Neutral Citation Number: [2022] EWHC 2113 (Comm)

Case No: CL-2017-000433

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

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

Date: 09/08/2022

Before :

CHRISTOPHER HANCOCK QC
(Sitting as a Judge of the High Court)

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Between :

LENKOR ENERGY TRADING DMCC	**Claimant**
- and -	
IRFAN IQBAL PURI	**Defendant**

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- -

Philip Jones (instructed by **Mackrell**) for the **Claimant**
Nigel Cooper QC (instructed by **Hill Dickinson LLP**) for the **Defendant**

Hearing dates: 29 July 2022

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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.

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CHRISTOPHER HANCOCK QC

Christopher Hancock QC:

Introduction and background facts.

1. This is an application by the Claimant to remove the so called "Angel Bell" exception, (named after the decision in a case involving a ship with that name, reported at [1981] 1 QB 65), which is contained in paragraph 11(b) of a worldwide freezing order ("**WFO**") originally granted by HHJ Waksman QC (as he then was) on 11 July 2017 and subsequently continued by Bryan J by order dated 18 October 2017. A similar application was made before me in 2019, which I dismissed, for reasons which I will come back to.

2. The background facts can be relatively briefly stated.

3. The underlying transaction out of which the claim first arose was described by Master Davison in his judgment in this matter given on 23 January 2020 as follows:

> *"3. Mr Puri was the sole shareholder in and managing director of a Dubai company, IP Commodities DMCC ("IPC Dubai"). On 20 July 2014 and 7 August 2014 IPC Dubai drew two cheques in favour of the claimant ("Lenkor Dubai") on a Dubai branch of Habib Bank Ltd. These were cheque 156851 for AED 91,400,200 and cheque 156862 for AED 117,100,000. Each of these cheques was signed by Mr Puri. Neither cheque stated expressly that Mr Puri was signing on behalf of IPC Dubai, but both had the name of that company stamped on them. The cheques were delivered to the claimant pursuant to an agreement made on 4 June 2014 between Lenkor Energy Trading Limited ("Lenkor HK") (a sister company of the claimant incorporated in Hong Kong), IPC Dubai and a Pakistani entity, which was the Buyer. There is no need to identify this entity in this judgment and I will continue to refer to it simply as "the Buyer". The agreement provided for Lenkor HK to sell six cargoes of gasoil to the buyer, with IPC Dubai acting as middleman ("the Tripartite Agreement").*
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> *4. Paragraph 15 of the Tripartite Agreement provided for payment by Letter of Credit as to 50% of each cargo value and for telegraphic transfer as to the other 50%. By paragraph 15(c) IPC Dubai was "to issue a payment guarantee for hundred percent of the cargo value by cheque in favour of [Lenkor Dubai]… 3 days before the vessel commences loading". It was pursuant to this provision that the two cheques referred to above were drawn."*

4. Although cargoes of oil were delivered to the buyer under this agreement, the only monies paid by the buyer were paid to IPC Dubai and (at the direction of IPC Dubai and/or Mr Puri) IPC Pakistan, a company of which the director was, I was told, Mr Puri's son. Allegations were made, to which I return briefly below, that this transaction was tainted by illegality, because Iranian oil was used to satisfy the transaction. Those allegations, and the legal effect of them, were considered by an arbitrator appointed pursuant to the tripartite agreement, whose Award I have not seen and which is not relevant to this judgment (since the applications I have to deal with are based, not on the Award, but on the decision of the Dubai Court which I deal with in the following paragraph).

5. The Claimant obtained judgment against the Defendant in Dubai for the sum of about £26,000,000, based on the cheques issued. The amount of the Dubai judgment was in

the same amount as the monies paid by the Buyer to IPC Dubai and IPC Pakistan. After various appeals in Dubai, including appeals to Dubai's highest court, the Dubai courts ruled against the Defendant and in favour of the Claimant.

6. The Claimant then commenced an action in debt against the Defendant on 17 January 2019 (claim no. QB-2019-000183) ("the Action") some five months after the final decision of the Dubai Court of Cassation on 05 August 2018. That action was based on the Dubai judgment.

7. It was at this stage that the previous application to remove the Angel Bell exception was made before me in March 2019. I rejected that application, essentially on the basis that because the Claimant did not have an enforceable English judgment, the application was premature. Because of this conclusion, I did not need to consider the further issue of whether the exception should be continued even after an English judgment was rendered.

8. The Claimant then sought and obtained summary judgment from Master Davison, who gave judgment, as I have indicated, on 23 January 2020. The Defendant obtained permission to appeal and that appeal was heard by Murray J, who gave judgment, rejecting the appeal, on 4 June 2020.

9. The Defendant appealed again, to the Court of Appeal, who, having given permission to appeal, rejected the appeal by order dated 21 May 2021. Finally, the Supreme Court rejected an application for permission to appeal made by the Defendant on 12 May 2022. At that point, the judgment of Master Davison, which had been subject to a stay of execution until this time, became final and enforceable.

10. It was at this stage, on 27 May 2022, that the Claimant issued the applications which are before me. The parties agreed all matters other than the Angel Bell exception and provided a draft Consent Order covering all of these other matters. I was told that Calver J had approved that order whilst the hearing before me was ongoing. Accordingly, I need only deal with the application to remove the Angel Bell exception.

The application to remove the Angel Bell exception.

11. The Defendant opposed the Claimant's request to remove paragraph 11(b) from the WFO (i.e. to remove the so called "Angel Bell" exception). Paragraph 11(b) is the exception which permits the Defendant to deal with or dispose of his assets in the ordinary and proper course of business.

The law.

12. Both Counsel referred me to the decision of the Court of Appeal in *Emmott v Wilson* [2019] EWCA Civ 219 as the most authoritative guidance on this question. There, the facts were as follows:

    a) There had been an arbitration between the parties. As a result of that arbitration, there was an award in favour of the Claimant, Mr Emmott.

    b) Mr Emmott had made an application to convert the Award into a judgment of the Court.

c) A freezing order had been granted to Mr Emmott before the Award was converted into a judgment.

d) Burton J heard the application under s.66 and granted that application. At that moment, the Award became a judgment of the Court.

e) Thereafter, the question was whether the Angel Bell exception, which had been part of the order prior to the Award being converted into a judgment, should be removed.

f) Sir Jeremy Cooke decided that it should be removed. It was his decision that then went to the Court of Appeal.

13. Gross LJ, delivering the judgment of the Court, considered the various authorities and then said, at paragraphs 53 to 57:

> "53 It is time to draw the threads together. First, post-judgment *Mareva* injunctions are granted to facilitate execution, by guarding against a risk of dissipation over the period between judgment and the process of execution taking effect, where the judgment would remain unsatisfied if injunctive relief was refused: *Masri* , at [34]. With respect to the *dicta* in *Camdex* , post-judgment *Mareva* injunctions can no longer be described as rare: *Nomihold* , at [32]. Whether pre-or post-judgment, a *Mareva* injunction is not intended to confer a preference in insolvency (*Camdex* , at p.638) and does not form a part of execution itself.
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> 54 Secondly, by reason of its nature and as a matter of realism, a post-judgment *Mareva* will increase the pressure on a defendant to honour the judgment debt. The mere increase in such pressure does not make it illegitimate or *"in terrorem"* . The facts in *Camdex* were extreme, concerning as they did the Central Bank of a friendly foreign State and the freezing of an asset of no value in the process of execution.
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> 55 Thirdly, in the light of Tomlinson LJ's further reflections in *Nomihold* , it cannot be said that, *without more* , the (*Angel Bell*) exception *would* be inappropriate in a post-judgment *Mareva* . In this regard, the observations of Colman J in *Soinco* and Tomlinson J in *Masri* , went too far.
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> 56 Fourthly, it *can* be said, however, on the basis of *Nomihold* (at [33]), that "it will sometimes and perhaps usually be inappropriate" to include the exception in a post-judgment *Mareva* injunction. Given the policy of the law strongly in favour of the enforcement of judgments, as already remarked, it would indeed be curious were the position otherwise - leaving the judgment debtor free to carry on business and ignore the outstanding judgment. The context is that a risk of dissipation must already have been

> demonstrated, as otherwise no *Mareva* injunction (with or without the exception) would have been granted at all. Accordingly, over the period between judgment and execution taking effect, a *Mareva* , without the exception, serves to hold the ring: Sir Jeremy Cooke, judgment, at [27].
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> 57 Fifthly, I would prefer not to characterise refusal of the exception in a post-judgment *Mareva* as either a "starting point" or a presumption. For that matter, I would be equally reluctant to pigeon-hole refusal of the exception as a remedy of last resort; there is no warrant for so confining such a decision, save that the more draconian the relief, the greater the need for its justification. Instead and while it strikes me as an obvious matter to consider when granting a post-judgment*Mareva* , the appropriateness or otherwise of the exception in such a *Mareva* should be treated as a question turning on all the facts in the individual case. In addressing this question, Tomlinson LJ's test in *Nomihold* , at [33] ("it will sometimes and perhaps usually be inappropriate" to include the exception in a post-judgment *Mareva*), furnishes helpful and appropriately nuanced general guidance. Thus analysed, the decision by a Judge to permit or refuse its inclusion is a discretionary decision reached on a fact specific basis, with which this Court will be slow to interfere. Furthermore, while a Judge, when considering refusal of the exception, would no doubt have regard to the ambit of the *Mareva* sought, the assets thus frozen and the impact on the judgment debtor's business, I am not at all attracted to the distinction which Mr Doctor attempted to draw between bank balances and other assets; nor do I think that the test for refusal favoured by Tomlinson LJ in *Nomihold* , at [33], was in any way confined to balances in bank accounts. In some circumstances, removal of the exception in respect of bank balances could readily prove as destructive of a defendant's business as removal of the exception across the board."

The parties' submissions.

14. Mr Jones, for the Claimant, submitted that it would be appropriate for me not to continue this exception "post judgment", for various reasons:

    a) There is no evidence that its absence would embarrass or hinder the Defendant in any way. The evidential burden in this regard was on the Defendant, who sought to justify use of frozen assets. In this regard, Mr Jones relied on the decisions in *Tidewater Marine International Inc v Phoenixtide Offshore Nigeria Ltd* [2015] EWHC 2748 (Comm) at 37, where Males J (as he then was) said that there was an onus on the Defendant to demonstrate that there are no other assets available, not frozen by the order, which he could use to pay for legal advice, a statement Mr Jones argued was equally applicable to funds used for business; and in *Halifax v Chandler* [2001] EWCA Civ 1750, in which

Clarke LJ (as he then was) referred (at paragraphs 17 and 27) to the fact that a Defendant had to put the facts fully and fairly before the Court, to show that there are no other assets which he can use.

b) The Defendant has made no effort whatever to satisfy the Dubai judgment.

c) The Defendant had made no attempt to account for what had happened to the very significant sums that had been misappropriated and/or diverted to IPC Pakistan. His diversion of the monies to Pakistan was intended to allow him to pretend that IPC Dubai did not have to account for them, as it was said that part of the Award quoted in Murray J's judgment showed; the only account given in Pakistan was that the money had been "dissipated" in IPC Pakistan's business; and his account that monies were owed to him by way of commission had been rejected by the arbitrator.

d) The Defendant had a long history of dishonesty and lack of probity, as appeared from an affidavit of Mr Atiyeh to which the Defendant had not responded.

e) There was a troubling history of a shifting of assets. Most recently, it had come to light that one of the Defendant's London properties (Norfolk Crescent) had been repossessed. Although there was no evidence as to why that was, it was argued that I should infer that it was because the debt burden had been allowed to grow, thus diminishing the value of the property in breach of the WFO; and the Defendant had incurred a costs liability towards the lender.

f) The Defendant was in breach of the WFO which led to the necessity of seeking disclosure from the banks.

g) Whilst this was a less important point, the Defendant has proved evasive in relation to service/acknowledgement of the QBD claim to enforce the judgment, particularly the refusal of couriered documents and the complete lack of any response notwithstanding the likelihood that the proceedings would have come to the Defendant's attention by one or other of the alternative means adopted.

15. Mr Cooper QC, on behalf of the Defendant, submitted as follows:

a) The effect of removing the exception would be to prevent the Defendant carrying on business and to treat the Claimant as a preferential or secured creditor. It is trite law that a freezing injunction, whether in a final or interim form, is not intended to provide a claimant with any proprietary or preferential interest in the assets of a defendant. This would be a draconian step. The suggestion that there is no evidence that the removal of the exception would embarrass the Defendant is to approach the matter from the wrong end of the telescope. As to the decisions in *Tidewater* and *Halifax*, those were cases which predated Emmott and involved different types of application.

b) It is apparent from the affidavit of the Defendant sworn in response to the order of HHJ Waksman QC that he does not have sufficient assets to satisfy the judgment.

c) There was no indication of any material change of circumstances, other than the obtaining of the English judgment, since the application was refused in 2019. Absent any change, there was no reason why I should reach a different conclusion to that which I reached in 2019.

d) The Claimant did not seek to have the exception removed at any time up until the refusal of permission to appeal by the Supreme Court.

e) The Claimant did not seek to have the Banker's Books Evidence Act application finally dealt with for a period of over 3 years.

f) As regards the points made by the Claimant:

i) There is no evidence that the Defendant is not cooperating with the Claimant or is deliberately seeking to avoid the effect of the WFO, unlike the position in *Emmott*.

ii) As to the assertion that the Defendant has failed to account for what happened to the money, this is to confuse the Defendant with IPC Dubai, the party to the Award.

iii) The Defendant did not need to respond to the allegations of want of probity since he consented to the WFO. In any event, those allegations are made in the statement of Mr Atiyeh who was confessedly dishonest himself.

iv) The argument as to evasion of service is a poor one. The Defendant has cooperated throughout these proceedings.

v) As to the property in Norfolk Crescent, there was no evidence to support the suggestion that the Defendant had allowed the debt burden to increase. Moreover, the Bank which had repossessed the property was a preferred creditor and it was not part of the function of a WFO to disturb the system of preferences. Finally, Mr Cooper QC pointed out that the Defendant had himself alerted the Claimant to the fact of the repossession.

My conclusions.

16. First, I accept Mr Jones' submission that, by reason of the entry of the English judgment, there has been a material change of circumstances which entitles me to exercise my discretion afresh. I did not understand Mr Cooper QC to contest this, although he clearly did submit that the discretionary factors prayed in aid on this occasion remained the same as in 2019 and for this reason I should exercise my discretion in the same way as I did then.

17. Secondly, in my judgment, it is clear from the decision in Wilson v Emmott that I have a discretion as to whether or not to remove the Angel Bell exception, taking into account all the circumstances of the case: see in particular paragraph 57 of that decision.

18. I turn then to the exercise of my discretion. I have concluded that, on the facts of this case, at least by reference to the evidence which has currently been put before me, it would be inappropriate to retain the Angel Bell exception and that the exception should thus be deleted from the WFO. I have reached this conclusion for the following principal reasons:

    i) I start with the guidance to be derived from *Emmott v Wilson* and the decision in *Nomihold* to which the Court of Appeal there made reference. The Court of Appeal drew the attention of judges in my position to the words of Tomlinson LJ, where he said that "it will sometimes and perhaps usually be inappropriate" to include such an exception in a post judgment WFO.

    ii) Secondly, looking again at *Emmott v Wilson*, the Court of Appeal stated that "given the policy of the law strongly in favour of the enforcement of judgments, as already remarked, it would indeed be curious were the position otherwise - leaving the judgment debtor free to carry on business and ignore the outstanding judgment". In essence, therefore, the law regards it as wrong to allow a party who owes a judgment debt to simply carry on business regardless.

    iii) Thirdly, and turning to the facts of the current case, there is a complete dearth of evidence as to the nature of the Defendant's business, what is being spent on business, and what profits or losses the Defendant is making. In my view, it is incumbent on a party who seeks to justify an exception of this type to explain the impact on that party's business of the removal of the exception. In this regard, I accept Mr Jones's submissions as to the extent of the observations in *Tidewater* and *Halifax*.

    iv) Fourthly, I regard it as of great importance that the Defendant has given no explanation of what happened to the money that he, or his company, misappropriated. The only answer that Mr Cooper QC could give to this is that the finding was made in relation to IPC Dubai; but that is a company wholly owned and controlled by the Defendant who has been found to be its controlling mind, so that that answer is not a good one. Apart from this, the only evidence that I have been taken to is to the effect that the bulk of the money has been "dissipated" by IPC Pakistan, in the course of its business, but without any detail being given. In my judgment, these explanations are wholly inadequate.

    v) Fifthly, there are allegations of dishonesty and want of probity against the Defendant which he has chosen not to answer. The fact that these were made by an individual who was himself found to be dishonest is, in my judgment, no answer. Nor is the fact that the Defendant chose, rather than to contest the allegations, to submit to the WFO. That is not evidence that the Defendant is not dishonest; it is a failure to seek to disprove the assertions.

19. As to the other matters which the Claimant relied on:

i) I regard the position in relation to Norfolk Crescent as troubling, since, although the Defendant had informed the Claimant of the fact of the repossession, this was some months after it had occurred. However, in the absence of any evidence as to what had occurred to cause the repossession, I decline to make any finding on this.

ii) I am not in a position to make any finding on whether the Defendant deliberately acted in breach of the WFO provisions as to production of bank accounts and therefore do not base myself on this.

iii) Finally, I place no reliance on the allegation in relation to evasion of service.

20. For all the above reasons, the WFO will be varied to delete the provisions of clause 11(b). I should make it is not clear that is remains open to the Defendant to apply to reimpose the exception, but that it will be necessary for the Defendant to produce much fuller evidence in this regard.

21. I would be grateful if the parties could draw up an order to give effect to this judgment.