtor might lead to its liquidation whereupon the liquidator could pursue a claim against the third party. *"In each case the key question is whether the assets are or would be available to satisfy a judgement through some process of enforcement"* that might be available.

6. In the present case, the Claimant alleges that properties in onshore Dubai, namely the City Walk Units and the Polo Units were transferred by D1 to D2 in or around 2019 in an attempt to avoid enforcement of a forthcoming final judgement by the onshore Dubai Court. D2's business of renting out such properties was carried out by using different bank accounts. Between 2014 and 2017, D2 had its own bank account at Mashreq Bank Dubai. In 2018 - 2019 it used R1's bank account at the National Bank of Fujairah and then from 2020 onwards it used the bank account of R2 with, as appears from the evidence, diversion therefrom in recent times. Whatever the exact amounts involved which were the subject of dispute, there is no doubt that the monies of D2, R1 and R2 were commingled in such bank accounts with the result that rental profits, whatever they might be, arising from the properties transferred by D1 to D2 can potentially be traced into such accounts. The manner in which the entities were bound up with one another appears from the brief description given in paragraph 3.3 above and although, in her evidence, R3 sought to demonstrate that she and R2 had an arm's-length commercial relationship with D2, it is clear, on the evidence that they operated closely together and, given the "related parties" entries in the audited accounts were, and apparently still are, all controlled by D1.

7. Whether or not it is possible to trace monies in this way from receipt by D2 to R2 and R3, is not, however, critical to the determination which I have to make. The authorities to which I have already referred are reflected in the article by Stephen Gee on the Brodahl decision, where he comments:

"The fact that the debtor is 100% shareholder and sole director of a company is normally sufficient to establish that the Enforcement principle is satisfied for company assets, because execution on, and sale of, the shares will realise a price depending on the value of the company assets, or a receiver can be appointed who can use the shares to vote a declaration of a dividend or to put the company into liquidation." ...

"Counsel's argument and the judgement overlooked common routes to enforcement, which in practice are much easier to satisfy. A debtor shareholder who has no proprietary interest in a company's assets could find a judgement creditor proceeding to enforcement against his shareholding, and the company's assets. A charging order might be imposed on the debtor's shares and the value of the company assets realised through share sale. There could be the appointment of a receiver over the shares who could then obtain dividends from the company. There could be voluntary winding up and a distribution to shareholders. If the debtor was owed money by the company, a third party debt order might be obtained. Section 43 does not require that the debtor is or ever has been a shareholder in a company or corporate trustee which holds assets or that such assets are beneficially owned or have ever been owned by the debtor. These routes for enforcement are all within the Enforcement principle. None of them require the debtor to in beneficially the companies' assets"

8. In the present case, the WWFO was made against D1 and D2 so that D2's assets are covered in the same way as the assets of D1. There is no dispute that the assets of D2 include the real property in onshore Dubai and that there is an income stream from it. It is thus important to ascertain where the income stream has gone and what has become of it. Although R3, in her evidence, maintained that there were no real profits to be had and that R2 had no money to speak of, that flies in the face of other evidence.

9. There were a number of areas where her evidence was not capable of acceptance and where the documentary record contradicted her statements. Unless there were corroborating documents, I could not rely on her bare assertions. By way of brief summary, the following factors militate against her evidence and in favour of the presence of assets which belong to D2 (and arguably therefore to D1) or could give rise to the type of claims envisaged in the test for *Chabra* relief:

(a) In her First Affidavit (which like all her affidavits, contained no jurat), she recited that she was the Company Secretary of D2 with a power of attorney from D1 to deal with legal matters on his behalf in the Dubai and DIFC Courts. She was therefore the person to whom lawyers representing D1 would look for instructions and to whom they would report. She said that she started working with D1 in May/June 2011 and was appointed as administrative manager of R1. She was appointed Company Secretary of D2 in August 2011. From 2020 onwards, R2, of which she was 100% shareholder, managed and supervised the properties of D2. She said that she had not received any sums from D2 from 2019 to the present day and had not received any sums from D1 since 3 February 2023.

(b) In the disclosure affidavit, purportedly in compliance with the disclosure order, she failed to give any details of the leases into which D2 had entered, despite the evidence showing that she and R2 acted as managers for D2 and had direct dealings with professional managing agents ("FAM").

(c) Although she stated that she had acted as administrative manager of R1 and had provided information about it, she did not provide any affidavit on its behalf to meet the requirements of the disclosure order.

(d) In her Second Affidavit, paragraph 23, she said she was not informed of any change in her position as Company Secretary of D2 prior to 23 April 2024 but this does not appear credible because she was the person with whom the solicitors on the record for D1 and D2 dealt and they did not come off the record until 13 May 2024 and therefore knew all that had happened up to that point and must have reported the position to her.

(e) Of greater significance is the lack of candour revealed by her first two affidavits which referred solely to the Power of Attorney relating to litigation. She made a strong point at paragraph 31 of her second affidavit of saying that the power of attorney which she had was strictly limited to representing D1 in court proceedings and did not extend to any matters concerning the control management or disposal of assets. What the documents show however is that she was granted another Power of Attorney by D1 dated 2 May 2023, following the grant of the WWFO against D1 and D2 in February of that year and the final charging order made over shares in D2 in March. That gave her the widest possible powers to receive and collect money on behalf of D1 from nine units of real property, six of which were in onshore Dubai and three of which were in the DIFC. She had the right to take all necessary measures to complete the sale and receive the proceeds as well.

(f) The audited accounts produced for 2020 show that R1 and R3 are treated as related parties to D2, meaning that they are under common control, which must refer to D1 as the owner/ controller.

(g) The most recent D2 audited accounts which were produced for the year ending December 2022 reveal that D2 has total assets of AED 141,953,375, with sums due from and to related parties of relatively small amounts (AED 1.539m and 1.722m respectively) but a shareholders current account for D1 standing at AED 145.689m. D2 is said to have no bank account but its operations are managed through a related party bank account, which, it can be assumed refers to R2.

(h) The most recent audited accounts for R2 for the same period reveal that in that year it was managing properties of a related party (obviously D2) at a fixed percentage of rental income as supervision fees. The cash balance at the end of the year was AED 1.866m approximately with a note that *"this bank account is used for receiving rental income of a related party and its shareholder and paying expenses for this company and other related parties"*. Under the heading of "Related party transactions", appear entries for *"collection of income on behalf of related party"* and *"on behalf of related party's shareholder"* and payment of expenses on behalf of both, the difference between the two amounting to a credit of some AED 600,000.

(i) No bank statements have been disclosed despite the requirement in the disclosure order for R3 and R2 to provide information as to the total sums received by R1 and R3, including receipts of revenue generated by D2's assets and from the professional real estate managers, FAM, engaged in connection with the onshore Dubai real estate. R3 stated on affidavit that there was no more than USD 10,000 in R2's accounts which appears inherently unlikely given the volume of the revenue from the rental properties which, in D2's audited accounts for the year ending 31 December 2022 show a gross profit of AED 4.605m before depreciation (the latter figure of 5.678m approximately then being sufficient to create a net loss for the year).

(j) FAM, in its disclosure affidavit, stated that it had not received any sums from D2 since 2019 other than AED 11,770,425 and that it holds no sums on account for it. FAM stated that they had limited records of payments for maintenance, cleaning, services and utilities which were all that it had paid on behalf of D2. It referred in a statement of account to the sum of AED 3,252,040 *"paid to Owner"* in 2023.

(k) There is no evidence as to where the net rental income went but the same accounts stated that *"the company does not have any bank account in its name. The company's operations are managed through a related party bank account",* which, on R3's evidence could only mean the bank account in R2's name. In her affidavits however, R3 maintained that neither she nor R2 had received monies for D2. Cheques however have shown to the Court which were made out by tenants in the name of R2 of quarterly rent.

(l) R2 was disclosed as funding the defences of D1 and D2 and such funding cannot have been cheap. No disclosure has been made of the source of funding of R2 and R3, despite the requirement in the WWFO for such disclosure to be made as part of the liberty to use assets to pay legal fees.

(m) If, however, that revenue stream did not go into the R2 bank account, in this and succeeding years, it can only be because R3 and R2 had diverted the income elsewhere, presumably at D1's instigation which would put them directly in the firing line for a claim from D2, now under new management in accordance with the Court's approved transfer of shares and the appointment of new directors. The reported statements of FAM and its disclosure only lead to the same conclusion of accountability to R2 and R3, with diversion the only plausible reason for non-receipt.

(n) Whilst R3 maintains that her only personal assets consist of a bank account with approximately AED 100,000 in it, and the equity in a property worth approximately AED 300,000 - 500,000 and R2's assets appear to be no more than appears in the 2022 audited accounts, whatever they do have would be available to satisfy the judgement against D1 by processes of enforcement, if they have been so involved.

Real Risk of Dissipation

10. For all the same reasons, as set out above in relation to available assets for execution, there must be a real risk of dissipation. There can be no doubt, on the evidence before the Court, that D1, R3 and R2, together with FAM have taken the line that the orders of this Court are ineffective in onshore Dubai and that they can proceed with impunity in dealing with the tenants of the real properties in onshore Dubai which are owned by D2. They consider that they are entitled to manage D2 and to enjoy its fruits, regardless of the orders of this Court. R3 continues to present herself to tenants as entitled to act for D2 following the orders made in January of this year, of which, contrary to what she says, she must have been aware. Reference can be made to the evidence of Mr Bessisso in this respect.

Conclusion

11. On this basis, the test for the grant of a *Chabra* injunction is satisfied. The balance of convenience favours the continuation of the WWFOs and disclosure orders made. R2 and R3 have attacked the WWFO on a root and branch basis and complained of their intrusive effect but they have not fully complied with disclosure orders, nor provided any good reasons for relief against the orders made which provide the usual exceptions in relation to living expenses and incurring legal fees, albeit on the basis of stating the source of payment.

12. There is, in short, every reason to believe that R3 is acting in collaboration with D1 and that she has done so throughout the course of these proceedings for which she has a Power of Attorney on his behalf.

13. The applications must be dismissed, both for discharge of the injunctions and removal from the action.

14. It necessarily follows that the unsuccessful applicants must pay the costs of their failed applications and in the event that the parties cannot agree the costs orders, they should make written submissions of not more than 5 pages. The Claimant should do so within 2 working days: R2 and R3 should reply within 2 working days and the Claimant can have the last word within one working day thereafter.