Neutral Citation Number: [2020] EWHC 57 (Comm)

Case No: CL-2019-000597

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 16/01/2020

Before :

THE HONOURABLE MRS JUSTICE MOULDER

- -

Between :

TRANS-OIL INTERNATIONAL SA	**Claimant**
- and -	
(1) SAVOY TRADING LP	**Defendant**
(2) IVAN MELNYKOV	

- -

- -

Ms ANGHARAD M. PARRY (instructed by **DAVIES BATTERSBY LTD**) for the Claimant

Hearing dates: 20 December 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MRS JUSTICE MOULDER

MRS JUSTICE MOULDER:

1. This is the reserved judgment on the application of Trans-Oil International SA (the "Applicant") dated 16 December 2019 for a variation of the worldwide freezing order dated 18 October 2019 made against the first respondent, Savoy Trading LP ("Savoy Trading"). By this application the applicant seeks to add Mr Ivan Melnykov to the freezing order, in the alternative to have him named personally in the penal notice of the existing freezing order. The applicant also seeks permission for service out and by alternative means pursuant to CPR PD6B 3.1.6(c) or pursuant to CPR62.5(1)(b).

2. In support of the application the applicant relies on the fourth affidavit of Melanie Nash dated 17 December 2019. Ms Nash is a solicitor at Davies Battersby Solicitors having conduct of this matter for the applicant. The court also has before it the earlier affidavits of Ms Nash dated 19 September 2019, 16 October 2019 and the third affidavit dated 24 October 2019 as well as an affidavit of Gregorio Fazzone, the director of the applicant dated 22 September 2019 in support of the original application for a freezing order against Savoy Trading.

3. The application was made without notice given the nature of the application.

4. Following the hearing I received a letter from counsel for the applicant dated 20 December 2019 to "follow-up on a number of points arising" notably in relation to the role of "partners".

Background

5. The background to this matter is set out in the various affidavits of Ms Nash. The application arises out of a dispute concerning a contract for the sale of wheat by Savoy Trading to the applicant entered into on 16 May 2019. The contract incorporated the GAFTA 49 form and provided that disputes should be settled by arbitration in accordance with GAFTA's arbitration rules number 125.

6. On 19 July 2019 the applicant received an email stating that Savoy Trading were not in a position to fulfil their contractual obligations.

7. On 1 August 2019 the applicant, through its solicitors, served a notice of arbitration on Savoy Trading, Mr Melnykov and Mr Falchenko. There has been no participation in the arbitration by Savoy Trading or Mr Melnykov. No arbitrator is currently appointed.

8. Savoy Trading is a Scottish limited partnership. The applicant carried out a search at Companies House which showed that the registered office of Savoy Trading was in Douglas, South Lanarkshire and that it had two partners, Cadwell Admin Ltd ("Cadwell") and Intech Admin Limited. The director of both Cadwell and Intech Admin Ltd was stated to be Tiffany Brown, resident in Belize. Ms Brown appears to be a director of a substantial number of (unrelated) companies.

9. The applicant also learned through its solicitors that on 9 April 2019 an Award of Sequestration was granted for the sequestration of the estate of Savoy Trading and an insolvency practitioner, Mr Cleghorn was appointed as trustee (the "Trustee").

10. The applicant applied for a worldwide freezing order against Savoy Trading and an associated order for the disclosure of assets both inside and outside the jurisdiction. The freezing order was granted against Savoy Trading on an *ex parte* basis by Teare J on 2 October 2019, and continued by order of Knowles J on 18 October 2019 following the hearing on the return date. Teare J also made an order against Savoy Trading AG requiring disclosure of all assets exceeding £5,000 in value.

11. On 12 October 2019 Mr Melnykov swore an affidavit in response to the order of Teare J. Although he provided certain information in that affidavit, he expressly stated that he did not consent to the jurisdiction of the court.

Worldwide freezing order against Mr Melnykov

12. It was submitted for the applicant that the applicant had a good arguable case in relation to the contractual dispute and there was a real risk of dissipation of assets. In relation to the requirement to show a good arguable case, counsel stated that the applicant relied on the same submissions and evidence which were before Teare J and Knowles J in support of the grant of a freezing order against Mr Melnykov.

13. However before considering the substantive application, it seems to me that the court must first address whether it has jurisdiction to make a freezing order against Mr Melnykov given that it is not asserted that there is any evidence before the court that he has any presence or assets in the jurisdiction. The applicant seeks to found jurisdiction in reliance on two "gateways": pursuant to CPR 6.36 and PD6 3.1(6) (c) or CPR 62.5.

Jurisdiction pursuant to CPR 6.36

14. CPR 6.36 states:

> "In any proceedings to which rule 6.32 or 6.33 does not apply, the claimant may serve a claim form out of the jurisdiction with the permission of the court if any of the grounds set out in paragraph 3.1 of Practice Direction 6B apply."

15. CPR 6.37 states:

> "(1) An application for permission under rule 6.36 must set out -
>
> (a) which ground in paragraph 3.1 of Practice Direction 6B is relied on;
>
> (b) that the claimant believes that the claim has a reasonable prospect of success; and
>
> (c) the defendant's address or, if not known, in what place the defendant is, or is likely, to be found.
>
> (2) Where the application is made in respect of a claim referred to in paragraph 3.1(3) of Practice Direction 6B, the application must also state the grounds on which the claimant believes that there is between the claimant and the defendant a real issue which it is reasonable for the court to try."

16. PD6 3.1 provides, so far as material:

> "3.1 The claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where -
>
> (1)…
>
> (2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.
>
> (3) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and -
>
> (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
>
> (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.
>
> (4)…
>
> (6) A claim is made in respect of a contract where the contract -
>
> (a)…
>
> (c) is governed by English law; …"

17. The application notice itself is not entirely clear as to which ground is relied upon: it states that Mr Melnykov is a "necessary and proper party" to the arbitration claim and has been served with the notice of the arbitration (suggesting subparagraph 3.1(3)) but seeks permission to serve out relying expressly on CPR PD6B 3.1(6) (c). The written submissions are also not entirely clear on this point. It seems to me that if, and to the extent the applicant was seeking to rely on CPR PD6B 3.1(3), this is not open to the applicant: *Linsen International Ltd v Humpuss Sea Transport Pte Ltd* [2011] EWHC 2339 discussed and followed in *Cruz City 1 Mauritius Holdings v Unitech Limited* [2014] EWHC 3704 (Comm) at [70]-[81]. There is also a passing reference in the written submissions to being able to rely on PD6 3.1(2). However there is no evidence before the court to establish any jurisdiction in reliance on this gateway.

18. The real thrust of the applicant's case for establishing jurisdiction pursuant to CPR6.36 appears to be the submission that there is jurisdiction over Mr Melynkov because the contract under which the dispute has arisen is English law and that because he is "arguably personally liable" on the contract, he can be brought within the scope of the arbitration and thus CPR PD6B 3.1(6)(c).

19. I note that the test which the court has to apply in this context is that of "good arguable case" meaning that one side has a much better argument on the material available: *DTEK Trading SA v Morozov* [2014] EWHC 94 at [17].

20. I turn then to consider the alternative bases on which the applicant submitted that Mr Melnykov is "arguably personally liable" on the contract.

21. The notice of arbitration was served by letter of 1 August 2019 on Mr Melnykov (as well as Savoy Trading AG and Mr Falchenko) and in that letter the applicant's solicitors stated:

> "…if Savoy Trading LP had no power or authority to enter into the contract then it may have been with the other parties listed in this message and consequently we commence arbitration [against] them all as well"

22. Before this court it was submitted that under Scottish law, Savoy Trading could not enter into contracts requiring credit without the permission of the Trustee, accordingly as no such permission was obtained, Mr Melnykov entered into a contract which he could have no authority to have made. It was therefore submitted that he can be personally liable on the contract on the basis that under English law where an agent enters into a contract outwith the scope of his agency the agent is liable on the contract. Counsel for the applicant submitted that:

> "International commodity contracts necessarily involve credit at some stages. Whilst no credit was raised directly between the applicant and [Savoy Trading], it is not understood how [Savoy Trading] could have operated without credit."

23. Counsel accepted in the course of the hearing that there was no evidence that this particular contract involved obtaining credit and there was therefore no evidence before the court to support the submission that any such offence had been committed. Even if the contract in question arguably involved the obtaining of credit, and thus the permission of the Trustee was required for this contract, the opinion of the Scottish Advocate (exhibited to the 4th affidavit of Ms Nash) to which the court was directed in the course of the hearing, did not in my view establish the proposition that personal liability would attach to Mr Melynkov in the circumstances. To the contrary the opinion states (paragraph 4(2)) that *prima facie* the offence would be committed by the limited partnership (Savoy Trading) and even if committed by the general partner (Cadwell), this would not render Mr Melnykov personally liable unless the court were to pierce the corporate veil which the Advocate notes in the circumstances was unlikely on the facts known to him.

24. The alternative submission advanced for establishing that Mr Melnykov is a party to the contract was that he was the "real principal". Counsel for the applicant cited Article 108 of *Bowstead and Reynolds on Agency (21st edition)* in support of this proposition:

> "Where a person professes to contract as agent, whether in writing or orally and it is shown that he is, in fact, himself the principal and was acting on his own behalf, he is (perhaps) personally liable on the contract."

25. The applicant has received a document from the Trustee headed "Nominee Declaration" dated 23 July 2014. The declaration, signed by Tiffany Brown for and on behalf of Cadwell and addressed to Mr Melnykov, states that Cadwell is a nominee of Savoy Trading, that it will act only upon instructions from the beneficial owner or their agents and that the ownership units of the partnership are held in trust for Mr Melnykov.

26. It was submitted for the applicant that this document suggests that Mr Melnykov is the beneficial owner of Savoy Trading and has significant control of Savoy Trading.

27. However the opinion of the Scottish Advocate states that the Nominee Declaration is not entirely clear as to what is intended. The Scottish Advocate states that it appears that by the nominee declaration, Cadwell is acknowledging that its ownership of an interest in Savoy Trading is as nominee for and in trust for Mr Melnykov. However the Advocate also notes there are two partners in Savoy Trading and in the absence of agreement each would have a 50% interest in the partnership.

28. I further note that in the Scottish opinion the Advocate states that:

> "The beneficiary of a trust does not come under concurrent liability on a contract entered into by the trustee on behalf the trust. Mr Melnykov is not under a personal liability for the obligations owed by Savoy, or for any liability in respect of them on the part of Cadwell. Personal liability would arise if he contracted as agent for an undisclosed principal, i.e. without disclosing the fact of agency. There is nothing to suggest this applies here." [emphasis added]

29. I concur with the conclusion that there is nothing to suggest that Mr Melnykov contracted as agent for an undisclosed principal. The contract with the applicant was entered into by Savoy Trading. The fact that the contract was signed by Mr Melnykov and that he had a power of attorney for Savoy Trading, does not in my view bring this case within the principle relied upon by the applicant. The Nominee Declaration and the power of attorney do not amount to evidence of a good arguable case that he was contracting as an agent for an undisclosed principal.

30. Even if there could be said to be a good arguable case on the evidence, the legal proposition is far from established. In the commentary to the rule cited above, *Bowstead and Reynolds* states that there is slender authority in support of the proposition and the cases usually cited in support were ones where the courts were searching for a way of holding an unauthorised agent personally liable. That is not the case here.

31. Counsel for the applicant submitted that the legal argument was "contentious" but the points are "properly arguable and have a reasonable prospect of success".

32. In my view, in order for the court to have jurisdiction under CPR 6.36, it is not enough for the applicant to serve a purported notice of arbitration on a person in circumstances where he is not a party to the contract containing the arbitration agreement. The court must be satisfied that there is a good arguable case that Mr Melnykov is a party to the contract (or possibly personally liable in respect thereof) and in my view the applicant has not shown a good arguable case that Mr Melnykov is a party to the contract, or personally liable on the contract, such as to give the court jurisdiction pursuant to the gateway in PD6B 3.1.6 (c).

Jurisdiction pursuant to CPR 62.5

33. In the alternative the applicant sought a freezing order pursuant to the *Chabra* jurisdiction (*T.S.B. Private Bank International S.A. v Chabra* [1992] 1 W.L.R. 231).

Under the *Chabra* jurisdiction the court has jurisdiction to grant a freezing injunction against a person against whom no cause of action lies to preserve assets which are or may be available to the judgment creditor.

34. CPR 62.5 provides that:

> "(1) The court may give permission to serve an arbitration claim form out of the jurisdiction if -
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> (a) …
>
> (b) the claim is for an order under section 44 of the 1996 Act; or
>
> (c) the claimant -
>
> (i) seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and
>
> (ii) the seat of the arbitration is or will be within the jurisdiction or the conditions in section 2(4) of the 1996 Act are satisfied."

35. In *Cruz City*, Males J held that service out pursuant to CPR 62.5(1)(c) is permissible only against a party to the arbitration agreement. He also considered section 44 of the Arbitration Act and CPR 62.5(1)(b) and expressed the view (*obiter*) that section 44 did not permit the Court to make orders against a non-party.

36. It was submitted for the applicant that the issue of whether orders can be made against third parties to an arbitration agreement under Section 44 is controversial, that the point is still open and there are conflicting authorities. Counsel referred to the decisions in *Tedcom Finance v Vetabet Holdings* [2011] EWCA Civ 191, *BNP Paribas v OJSC Russian Machines* [2011] EWHC 308, *Western Bulk Ship Owning v Carbofer Maritime Trading* [2012] EWHC 1224 and *PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov* [2013] EWHC 3203. Accordingly it would appear that the applicant sought to establish jurisdiction pursuant to CPR 62.5(1)(b).

37. The difficulty with the applicant's submissions on this point is that this is the same argument that was raised and rejected by Ms Sara Cockerill (as she then was) in *DTEK*. The judge observed at [12]:

> "This is a controversial question which has been touched on over the years in a number of decisions without being addressed head on. The Court of Appeal in declining to consider the issue in one case have reportedly described the issue as "not straightforward" (see *Cruz City* paragraph 41). But the principal hurdle faced by DTEK is that Males J held (albeit obiter) only recently, and following full argument, that orders under section 44 of the Act cannot be made against non-parties to the arbitration agreement, and hence that permission to serve out cannot be given against non-parties pursuant to CPR 62.5(1)(b)…" [emphasis added]

38. The judge then considered the authorities relied upon by the applicant in this case, which had also been considered by Males J, and concluded that she concurred with the view taken by Males J: see judgment at [26] - [31] and [56].

39. Cockerill J concluded:

> "54. Finally they submit that ultimately, whether or not the Court should be making orders against non-parties to arbitrations, particularly where the seat of the arbitration is not in England and Wales, is a matter going to the Court's discretion as to whether or not to grant the particular order sought. It is not a reason for holding that the Court has no such power at all.
>
> 55. This is not, in my view an argument in favour of finding a jurisdiction. Indeed it would be an error to derogate from the jurisdictional stage of the argument and place all the emphasis on discretion. The consideration of jurisdictional thresholds in service out places an important check on the jurisdiction of the court which if not exorbitant (pace Lord Sumption in Abdela v Bandarani) should not lightly be used to intrude on parties who are not within the court's natural territorial jurisdiction.
>
> 56. Having therefore carefully considered the Cruz City judgment and the line of authorities which precedes it in the light of Mr Smith's detailed and helpful submissions, I consider that while there is plainly an argument as to this issue, I am clear in my own mind that the right answer is that which Males J reached."

40. Whilst noting the submission for the applicant that the judge in DTEK said that there was "an argument as to this issue", no substantive arguments were advanced on behalf of the applicant as to why this court should not follow the decisions in those two authorities, which considered in detail the cases relied upon by the applicant, and in which the judges gave reasoned decisions why they were not persuasive and/or correct.

41. It was submitted for the applicant that it would not be possible to effect service out unless such a case is held to fall within CPR 62.5.

42. The argument that the decisions result in a *lacuna* was addressed in *DTEK* by the judge at [57]:

> "It may be that the result is that there is a lacuna in some cases - most notably Chabra and anti-suit injunctions. However it is worth noting that in the majority of the cases where this type of relief was sought jurisdiction was ultimately enabled to be established under the necessary and proper party head under CPR 6."

43. Further I note the observations of Males J in *Cruz City* at [10] describing the Chabra jurisdiction as:

> "an unusual jurisdiction, involving as it does the exercise of the court's compulsive powers, backed by the sanction of contempt proceedings, against a party against whom no cause of action is asserted…"

44. And at [11]:

> "That need for caution applies with even greater force when the Chabra defendant is a foreigner with no presence or assets within the jurisdiction of this court, who has not agreed to come here. In view of the unusual nature of the Chabra jurisdiction and the need for caution which the cases emphasise, it would not necessarily be surprising to find that there is no applicable gateway permitting service out of the jurisdiction on a Chabra defendant against whom no substantive relief is sought."

45. For the reasons discussed I follow the decision in *Cruz City* and *DTEK* and find that the applicant has not shown a good arguable case that the court has jurisdiction in the circumstances of this case to make a freezing order against Mr Melynkov pursuant to CPR62.5.

Substantive claim for relief

46. If I am wrong on the issue of jurisdiction, then I consider the issue of whether a freezing injunction should be granted.

47. On the evidence it seems to this court that Savoy Trading clearly repudiated and/or renounced the contract by its emails and thus there is a good arguable case for breach of contract. However the court also has to determine whether it is just and convenient and in particular whether the applicant has shown a real risk of dissipation by the respondent of his assets.

48. Counsel for the applicant invited the Court to infer that this is the case by reason of the following matters:

i) In his affidavit Mr Melnykov stated that he currently has no role at Savoy Trading although he has "participated in the first respondent's trading activities in the past." Counsel for the applicant submitted that that was an "understatement" of his role as it would appear that from September 2018 until September 2019 Mr Melnykov held a very broad ranging power of attorney to act on behalf of Savoy Trading (other than in the UK).

ii) Further in that affidavit Mr Melnykov disclosed two bank accounts but did not disclose the existence of two bank accounts in Latvia, whose existence has now come to the attention of the Trustee.

iii) The applicant entered into other contracts with Savoy Trading in the period from April 2019 and pursuant to which approximately $6 million was paid to the Czech bank account and yet by October 2019 the balances in those accounts are said by Mr Melnykov to be below £5,000.

iv) Under Scottish law by virtue of the sequestration, assets or sums due to Savoy Trading under contracts entered into before the date of sequestration should have vested in the Trustee but nobody involved with Savoy Trading has communicated with the Trustee. Until September 2019 Mr Melnykov had the power of attorney to act on behalf of Savoy Trading.

v) It was submitted that the "complex structure" indicated a "low commercial morality" and should be taken to support the applicant's case that there is a real risk of dissipation by Mr Melnykov: (*Petroceltic Resources v Archer* [2018] EWHC 671 (Comm) at [21]). He has not engaged with the Trustee and due to concerns with his conduct the Trustee has reported his suspicions to the Scottish police (para 24 of 4th affidavit).

vi) When negotiating the contract with the applicant, Mr Melnykov did not disclose that Savoy Trading was subject to the sequestration.

Discussion

49. The highest that counsel could put her submissions was that money previously paid to Savoy Trading "could be" in the hands of Mr Melnykov who "could have taken" the money and therefore the court should infer that he has assets. Further, counsel submitted that the court should infer that he has assets given that he has physically moved around the world and has instructed lawyers.

50. In my view a failure to engage with the applicant and the Trustee does not establish a risk of dissipation; rather I note that even though he disputed the jurisdiction, Mr Melnykov has given the affidavit as required by the court order and there was apparently no requirement to disclose the Latvian bank accounts given that the balances in those accounts were below the specified amount. Further it was conceded in oral submissions that there was no obligation as a matter of law to tell the applicant, as a potential customer, that Savoy Trading was in sequestration (paragraph 21 of the opinion of the Advocate dated 30 August 2019).

51. There is therefore little or no real evidence of dishonesty or low standards of commercial morality beyond the use of the partnership structure which in this particular case may be for good reason: as to the suspicions of the Trustee, there is no evidence as to the strength of such suspicions. In relation to the use of the Scottish limited partnership structure the applicant relies on a (partial) extract from a website of an individual in relation to money laundering vehicles without any evidence as to its reliability or direct relevance to the issues in the present case (other than a reference to Tiffany Brown who as noted above is involved in a substantial number of apparently unrelated companies).

52. The evidence in this matter as to the assets of Mr Melnykov and a real risk of dissipation by Mr Melnykov is in my view weak. (The position in relation to Savoy Trading was different as to assets and the risk of dissipation and does not mean that there is a good arguable case in relation to Mr Melnykov). Whilst the court accepts that evidence in these cases may of necessity be drawn by way of inference, there must be enough evidence to warrant the grant of what is a draconian order freezing the assets of a person and had it been necessary to decide the issue, in my view the court would not have exercised its discretion to grant the order against Mr Melynkov.

The addition of Mr Melnykov personally to the penal notice as general partner of Savoy Trading

53. In the alternative the applicant seeks an order to "have Mr Melnykov named personally in the Penal Notice" on the basis that he is a *de facto* general partner/director of Savoy Trading. In effect by this application the applicant seeks to make Mr Melnykov liable to proceedings for contempt for any failure by Savoy Trading to comply with the freezing order.

54. CPR 81.4 provides (so far as material):

> "(1) If a person -
>
> (a) required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
>
> (b) disobeys a judgment or order not to do an act,
>
> then, subject to the Debtors Acts 18692 and 18783 and to the provisions of these Rules, the judgment or order may be enforced by an order for committal.
>
> (2) …
>
> (3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation." [emphasis added]

55. It was acknowledged for the applicant that Savoy Trading is a partnership but it was submitted that Mr Melnykov should be viewed as analogous to a *de facto* director (to which the rule in CPR 81.4(3) has been held to extend) and the rules applied accordingly. This submission was justified in various ways: counsel submitted that:

i) a person who is "held out" as a partner is liable as a partner;

ii) that in CPR 81.4 (3) the term "other officer" in "any director or other officer" could extend to a partner,

iii) that the provision would lack "teeth" unless it applied to partners as well as directors.

Counsel submitted that the applicant need only show a good arguable case that Mr Melnykov was a *de facto* director: *Akhmedova v Akhmedova* 2019 EHWC 1705 (Fam) at [45]. Counsel submitted that he was a *de facto* partner as he held a wide-ranging power of attorney and had the benefit of the Nominee Declaration.

56. It seems to me that there is no basis for firstly, extending the rule in CPR81.4(3) to partners and secondly, extending the rule to *de facto* partners. The authorities as to what constitutes a *de facto* director have no application to partners unless one first establishes that the rule in CPR81.4(3) extends to partners.

57. In the written submissions following the hearing counsel for the applicant acknowledged that a partnership is not "strictly speaking" a body corporate and the "strict legal view" is that the partnership as an entity is distinct from the partners but referred to *Lindley & Banks on Partnership* that the commercial view involves treating a firm in much the same way as a company.

58. Counsel in those written submissions sought to derive support from the fact that the order had been made against a partnership and the penal notice referred to the partnership.

59. In those written submissions, counsel also made reference to other sections of the CPR which refer expressly to partners such as the provisions relating to service of legal process (CPR 7APD) and enforcement against a partnership (CPR PD70).

60. As these points were raised only after the hearing, the court is left in the unsatisfactory position that these points were not canvassed at the hearing. However in my view it is in the nature of a partnership that the individual partners are liable for a breach of an order (other than where the partnership has separate legal personality, or in the case of a limited partnership, the limited partner) (*Lindley & Banks on Partnership* at 13-12). It is unclear from the submissions and the evidence before the court whether as a Scottish partnership, Savoy Trading has separate legal personality.

61. CPR 81.4 (1) refers generally to "a person". The provision in CPR 81.4 (3) deals expressly with corporate entities which can only act through its directors. This is not the case with a partnership (other than those with separate legal personality). Given the liability which attached to individual partners by virtue of their position as partners, it seems to me that there is no need for CPR 81.4(3) to address the position of partners generally. I accept however that this may not cover partners in partnerships with separate legal personality. However, it seems to me that should the CPR wish to address partners in unlimited and/or limited partnerships it would be open to do so, as it has done elsewhere in the CPR, by express provision.

62. Since in my view CPR81.4(3) should not be read as extending to partners, the second step of whether to apply the authorities on directors to extend the rule in CPR 81.4(3) to cover "*de facto*" partners does not arise.

63. If I were wrong and the rule in in CPR81.4(3) should be interpreted as extending to partners and *de facto* partners, then the court would need to establish what constituted a *de facto* partner. The applicant cited Lord Hope in *HMRC v Holland* [2010] UKSC 51 that there was no single test for a *de facto* director but referred to factors such as whether he was held out as a director and purported to act as a director. It is far from clear that the authorities referred to can be applied to the role fulfilled by partners. However on the evidence before the court, in my view Mr Melnykov was not held out as a partner and did not act as a "*de facto*" partner. The opinion of the Scottish Advocate was that Cadwell was the general partner and liable for the debts and obligations of Savoy Trading. He stated that Mr Melynkov was not under any liability in respect of them on the part of Cadwell. The evidence before this court is that Mr Melynkov acted in his dealings with the applicant not as the general partner but pursuant to a power of attorney from Savoy Trading. In my view had it been necessary to decide the point I would have held that the applicant had not shown on the evidence a good arguable case that Mr Melnykov was acting as a *de facto* partner.

Accordingly for all these reasons the application to have Mr Melnykov named in the Penal Notice is refused.