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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
KING'S BENCH DIVISION  
COMMERCIAL COURT



Claim No. CL-2023-000152

Rolls Building  
Fetter Lane  
London EC4A 1NL

Friday, 2 February 2024

Before:

MR JUSTICE FOXTON

B E T W E E N :

CANCRIE INVESTMENTS LIMITED

Claimant/  
Respondent

- and -

ZULFIQUR AL TANVEER HAIDER

Defendant/  
Applicant

MR G HAYMAN KC (instructed by Lewis Silkin LLP) appeared on behalf of the  
Claimant/Respondent.

MR R SLADE (Solicitor of Richard Slade and Company) appeared on behalf of  
Defendant/Applicant.

J U D G M E N T

(via Microsoft Teams)

MR JUSTICE FOXTON:

- 1 This application comes before the court on the defendant's application to vary the terms of an undertaking which he gave to the court in lieu of worldwide freezing order relief. The undertaking and the without notice freezing order that preceded it, in the usual way prevented the defendant from disposing of or dissipating assets up to a certain value. There was the usual requirement for an affidavit of assets to be produced, and that identified one substantial asset which is a property at 16 Price's Court, which I shall refer to as "the Property".
- 2 That freezing order was granted by HHJ Pelling KC, as I said, on a without notice basis on 18 July 2023. I should record that it is a matter of considerable regret and embarrassment to me that it appears that it has only been possible to list the return date to allow an effective challenge to that application in May 2024. I can only offer the court's apologies for the pressure on the list that has had that effect, but nonetheless I think, that order having been made and absent an earlier attempt to set it aside, I must proceed upon the basis that it was properly made and that the well-known requirements for granting freezing order relief are made out.
- 3 The immediate source of today's application is a desire on the part of Mr Haider, the defendant, to sell the Property on the basis that the net proceeds of sale would be paid into a secure account. On the face of things, that sounds perfectly straightforward and one might imagine that substituting the real property with a secured liquid asset would be something that could be the subject of agreement. But there is a very real complication in this case because the Property stands as security for a significant bank loan, which exceeds its value if one looks at the entirety of the loan.
- 4 That loan is secured by at least one other property – and I will come back to that – and I understand it to be accepted that the other property is beneficially owned by the defendant's son. That raises the issue of how far the net proceeds of sale of the Property (Price's Court) should be used to discharge the loan. If the proceeds of sale were all applied for this purpose, that would inevitably involve considerable benefit to the beneficial owner of the other secured property and, in doing so, potential detriment to the claimant were it ever to get to the stage of having a judgment to enforce.
- 5 I was referred by Mr Hayman KC to the legal principles to be applied when the court is asked to vary a freezing order as set out by Christopher Clarke J in *Noga v Australian and New Zealand Banking Corporation* [2006] EWHC 602 (Comm) [9]. In short, it must be in the interests of justice to make the variation, having regard to the fact that a freezing order has been imposed, the burden being on the applicant to persuade the court that it is appropriate to make the variation and to adduce the necessary evidence.
- 6 I should acknowledge at this stage that I have not found this application straightforward. It is one of those contexts in which the court, having granted freezing order relief, is faced with what, on their face, are legitimate concerns and interests on the part of both parties. That is not an unfamiliar scenario. One often sees it when issues arise in the context of a proprietary freezing injunction as to the use of frozen assets to meet legal fees, with the respondent saying "I must be entitled to use funds, even those in which you claim a beneficial interest, to defend myself. Otherwise, I may be prevented from doing so when your entitlement is not established." It can also arise in a conventional freezing order context, when the respondent says "I must be entitled to use funds within this jurisdiction to pay lawyers within this jurisdiction", with the claimant having, on the face of it, an equally legitimate basis for saying "If you use the money in this jurisdiction to pay your lawyers, I will be prejudiced because I can more readily enforce against funds in the jurisdiction than elsewhere."

- 7 One thing I am satisfied is absolutely clear is that when the court is faced with conflicts of this kind and is forced to balance the competing interests of the parties, it must do so on the basis of the fullest understanding of what the surrounding circumstances in relation to asset ownership are. The thrust of Mr Hayman's submission is not that his client necessarily has a right to prevent this Property ever being sold, but, rather that before the court sanctions such a course, which is capable of acting to the potential prejudice of his clients at judgment stage, it should do so on the basis of full information.
- 8 I should immediately state that I quite see Mr Slade's point that it would be surprising if there was an absolute right on the part of a freezing order applicant who has no security interest in the frozen assets if they could prevent a respondent from selling the frozen property at all, when there may be issues of ongoing loss on the property or deterioration in value. However, I entirely understand Mr Hayman's point that, before taking a step which would potentially prejudice his clients at the enforcement stage, I would need to ensure that the court fully understood what the full picture was. I should also note that there is, of course, an undertaking in damages offered by Cancric Investments to the extent to which delay in selling this Property causes Mr Haider loss. That has been fortified to the tune of \$150,000, but, if a credible case can be made that further fortification is required, that is an option that is always open.
- 9 Against that background, I am not persuaded at this stage and on the information available to me that it would be in the interest of justice to grant the variation sought. Whilst there was a particular purchaser in play when the application was made, that transaction did not complete or was not in a position to complete and that purchaser withdrew. There is very late filed evidence this morning of a new purchaser with an offer "in principle", having been accepted, but the claimant has had no chance to investigate the arm's length nature of that transaction. Granting an order in more general terms which permitted sale, but not to an unidentified purchaser, would raise a number of difficulties of enforcement, including whether the court should fix the price now, even though the market might move, or whether any movement in the market and the price obtained might itself impact on what might be a fair allocation of the net proceeds as against the bank loan or otherwise. In addition, I am satisfied that there are legitimate queries raised in relation to a number of matters which I shall come on to, answers to which would inform the court's view as to how best to balance the competing interests in play before it.
- 10 The first point I should make is this. The way in which the defendant has approached the sale of the Property has not been conducive to persuading the claimant of the arm's length nature of the transactions proposed and of the security split agreed with the bank. I quite accept that putting property on the market or agreeing a sale subject to contract is not itself a breach of a freezing order. But all of us who have experience of the atmospherics of freezing injunctions, and Mr Slade has a great deal of experience, know that proposals to sell excite a great deal of interest and anxiety on the part of freezing order applicants who have obtained an order, and only informing them of the sale after the event at the point of completion is seldom conducive to successful cooperation in a sale. On the contrary, it tends to build mistrust.
- 11 That is also true of the way in which the defendant, it would appear through the defendant's son, has gone about the discussions with the bank about what part of the net proceeds should be allocated to the loan, where it is entirely fair for Mr Hayman to say that the claimant has been presented with a *fait accompli*. In addition there are legitimate questions as to what the overall security position is, in particular, when one looks at another cross collateralised loan agreement that Mr Hayman took me to.

- 12 I do not regard the language in the loan letters about “other security from time to time” as itself particularly informative. That has all the appearance of boilerplate. But there are indications of an asset portfolio / large amount of cash which, at least functionally, are operating in some sense as security for both the loan I have been referring to (the personal loan) and a loan taken out by a Guernsey company.
- 13 Mr Slade says on instructions that effectively there is no asset portfolio and that these references in the documents have effectively been overtaken by events, but I am unable to act on that basis alone. It seems to me that this is one of the contexts in which a full explanation of the position evidenced by contemporaneous documents is going to carry a great deal more weight. In that regard, I feel I must have regard to the fact that HHJ Pelling KC, at least on a without notice basis, was persuaded of the real risk of dissipation. Mr Hayman is able to point to what, on the face of it at least, would appear to be a false explanation offered to the bank about the beneficial owner of the Wolfe property.
- 14 All of those matters make this a case in which the court cannot act on assertion, but needs to see the underlying documentation and, although not specifically in the context of this sale, the claimant has asked a number of pertinent questions about the asset portfolio / cash deposit in a letter of 23 October, paras.27 to 31, All I shall say of the response is that it is fair to say that it did not engage with the substance of those queries.
- 15 In all of those circumstances, I think the defendant needs to recognise that, if he wishes to proceed with the sale of the Property and, as I have indicated, I can certainly see legitimate reasons why he might want to do so, that is going to require a collaborative process in which the queries raised by the claimant as to the overall security and asset position are answered, and answered in a way which provides documents which are always a greater source of assurance than the mere say so. The defendant is going to have to keep the claimant in the loop at a much earlier stage, rather than simply at the end point when the transaction is about to close.
- 16 The reality is that the competing interests mean that a collaborative and transparent approach is going to be more productive, not least because, if the defendant is transparent and does respond to the questions that have been raised, it will make it much more difficult indeed for Mr Hayman on any future occasion to point to the alleged murkiness of events as a reason why relief should be refused.
- 17 Finally, and this is offered without a great deal of analysis on my part as to whether it would work, but as one way that may be explored, plainly, if the entire proceeds of sale were paid into a bank account over which the bank retained its first charge, it might be possible to bring about a state of affairs in which the Property had been sold; the position of the claimant would not have been damaged because whatever marshalling arguments it might have would remain open to it; but it would have no security and would still be in the same position as it is now. That will require cooperation and discussion all round, but that may be one way of moving this matter forward.
- 18 So, for those reasons, the application is refused, but I hope I have given some indications of the steps which will give a further application a much better prospect of getting somewhere.

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This transcript has been approved by the Judge.