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

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

GTC TRADING SA

Claimant

and

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

Defendants

REASONS FOR THE ORDER OF JUSTICE SIR JEREMY COOKE DATED 28 NOVEMBER 2023

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1. In this matter the Claimant applies for an order for committal for contempt of court on the basis that the Defendants have failed to comply with the Worldwide Freezing Order and in particular to give the disclosure of assets that was ordered by the Court, first, within a period of 7 days on the basis of information and then within a further period by way of affidavit.

2. The timetable of this matter bears a repetition, it was as long ago as the 31 October 2018 that the onshore court of appeal in Dubai (the "Dubai Court") gave judgment against the First Defendant in the sum of approximately USD 15.5 million. That judgment became finally enforceable when the Court of Cassation in Dubai dismissed an appeal on 24 February 2019.

3. For various complicated reasons, it was not until 1 February 2023 that an application for an interim charging order was made in this jurisdiction together with an application for a worldwide freezing injunction that was based on an execution letter from onshore Dubai dated 31 January 2023.

4. On 3 February 2023, the Court made the orders sought on an ex parte basis for recognition and enforcement of the Dubai Court judgment, for a worldwide freezing order and for an interim charging order over shares held by the First Defendant in the Second Defendant.

5. On the return date, the Court continued the Worldwide Freezing Order and made a Final Charging Order over the First Defendant's shares in the Second Defendant, in the absence of the First Defendant, who says he was in prison at the relevant time.

6. In July 2023, a Part 8 Claim was instituted by the Claimant for the sale of the First Defendant's shares in the Second Defendant pursuant to the Final Charging Order.

7. On 20 September 2023, the First Defendant applied to set aside the Enforcement Order, the Worldwide Freezing Order and the Charging Order and, in due course a case management timetable was agreed for the hearing of those matters with the hearing now fixed for a date in some 3 weeks' time.

8. On 27 October 2023, the Claimant brought its application for contempt, and the First Defendant and the Second Defendant were duly served in accordance with court orders in circumstances where, despite having solicitors instructed, the process of service was made as difficult as possible by the Defendants. The Court made an order for alternative service, which has not been challenged.

9. In accordance with the Court's orders, the reply evidence of the Defendants in relation to the application for contempt was due on 8 November 2023. There have been a series of applications made by the First Defendant, mostly dealt with by the court on paper seeking to postpone the hearing of the contempt application from its listed date today. None of those succeeded because I could see no basis upon which such a stay should be granted, particularly in the absence of any information as to what evidence might be required to deal with the application for contempt and the absence of any expressed defence to the application for contempt.

10. That remains the position as at today. The breach of the disclosure obligations under the Worldwide Freezing Order is undoubted. The breach does not depend on whether or not the order was validly or correctly made with or without jurisdiction. That remains a fundamental principle of the common law, as is made plain by various passages in the textbook by Stephen Gee on Freezing Injunctions, which recites various authorities to the same effect. I have been directed to various passages in the Court of Appeal decision in *(1) Sandra Holding Ltd (2) Nuri Musaed Al Saleh v (1) Fawzi Musaed Al Saleh (2) Ahmed Fawzi Al Saleh (3) Yasmine Fawzi Al Saleh (4) Farah El Merabi* [2023] DIFC CA 003 and in particular, paragraphs [108] to [112] as to how matters of this kind should be dealt with.

11. I do not consider that I am bound by those passages to conclude that it is open to a defendant to ignore the terms of a court order simply on the basis that he wishes to challenge it, whether on the grounds of jurisdiction or any other ground. I do not consider that is what the court of appeal is saying at all or that it had this situation in mind.

12. The effect of what the First Defendant has throughout sought to do, is to disregard the orders of the Dubai Court, and now the orders of the DIFC Court, and seeks impunity for doing so on the basis of a challenge that it proposes to amount to the enforcement jurisdiction of this Court.

13. The fundamental position must be that, unless and until a court order is set aside, it has to be obeyed. The Defendants are therefore in contempt in not serving the affidavit evidence disclosing assets which was originally due on 20 February 2023. Since that time, the First Defendant has been represented by a series of different lawyers at 3 or 4 firms, I think in all, with whom there has been correspondence, making it plain that the First Defendant is in contempt of court in failing to obey the relevant orders. As pointed out by counsel for the Claimant, if the First Defendant feels free to disobey a court order in relation to disclosure, there is every reason to believe that he will feel free to disobey a court order in other respects. The fact that the shares appeared to have been secured according to the Registrar of Companies, is not due to his own actions in circumstances where he apparently feels free to do exactly what he wants regardless.

14. The inequity in what the First Defendant has done so far, is that it impedes the course of justice. If, as he argues for the purpose of setting aside the enforcement proceedings, the Dubai execution letter does not allow enforcement against the shares, then the other assets, which he has are of critical importance. The one thing that the Claimant then wishes to know in order to enforce the Dubai Courts' Order, and now the DIFC enforcement proceedings is what assets there are to enforce against. This is a very different situation from that which obtained in *Sandra Holdings.*

15. The principles that are set out in *Motorola Credit Corporation v Uzan and others* (No.2) (CA) [2004] 1 WLR 113 and *Arab Monetary Fund v Hashim and Others* [1997] EWCA Civ 1298 which are referred to in the Sandra Holdings Court of Appeal decision focus upon what the interests of justice require in the context of dealing with a contemnor or alleged contemnor. The key question is what the interests of justice require in such circumstances, and the court has a discretion as to whether or not to hear a contemnor, until his contempt is purged. The courts have said that it is an exceptional circumstance where the court will not hear from a party in the representations it wishes to make. Nonetheless, there has to be some restriction where a contemnor is simply defying the court orders and refusing to pay any attention to them at all. An opportunity is often given for the contempt to be purged, so that the contemnor can then be heard.

16. There is, as is plain, from the course of action adopted by the First Instance Judge in *Sandra Holdings,* a difference between the contemnor applying to set aside an order on the basis that the court had no jurisdiction at all to make the order in question - "a lack of prima facie jurisdiction" - to use the Court of Appeal's expression, and other circumstances where the contemnor seeks to set it aside for reasons which do not go directly to the court's prima facie jurisdiction but to the application of that jurisdiction.

17. As I have said here, the Defendants' conduct directly impedes the course of justice and as put by Lord Denning in one of the earlier cases, the question arises as to what effective means there may otherwise be of ensuring compliance if the contemnor is not to be prevented from addressing the court. It appears to me here that the First Defendant has no intention of complying with court orders unless he absolutely is compelled to do so and the Second Defendant, being controlled by him is in the same position. Whether talking about orders in the Dubai Courts or in the DIFC, he has already been found in onshore Dubai to have moved assets in order to frustrate the judgment being executed against him.

18. In these circumstances, it seems to me that the correct order that I should make today, where the challenge to the enforcement order is due to be heard in 3 weeks is to make a declaration that the First Defendant is in contempt of court and that I do.

19. There is no defence to the committal complaint. None has been offered as a reason for not complying with the order to give disclosure and there can therefore be nothing further that could be said.

20. Mr. Doherty, who appeared for the First Defendant, said he had no instructions as to what the defence was, and he had equally nothing to say about what evidence could possibly be relevant to adduce in that context. His submission that matters should be stayed and everything should be put off until after the enforcement application has been dealt with is therefore refused because it would achieve nothing. It is however, obviously relevant at the end of the day to the sanctions that might be imposed, to consider whether or not the order should in the first place have been made. It is nonetheless necessary for the court to mark the fact that there is contempt regardless of whether at the end of the day the earlier order for enforcement is set aside.

21. It is also important that the court should do all that it can to ensure that its orders are complied with. In these circumstances, the right course, appears to me, to give the First Defendant a further 7 days in which to purge his contempt by producing the affidavit relating to his assets, which was originally due on 20 February 2023.

22. The question which then arises is what sanction should be applied if there is a failure to purge the contempt within that period. It seems to me that the court ought to take the view that it would be unlikely to hear the Defendant in relation to anything other than what is described by the Court of Appeal as a point which goes to the prima facie jurisdiction of this Court. That is the Order that I shall make.

23. The Court will, absent special permission being given, not hear the First Defendant on anything other than a point as to prima facie jurisdiction in relation to the enforcement application unless that contempt is purged by the production of the affidavit in question.

24. Turning then to one or two other matters which arise out the draft form of order that is currently sought, it is clear from what I have said that the court is not going to impose any sanctions today, other than that which I have referred to in the context of purging the contempt and not hearing on other points at the hearing in 3 weeks' time.

25. It also follows that I am not going to make an order of the kind which is being sought in paragraph 3 of the draft order put before the Court which required the First Defendant to comply with the enforcement order and satisfy the judgment debt within 7 days of today on further penalty of contempt. It seems to me that if there is to be an order which has a time limit which would enable sequestration of assets as opposed to simply charging the shares, that is a matter which should be dealt with appropriately at the time of the enforcement application being considered and determined.

26. In the situation where the Second Defendant is not represented but has chosen not to appear before this court after being properly served with the contempt application, the orders that I have made vis-a-vis the First Defendant apply mutatis mutandis to the Second Defendant which is 100% owned by the First Defendant and therefore can be said to be under his control. In those circumstances, there can be no good reason for their failure to either comply with the orders in the first place or to appear today and they are therefore subject to the same orders as the First Defendant.

27. Costs are summarily assessed in the amount of AED 130,000 to be paid by both the First and Second Defendants within 21 days of the date of this Order.

Issued By:
Hayley Norton
Assistant Registrar
Date of issue: 30 November 2023
At: 2pm