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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT
[2022] EWHC 3110 (Comm)



No. CL-2017-000058

7 Rolls Building
Fetter Lane
London
EC4A 1NL

Friday, 11 November 2022

Before:

MR JUSTICE ANDREW BAKER

B E T W E E N :

GFH CAPITAL LIMITED
(A company incorporated in the Dubai International
Financial Centre of the Emirate of Dubai)

Claimant/Respondent

- and -

(1) DAVID LAWRENCE HAIGH
(2) THE COVE ESTATES LIMITED
(3) HOTEL COVE LIMITED
(4) COVE LAMORNA LIMITED
(5) MONT FLEURY LIMITED
(6) CLOATLEY HOSPITALITY LIMITED
(7) SPORT CAPITAL LIMITED
(a company incorporated in Guernsey)
(8) ALISON LOUISE THOMAS

Defendants/Applicants

MR A PRATT (instructed by Preiskel & Co. LLP) appeared on behalf of the Claimant/Respondent.

THE FIRST DEFENDANT/APPLICANT appeared in Person.

THE SECOND TO SIXTH DEFENDANTS/APPLICANTS did not appear and were not represented.

J U D G M E N T

MR JUSTICE ANDREW BAKER:

- 1 This is an unusual application issued on 3 November 2021 by Mr Haigh, the first defendant, at the time intending it to be an application, at least as stated in the application notice, on his own behalf and on behalf of the second to sixth defendants, for an order to the effect that the freezing order granted by Flaux J (as he then was) in December 2014 be discharged against all defendants.
- 2 It is an unusual application for a number of reasons. Firstly, it is unusual because the freezing order is now the best part of 8 years old and the application is only now before the court. Secondly, it is unusual because it has taken, for reasons I do not need to go through (the parties are very familiar with them), a full calendar year and two, if not three, adjournments to get the application to a hearing. Thirdly, it is unusual because, strictly speaking, the freezing order of Flaux J was not granted in this claim (CL-2017-000058) but in what was procedurally a predecessor to this claim issued in 2014 with the old style claim number of 2014 Folio 956. Although I am not sure this is anywhere in the bundle, I had a note to myself from CE-File that it may be, and if this matters at all going forward the parties can no doubt double-check this, that that claim now has the CE-File claim number of CL-2014-000603.
- 3 To be fair to the claimant, Mr Pratt has not suggested that I should refuse to entertain the application merely on the ground that the application notice was issued in this 2017 claim, but its subject matter is the order Flaux J made in the 2014 claim. On that procedural technicality, I would note that there is also in existence a proprietary injunction granted by Sir Andrew Smith in August 2017 that, on its face, was granted as an order made both in this 2017 claim and in the predecessor 2014 claim. As it seems to me, it would be sensible for this hearing that any order drawn up on the short judgment I am now giving likewise is expressed to be made in both claims and so, having said that the parties can check the 2014 claim number I have given, if it matters for future purposes, I have just immediately given them a reason why it will matter. So, for the purposes, in due course, of drawing up a formal order to reflect the outcome of today's hearing, we must all check that I have got that 2014 CL claim reference right.
- 4 As Mr Pratt has acknowledged, the 2014 claim in which the freezing order was made originally in August 2014 by Males J (as he then was), then continued with variations by the order of Flaux J, with which I am directly dealing, was a claim the only relief sought by which was a freezing order in support of the substantive claim brought against Mr Haigh by the claimant, which was a claim before the court of first instance of the Dubai International Financial Centre ("the DIFC"). The operative wording of the freezing order, after stating at paragraph 1 that it was a freezing order made on the claimant's application and at paragraph 2 that Mr Haigh, who was identified as the sole defendant, or various other parties identified as respondents to the freezing order relief, but not primary defendants to the claim, had a right to apply for it to be varied or discharged, and stating at paragraph 3 that it was made after an order, in fact, I understand, a freezing order, made between the claimant and the defendant in the DIFC proceedings, then was as follows at paragraph 4:

‘Until the disposal of the Claim or further order of the court, the Defendant must not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of his assets which are in England and Wales up to the value of US \$5 million (“the amount”).’

- 5 I have no doubt at all, although it is unusual that it has taken until now for the point to be brought up for determination, that, as granted in December 2014, any sensible recipient of

that order would understand “the Claim” in paragraph 4 to refer to and to mean the substantive claim brought by the claimant against the defendant before the DIFC referred to in paragraph 3. As I put it during the opening submissions by Mr Haigh this morning, and he adopted this characterisation, the sensible reading of the order is surely that at the end of the first sentence in paragraph 3 what was intended was “(“the Claim”)”. That is to say “the Claim”, for the purposes of this order, was the claim brought by the claimant before the first instance court in Dubai.

- 6 It is well known in practice before this court that an important and sharp distinction is drawn between pre-judgment and post-judgment relief of various kinds. In circumstances where the freezing order was granted at the outset, broadly speaking, of the overall litigation process in this wider case, by reference to the substantive claim being pursued in the DIFC, for the court to say at that stage that it was granting an injunction by way of freezing order relief, until the disposal of the Claim, is to say that the injunction thus granted existed until the final determination of the claim before the court in the DIFC. That occurred as long ago now as 4 July 2018 by and under a judgment of that date of Sir Jeremy Cooke sitting as a judge of the DIFC.
- 7 In those circumstances, inconvenient though the claimant may regard it and unusual though it is that it has taken four years to get to it, but the wide range of other things that have gone on in the litigation between these parties may be an explanation for why it is only now that the point is being confronted, in my judgment the only sensible reading of the order granted by Flaux J in December 2014 is such that it expired on its own terms on 4 July 2018. It is evident from at least some of the material that is in front of me that the claimant, for its part, has not appreciated that that is the effect of the order that it had obtained and, for his part, Mr Haigh, alongside a wide range of other matters he has had to deal with in the litigation, has, until now, not brought to a head before the court that question; namely whether, in truth, it did still apply.
- 8 In those circumstances, I am satisfied that the appropriate order to make on Mr Haigh’s application is an order in appropriate language declaring that the order of Flaux J stands discharged and, indeed, spelling out that it stands discharged having expired on its own terms on 4 July 2018. The substance of the matter, therefore, is that the application is granted, albeit offline and with the assistance of the parties I shall take a little care as to exactly how we articulate that conclusion in the order that I now make.
- 9 Mr Haigh, from whom I did not call on in reply, having come to the clear view that he was correct about the terminal point of the December 2014 order, also pursued the application on grounds that if, on its own terms, the order otherwise continued to apply, nonetheless the time had come - and, indeed, again, he would say the time had come some time ago - at which the order should be discharged by the court on grounds, as he says, that the court can see that there is no continuing purpose for or need for the order to remain in place. In that regard, he argued that the court can conclude that he has no relevant material assets that might be the subject matter of an ongoing application of the freezing order, that there is not today - whatever the position may have been in the past - a serious or relevant risk of the dissipation of assets, and that, because the claimant’s evidence concerning, as it says, its ongoing concerns in the wider recovery process are all primarily to do with the final securing of its interests over the properties in Cornwall and its wish to continue to explore the possibility that they may have generated income that may have come directly or indirectly to Mr Haigh, but which has not been traced, relates, says Mr Haigh, really to the position of those corporate co-defendants of his and not to his own position.

- 10 In relation to those other wider grounds, I will express no final conclusion, not least because I did not call on Mr Haigh in reply to what Mr Pratt had said about them, because I had come to the clear view that he was correct on his logically prior point. If and to the extent that submissions around Mr Haigh's current financial position, the degree to which he has or has not given - fully and satisfactorily - disclosure of all assets, including income flows that might directly or indirectly have come to him, matter to any further incarnations of this longstanding litigation, as the claimant seeks to recover its funds, then nothing I have said today should be taken as a ruling either for or against the submissions Mr Haigh made in relation to those points, or the submissions in response that Mr Pratt put forward.
- 11 For those reasons, it may be clumsily expressed, but so that the parties know immediately where they stand, the application in substance succeeds. It succeeds on the basis that, strictly speaking, the order of Flaux J expired on its own terms as of 4 July 2018 and it is high time that the court so declared by order so that these parties - and it may be any third parties made aware of the freezing order - can know the position.
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CERTIFICATE

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This transcript has been approved by the Judge.