

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

NCN: [2023] EWHC 2477 (Admin)
IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
ADMINISTRATIVE COURT



No. AC-2023-LON-
001690

Royal Courts of Justice

Thursday, 14 September 2023

Before:

MRS JUSTICE COCKERILL

B E T W E E N :

NATIONAL CRIME AGENCY
Claimant

- and -

(1) YAQUB YOUNIS
(ALSO KNOWN AS CHAUDRY YAQUB AND ABDUL QAYUM)

(2) REGAL CAPITAL UK LIMITED

Defendants

MR T RAINSBURY (instructed by Burges Salmon LLP) appeared on behalf of the Claimant.

MR A MALIK (instructed by Starling Winshaw) appeared on behalf of the Defendant.

J U D G M E N T

MRS JUSTICE COCKERILL:

- 1 This is an application for a property freezing order (“PFO”) under section 245A of the Proceeds of Crime Act in respect of properties known as “Properties 1 to 14”. Those are properties listed in the order made on 7 June 2023 when Steyn J made an unexplained wealth order under section 362A of the Proceeds of Crime Act. That order compelled Mr Yakob Younis, the first respondent, in his personal capacity in respect of property 1 and as a specified responsible officer of Regal Capital Limited, the second respondent, in respect of properties 2 to 14 to provide information and documents to the National Crime Agency (“NCA”) by 4 p.m. on 7 August 2023. The order also included an interim freezing order made under section 362J of the Proceeds of Crime Act. That prohibited dissipation of properties 1 to 14 pending compliance with the unexplained wealth order. The value of the properties in question is approximately £1,252,825.
- 2 The NCA has now applied for a final property freezing order under section 245A of the Proceeds of Crime Act. The first step in the hearing today was to consider whether there should be any stay in relation to the proceedings to allow the second respondent further time to respond to the unexplained wealth order. I have dealt with that application already by dismissing it. It is therefore now the task which I must perform to decide whether the property freezing order should be made.
- 3 The law in relation to property freezing orders has been set out in some detail in the very helpful and full skeleton argument served by the NCA and drafted by Mr Rainsbury of counsel. I do not need to go through that. The jurisdiction effectively provides as is set out under section 245A. The application for the PFO must be made by an enforcement authority and must be made in this court, and supported by appropriate written evidence

setting out the grounds on which the PFO is sought. That evidence has been served in this case and there is no issue about it. The threshold test is that:

“The court may make a PFO if it is satisfied that there is a good arguable case that the property to which the application for the order relates is or includes recoverable property, and ... that if any of it is not recoverable property, it is associated property.”

4 That is a test which derives from the freezing order jurisdiction which is so often exercised in the Commercial Court and the other Business and Property Courts. The good arguable case test is well known as a relatively low one as explained in *The Niedersachsen* [1984] 1 All ER 398 by Mustill J. It is effectively a test of something which is more than barely capable of serious argument. It is not a better than 50 per cent chance of success.

5 So far as “recoverable property” is concerned, that is a very wide term covering property obtained through unlawful conduct or property which represents property obtained through unlawful conduct, and the definition of “unlawful conduct” is likewise wide.

6 The court is entitled to take a global approach in deciding whether property is recoverable. See *ARA v Jackson* [2007] 2553 [116]. “Associated property” covers:

“...property which is not itself recoverable property but which consists of any interest in the recoverable property, any other interest in the property in which the recoverable property subsists...”

7 As with the more standard freezing order, once one gets past the threshold tests, there is a discretionary stage at which the court must consider whether the making of the order will interfere with rights under the European Convention on Human Rights, including Article 8 and Article 1 of Protocol 1, and whether such interference is justified. It is not suggested that that is relevant here.

8 Another relevant factor is whether there is a risk of dissipation, a factor which obviously is key generally in the commercial contact but which can also be engaged here. In this case the questions which I have to consider, therefore, are whether the statutory tests are satisfied.

9 So far as the nature of the property is concerned, it does not appear to be remotely contentious that properties 1-14 are or include property which is capable of being property obtained through unlawful conduct, so the nature of it is sufficient to satisfy the property test.

10 We then have two grounds for the application being made. The first is the statutory presumption under section 362C of the Act by which this court is required to presume that for the purposes of this application the properties are recoverable under section 362C. That is because such a presumption is put in place by section 362C if there is a failure to comply with the requirements of the unexplained wealth order. In this case it is not contentious that the first and second respondents have failed to comply entirely with the requirements of the unexplained wealth order, and indeed it is inherent in the application which was made and which I have dismissed which was in part for more time to be granted for any compliance to be made, that it is accepted that there has been no compliance.

11 There has been a question of whether there was any reasonable excuse for the failure to comply such as to disapply the presumption under section 362C(1). I have no difficulty in concluding that there is no reasonable excuse. No excuse at all has been provided by the first respondent, and the excuse on behalf of the company is effectively the absence of Mr Yacoub. As I indicated in relation to the application which was earlier made on behalf of Mr Y(?) Yacoub, the evidence which there is as to attempts to comply, even if Mr Yacoub Younis were completely uncontactable, is a long, long way from satisfying the test of

reasonable excuse. There is a long period of time in which compliance might have been sought to be made. There is very little in the way of particularity as to the attempts which have been made. Even having asked for six weeks to comply nothing really appears to have been achieved within the six weeks. So I have no difficulty in concluding that even if it were the case that there were evidence that the first respondents were uncontactable and not in contact, there would be no reasonable excuse. There are, however, grounds to believe that the first respondent is or has been involved with the company. For example, that he signed Regal's balance sheet on 25 May 2023. There are also other individuals involved with the company or who have been involved with the company who have been identified who ought to have been able to assist in providing such information, and absolutely no detail has been given of attempts to get information from them.

- 12 The reasonable excuse threshold which might have been sought to be relied on cannot be met. The presumption is engaged. Those properties must be presumed to be recoverable property for the purposes of these proceedings, and there has been no evidence rebutting the presumption by showing that they are not recoverable, for example under section 362C(2) by showing exactly how those have been funded and that the monies in question are not in any respect as a result of unlawful conduct. The threshold of the statutory test is satisfied on that ground.
- 13 I have been asked also to consider whether the good arguable case test would have been met on the evidence, even if the presumption were not satisfied. Because of the conclusions I have come to on ground 1, I can deal with this relatively shortly. Mr Rainsbury has taken me through the evidence and I have read Mr Hill's first statement which sets out the evidence on which the NCA relies. That is evidence which was before Steyn J in June. At paras.34 to 35 of her judgment, she regarded that evidence as satisfying the reasonable grounds for suspecting test. Having looked at the evidence in question, while it is not

evidence which demonstrates or would satisfy above a 50 per cent chance of success threshold, i.e. the civil standard of proof threshold, bearing in mind the related threshold, more than barely capable of serious argument which is in place at this stage, I am satisfied that when one takes together and regards globally the factors which are summarised in para.35 of Steyn J's judgment as amplified in the oral argument before me, in Mr Rainsbury skeleton argument and Mr Hill's statement, I would be satisfied that that evidence does amount to a good arguable case on the evidence that the properties are or include properties which is or represents property obtained through unlawful conduct, including potentially money laundering and mortgage fraud.

14 We have all of them controlled by the first respondent or the company which he controls. There is a significant criminal history. That criminal history does not include acquisitive offences. However, it includes serious criminality and criminality on effectively a conspiracy-organised scale, so not casual criminality. There is some intelligence which, of course, is not fact, but it is intelligence which indicates that there are suspicions of fraud and money laundering. Those suspicions are unsurprising given the value of the portfolio, the extent to which it is mortgage-free or appears to be mortgage-free, and the declared income of the first respondent and the relatively short history of the second respondent. The fact to the extent that previous finance has been achieved, it was achieved by a guarantee in part from Mr Younis which takes us right back to his apparently very low income, £12,750 on average a year, which gives rise itself to questions about how any finance is obtained for the later properties. Routing through different bank accounts, there appears to be some evidence showing trading in bullion which would not appear to be reflected in the income of Mr Younis.

15 All of those things go to suggest that the “*more than barely capable of serious argument*” threshold has been crossed. I have obviously considered anxiously the question of full and

frank disclosure and what might have been said had the first or second respondent instructed counsel with sufficient authority and notice to be able to prepare properly. A detailed section on full and frank disclosure is included in Mr Hill's statement. I read that in preparation for the hearing. I have been taken to it again in the course of the hearing. Having considered all of those things, I still consider that the good arguable case test would be surmounted, albeit not by a huge margin.

16 So far as risk of dissipation is concerned, in the circumstances the nature of – this elides with some of the authorities in the commercial context – given the nature of the matters which are considered of concern (fraudulent behaviour, money laundering and so forth) and some of the evidence showing multiple bank accounts, layering of money through different accounts, use of bullion – all of these things show a facility with sophisticated uses of money – the fact that the first respondent (a) has absented him and (b) though absenting himself involved himself apparently in the business of the second respondent, the fact that there is a significant value, a number of the properties are unencumbered by any mortgage, and the other matters to which I have referred, I have no difficulty in concluding that there is what in commercial terms we would call solid evidence of a real risk of dissipation or at any rate evidence of a risk of dissipation.

17 That dovetails into the question of whether it is appropriate to exercise the court's discretion. This is an application made in the public interest and subject to a statutory purpose. The interference with Article 8A1P1 is one which is effectively covered by section 245A. There is no question that it is not a legitimate aim and is not proportionate. There is no specific factor which takes it outside of those factors and here the NCA has considered whether alternative methods are available and has concluded, and has gone on evidence as to this fact, that the necessary objectives cannot be achieved by less intrusive means. This is a natural follow-on from the unexplained wealth order and is necessary to maintain the

freezing aspect of the unexplained wealth order in circumstances where the interim freezing order falls to the ground at the end of today's hearing.

- 18 In all of those circumstances I have no difficulty in concluding that this is an appropriate case for me to exercise the discretion and make the freezing order sought.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*