

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)



No. CL-2022-000048

NCN: [2023] EWHC 2624 (Comm)

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 4 October 2023

Before:

MR JUSTICE BUTCHER

B E T W E E N :

- (1) COMMERCIAL BANK OF DUBAI PSC
- (2) HORTIN HOLDINGS LIMITED
- (3) WESTDENE INVESTMENT LIMITED
- (4) LODGE HILL LIMITED
- (5) VS 1897 (CAYMAN) LIMITED

Claimants

- and -

- (1) ABDALLA JUMA MAJID AL SARI
- (2) MAJID ABDALLA JUMA AL SARI
- (3) MOHAMED ABDALLA JUMA AL SARI
- (4) FAL OIL CO LLC
- (5) INVESTMENT GROUP PRIVATE LIMITED
- (6) IGPL GENERAL TRADING LLC
- (7) GLOBE INVESTMENT HOLDINGS LIMITED
- (8) MENA INVESTMENT HOLDINGS LIMITED
- (9) MAS CAPITAL HOLDINGS LIMITED

Defendants/Respondents

J U D G M E N T

A P P E A R A N C E S

MR A PETO KC and MR A TROTTER (instructed by Jones Day) appeared on behalf of the First Claimant.

MR C WILLIAMS (instructed by Ince & Co Middle East LLP) appeared on behalf of the Seventh to Ninth Defendants.

THE FIRST TO SIXTH DEFENDANTS did not appear and were not represented.

MR JUSTICE BUTCHER:

- 1 The first question that arises in relation to the First Claimant's application for sanctions for the alleged contempt on the part of the First to Sixth Defendants, is whether it is appropriate for the court to proceed in the absence of the Defendants, for it is the case that they are not here or represented today. The court has a discretion to proceed in the absence of defendants, albeit one which will be exercised with care and only after consideration of the relevant factors.
- 2 A number of considerations have been identified in the authorities, and these have been helpfully summarised by the Claimant's counsel in their skeleton argument for the committal application. I propose to deal with those in turn.
- 3 The first consideration is whether the respondents have been served with the relevant documents including notice of this hearing. I am satisfied that they have. I am satisfied as to the service of the original disclosure orders, as I will explain in due course. As to this application, namely the contempt application, that was served on Charles Russell Speechlys ('CRS'), and thus on the CRS Defendants, as they have been called (namely the First, Second, Fourth, Fifth and Sixth Defendants) for whom CRS were acting at the time. No issue was taken with that service, and until CRS ceased to act they corresponded regarding the application, and sought extensions of time in relation to it. As to the Third Defendant, Mohamed Al Sari, it has emerged that the contempt application was not served on him through the prison authorities. It was, however, served in accordance with paragraph 2.4(ii) of the alternative service order made at the return date, namely by service on Abdalla and Majid Al Sari. It is also apparent that Mohamed Al Sari will have been aware of the application because it has been sent to an Al Soor email address in March 2023, which there is evidence that Mohamed Al Sari has been using.

- 4 In relation to the listing of today's hearing, I am satisfied that the First to Sixth Defendants have been served with my order bringing forward the hearing of the contempt application against them to the date previously held for the Claimants' summary judgment application. That is dealt with in paragraph 21 of Mr Richards' fifth affidavit. Steps were taken to serve that order on 12 May 2023. The relevant Defendants have also been informed on 20 September that the date in that order, which was said to be 3 October 2023, was not the date on which this hearing would take place, which was today, 4 October. That is dealt with in paragraph 22 of Mr Richards' fifth affidavit.
- 5 Accordingly, I am satisfied that the relevant Defendants have been served with the relevant documents and what I have said also indicates that those Defendants have had sufficient notice to enable them to prepare for this hearing, which is the second of the matters referred to in the list of considerations which I have mentioned.
- 6 The third is whether any reason has been advanced for the non-appearance of these Defendants. The answer is that no reason has been advanced.
- 7 The fourth is whether, by reference to the nature and circumstances of a respondent's behaviour, it has waived the right to be present. That may also be formulated as whether it is reasonable to conclude that the respondent knows of or is indifferent to the consequences of the case proceeding in its absence. I am prepared to draw that inference in this case from the course of conduct of these proceedings, including that the relevant Defendants, apart from Mohamed Al Sari who has never engaged with the proceedings at all, did not put in evidence in relation to the application for summary judgment, and also did not appear on the application, which they themselves had made, challenging the jurisdiction of the court.

- 8** The next consideration is whether an adjournment would be likely to secure the attendance of a respondent and facilitate its representation. Given the history of this matter I do not consider that an adjournment would be likely to have those effects in relation to these Defendants.
- 9** The next consideration is the extent of disadvantage to the respondent in not being able to present its account of events. I recognise that there will plainly be such a disadvantage. However, in this case many of the facts are beyond argument. Moreover, there is an indication, both in Majid 1 and Majid 2, as to the nature of what the Defendants might say in relation to many of the matters which are relevant. Accordingly, although there is clearly a disadvantage, I do not accept that it is a very substantial disadvantage. Such disadvantage has to be weighed with the other matters to which I have to have regard.
- 1 0** One of these is whether undue prejudice would be caused to the applicant by any delay. Given the length of time since this application was issued and served, and given the length of time for which these proceedings have been going on and the very significant costs which have been incurred, I am of the view that it would cause undue prejudice for there to be a delay now by reason of the Defendants' not having appeared in relation to an application which they have known about for a considerable length of time.
- 1 1** The next consideration is whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondent. Effectively for the reasons which I have already given, I am satisfied that it would not. The Defendants have had the opportunity of putting in evidence. They have had the opportunity of appearing if they had wished to do so, but have not done so.

- 1 2** Finally, I have looked at the matter overall in terms of whether it is in accordance with the overriding objective for the matter to proceed today in the absence of the Defendants. I have no doubt that it is. It is in accordance with the overriding objective to deal with the matter expeditiously. That, in the context of these proceedings, means proceeding now given the extent of the opportunity which the Defendants have had to appear and be represented, had they so wished. That will avoid the incurring of unnecessary further costs. It is also in accordance with the overriding objective that this court should seek to uphold the authority of its own orders, and to do so without unnecessary delay.
- 1 3** For those reasons I am satisfied that it is appropriate to proceed with this application in the absence of the First to Sixth Defendants.

L A T E R

- 1 4** This is an application by the First Claimant for sanctions for contempt in claim no. CL-2022-000048 against the First to Sixth Defendants.
- 1 5** I will call the First Claimant, which is the Commercial Bank of Dubai, "C1" or "the Bank". The Third Defendant is Mohamed Al Sari, and he has not engaged with the proceedings at any point. I will call him either "D3" or "Mohamed Al Sari". The First, Second and Fourth to Sixth Defendants were previously represented by Charles Russell Speechlys ('CRS'), and for that reason I may refer to them as "the CRS Defendants".
- 1 6** In fact, CRS came off the record in February 2023, and the CRS Defendants have not engaged with the proceedings since then, save that I understand that the First Defendant, Abdalla Al Sari, has recently re-engaged for the limited purpose of attempting to recover

certain documents which he says are confidential documents which were in the Bridge Apartment when it was subject to enforcement procedures.

Background

- 1 7** What emerges from the witness statements before me is that in November 2012 the Bank commenced proceedings in Sharjah ("the Sharjah proceedings") to recover debts from the First to Fifth Defendants. In March 2016 the Sharjah Court of First Instance gave judgment for the Bank for some £87 million. On 6 April 2021, after obtaining summary judgment in enforcement proceedings in the BVI, the Bank, through the Fifth Claimant, took control of the shares in the Second to Fourth Claimants, which were SPVs formerly owned by Majid and Mohamed Al Sari, and which have been referred to as "the BVI Companies". The BVI Companies' assets were properties in London worth about £9 million, consisting of a luxury apartment called "the Bridge Apartment" and certain commercial units which, with the Bridge Apartment, have been described as "the Bridge properties."
- 1 8** The Claimants were not able to obtain possession of the Bridge Apartment until recently. It is a feature of the 2022 proceedings, which I will refer to below, that the Claimants allege that the Al Saris and the Sixth to Ninth Defendants conspired to thwart the enforcement of the obligation to pay the Sharjah judgment through various means, including a fabricated tenancy agreement, and various documents which have been called "the Globe documents" which purported to create a substantial debt in favour of the Seventh Defendant against the BVI Companies. Those are matters which are still live in the 2022 proceedings. The BVI Companies have, however, recently, on 6 September 2023, by the High Court Enforcement Officer, taken possession of the Bridge Apartment.

- 1 9** The initial proceedings which were brought here were commenced on 17 November 2014. At that point the Bank sought and obtained a domestic freezing order pursuant to section 25 of CJA 1982 in support of the Sharjah proceedings. That order was made against the Al Saris, and against the BVI Companies (which were then under the Al Saris' control) as *Chabra* Defendants. That freezing order remained in place against the BVI Companies until the Bank took control of them, and against the Al Saris until the worldwide freezing order was continued at the return date in the proceedings which I will just come to now. Those proceedings are what have been called "the 2022 proceedings". In them the Bank claims, against the First to Fifth Defendants, to enforce the Sharjah judgment as a debt. That has been called "the enforcement claim". The Bank also claims against the First to Third and Sixth to Ninth Defendants in relation to the alleged fraudulent wrongdoing frustrating enforcement of the Sharjah judgment, to which I have already referred. Those have been called "the conduct claims".
- 2 0** Default judgment has been entered against Mohamed Al Sari on all of the claims. Summary judgment has been entered against the First, Second and Fourth and Fifth Defendants on the enforcement claims. Jurisdiction challenges brought by all the Defendants except Mohamed Al Sari in respect of the conduct claims were recently dismissed by Bright J. There is an extant application by the Seventh to Ninth Defendants for permission to appeal in respect of that dismissal, but not by any of the First, Second, Fourth, Fifth or Sixth Defendants.
- 2 1** Most significant for present purposes is that on 18 February 2022, at the outset of the 2022 proceedings, Cockerill J granted a worldwide freezing order against each of the Defendants. That worldwide freezing order was continued by Calver J at the return date on 11 March 2022, together with an imaging order and other injunctive relief. Both the worldwide freezing order and the continuation order contained ancillary asset disclosure orders. As will appear, the Defendants who were affected by those orders did not even purport to

comply with their asset disclosure obligations until several weeks after deadlines for doing so. As I will set out further, the First to Sixth Defendants have still not done so.

2 2 The contempt application was issued on 12 May 2022, that is to say some 12 weeks after service of the worldwide freezing order and between seven and eleven weeks after the various deadlines for asset disclosure obligations set out in the worldwide freezing order and continuation order. It was also over two months after Calver J had, at the return date, criticised what he described as "the Defendants' seriously contemptuous attitude to the court's freezing order."

The Legal Principles.

2 3 The only legal principles which, for present purposes, it is necessary to mention are, first, that asset disclosure is often an important aspect of a freezing order because it is the only means by which an applicant can police compliance with the order and, if necessary, bring non-compliance to the attention of the court. Secondly, in relation to a contempt application such as this, the burden of proof of showing that there has been contemptuous non-compliance is on the applicant; and the applicant must prove the contempt to a criminal standard, that is to say that the allegations must be proved so that the court is sure of their truth.

2 4 Where a contempt is alleged to consist of a breach of a court order, it is necessary for the court to be satisfied so that it is sure that the order was served on the respondent. In addition a contempt application itself is usually to be served personally unless the court directs otherwise in accordance with Part 6 (CPR Rule 81.5(1)). Where the Defendant does not appear the court has a discretion to proceed in his/her or its absence. I have already this morning given my reasons for concluding that it is appropriate to do so here.

The Orders Breached

- 2 5** The starting point is to identify the obligations imposed by the court order which the First to Sixth Defendants are said to have breached.
- 2 6** The asset disclosure obligations under the worldwide freezing order and the continuation order were, in summary, as follows. The relevant Defendants were required to inform the Claimants' solicitors, within 24 hours, of all their assets worldwide exceeding £50,000 in value, of all of their bank accounts, as defined, in any jurisdiction and, in the case of the Al Saris, of all companies over which they had control whether directly or indirectly. Secondly, within 48 hours, the location of all the asset documents, as defined. Thirdly, within five working days, of any direct or indirect disposals of their assets to related parties, or disposals at an under value between 1 October 2015 and 23 February 2022, and of any third parties holding asset documents on their behalf, or to their order. Within seven days the Defendants were further required to deliver up to the Claimants' solicitors all the asset documents, or copies of those documents, which were in their personal custody or possession; and serve an affidavit confirming the information listed above, and the details of any attached asset, and exhibiting any attachment or similar order relating to it, and confirming that they had complied with their obligations to preserve and deliver up asset documents.
- 2 7** Under the continuation order the Defendants were further required, within five working days, to give written instructions to third parties to deliver up any asset documents held to the order of, or on behalf of, the respondents, and in the case of bank accounts to give those instructions in a prescribed form, and to deliver up to the Claimants copies of the signed letters or instructions.

Service

- 2 8** The next issue to consider is whether there was service of the worldwide freezing order and the continuation order on the Defendants. In respect of the CRS Defendants the material before me establishes so that I am sure that the worldwide freezing order was served, together with the service bundle, by email at 8.15 a.m. on 23 February 2022 pursuant to the order for alternative service granted at the without notice hearing. Further, Ms Sheffield of CRS accepted the invitation to a file share website to download the documents at 8.23 a.m. and it was downloaded by her colleague at CRS at 9.56 a.m. CRS later confirmed in correspondence that they were approached by the CRS Defendants on 23 February 2022. The worldwide freezing order was also served or notified by various other alternative means which were permitted, or later deemed to be good service. It is clear that the CRS Defendants were well aware of the worldwide freezing order by 23 February 2022. The continuation order was served on CRS on 14 March 2022.
- 2 9** As to Mohamed Al Sari, the worldwide freezing order was served by various methods permitted under the service order granted by Cockerill J. There was evidence before Calver J on the return date that the Bank's UAE solicitors had been informed by the Sharjah correctional authorities that Mohamed Al Sari was being held at the Sharjah Central Jail. On that basis Calver J granted permission to effect service by email on the correctional authorities. The worldwide freezing order and continuation order were each served on him in that way on 11 March 2022.
- 3 0** As to the service of the committal application, I have already given my reasons at an earlier stage today for concluding that the relevant Defendants have also all been served with the committal application.

Non-Compliance

- 3 1** The next issue to consider is whether there has been non-compliance with the orders which I have mentioned. As the Claimants say, the position of the Third Defendant, Mohamed Al Sari, is the starkest. He has never engaged with the proceedings at all, nor has he even purported to comply with any of his asset disclosure obligations under the worldwide freezing order, or the continuation order. As I have said, I am satisfied that he was served with these orders, but he has not engaged or responded to any of the Claimants' communications. I do not consider there to be any reasonable doubt that he was aware of the worldwide freezing order and continuation order, or of the contempt application and this hearing, but he has deliberately refused to comply with his obligations or to engage with these proceedings.
- 3 2** As to those Defendants who have been called "the CRS Defendants" the position is that during the period before the return date, they did not comply with the asset disclosure obligations which they were under. This was notwithstanding that they did instruct CRS to undertake other work. At the return date on 11 March 2022 Calver J observed that the CRS Defendants had simply ignored their asset disclosure obligations under the worldwide freezing order. What they did on that occasion, however, was unsuccessfully to seek an adjournment. Calver J described their conduct as "fairly extraordinary", and he noted that at that stage there was no apology, and no suggestion that they (the Defendants) were going to comply. Calver J ordered Abdalla and Majid Al Sari to explain their non-compliance. The reasons which were then given in Majid 1, dated 16 March 2022, were, in my view, entirely inadequate. Insofar as that affidavit contained an apology it was contradicted by the suggestion made that it was not fair that he should be required to comply, and an indication that he still needed to consider his position in light of the advice that he had received.

- 3 3** It was not until 14 April 2022 that CRS indicated that they were instructed that their clients wished to comply with their asset disclosure obligations and proposed to do so by 28 April 2022. Despite that, the CRS Defendants instead applied to the Sharjah court seeking relief to prevent the worldwide freezing order being enforced against them. That claim in Sharjah, and their appeals were dismissed. But the evidence which was filed in the meantime in this court omitted to mention the application which had been made to the Sharjah Court. It is fair to say, I think, that the CRS Defendants had been looking for a way to avoid complying with their asset disclosure obligations and had been less than frank with the Claimants and the court about what they were doing.
- 3 4** As will appear from what I have already said, the CRS Defendants had not purported to comply with their asset disclosure obligations until Majid 2 was filed on 13 May 2022. Majid 2 gave only very limited disclosure, but sought to give a number of reasons for not giving more. Amongst other things, Majid 2 relied on what was said to be relevant UAE confidentiality laws through a legal opinion given by a lawyer who was acting for Majid Al Sari in the Sharjah proceedings.
- 3 5** In my judgment, it is clear that the reasons which were given for declining to give further disclosure were bad ones. The first was that, in certain respects, the First or Second Defendants had no relevant interest in companies or their assets. The position is that Majid 2 accepts that the First and Second Defendants had information relating to certain Al Sari companies, but said that those two gentleman had no interest in the companies beyond being their appointed managers. That suggestion is inconsistent with the evidence of certain of the trade licences, which indicate that the shares in several of the companies were held directly, or indirectly, by the First or Second Defendants, or other Al Sari family members including children. There is also evidence before me that the Al Saris treat family companies as under their control and hold assets through them, which they deal with and treat as their own. In

any event that argument provided no excuse for the companies themselves, that is to say the Fourth to Sixth Defendants, not disclosing their assets.

- 3 6** The second reason was a refusal to disclose UAE assets on the basis that all those assets were subject to attachment orders which rendered their value nil. The answer to that appears to me to be that the fact that an attached asset could not lawfully be disposed of did not render it valueless.
- 3 7** The third reason was, as I have said, a reference to UAE confidentiality rules. The legal opinion relied on asserted that Abdalla and Majid Al Sari could be exposed to penalties under the UAE Penal Code, or consequent civil liability, for disclosing information confidential to the companies of which they were the managers. However, in the first place, I am not satisfied that, even if that were the case, it would be a justification for non-compliance with the disclosure orders in the worldwide freezing order, and the continuation order. If well-founded at all, it would have been a basis to have sought a variation or amendment to the worldwide freezing order or continuation order. Secondly, there is good reason to believe that it is a wrong view of the law, because disclosure is not prohibited under the relevant UAE provision if it is permitted by law, and that, in the view of Mr Al Zarouni, the expert whose report has been exhibited by the Bank, would include the orders of a foreign court. Thirdly, even if the legal opinion were correct, the risk of prosecution of Abdalla or Majid Al Sari would appear to rest on the fanciful suggestion that the Al Sari companies under their control would refuse to authorise the disclosure, which is particularly unrealistic in circumstances where three of the companies are themselves the subject of the worldwide freezing order and required to give disclosure.

Contempt

3 8 I find, therefore, that there was non-compliance in the respects which I have identified, and I further find that the First to Sixth Defendants are in contempt, by reason of that non-compliance, in the following respects: first, there was contemptuous non-compliance in a timely fashion with the order for asset disclosure. The CRS Defendants were obliged to give asset disclosure but failed to do so by the return date or for up to 12 weeks after their obligations fell due to be performed. Calver J said, in paragraph 15 of his judgment of 11 March 2022 ([2022] EWHC 705 (Comm)) that this was a "serious contempt". I agree. I am sure that the delay was deliberate in order in part to search for a way of avoiding disclosing the relevant assets. That is a conclusion which I reach in light of what has transpired regarding the Sharjah WFO proceedings, the inadequacy of the Defendants' excuses for the delay, the weakness of the arguments for the limits of disclosure ultimately produced in Majid 2, and the propensity of the First to Sixth Defendants to disobey court orders shown by the history of non-compliance in these proceedings.

3 9 I am also sure that there was contempt in the failure by the First and Second Defendants to disclose assets exceeding £50,000 and their bank accounts. I am sure of this for the reasons set out in Mr Richards' fourth affidavit. In particular I am sure that there was a failure by Abdalla Al Sari to disclose his direct shareholding in Sari Investments LLC. There was a failure by Majid Al Sari to disclose his direct shareholding in IGPL Investments LLC and IGPL. There was a failure by Abdalla and Majid Al Sari to disclose assets or bank accounts of the Al Sari property companies which they managed and which, it is to be inferred for the reasons given in Mr Richards' fourth affidavit, they had power to deal with as their own. In particular they failed to disclose the funds or bank accounts of IGPL GT used to pay CRS' fees, and a yacht owned through IGPL GT. Abdalla Al Sari failed to disclose any assets or bank accounts whether in the UAE or elsewhere; he gave an express refusal to disclose assets in the UAE. I find it highly unlikely that he owns no assets and has no bank accounts. Majid Al Sari refused to disclose any assets in the UAE. He accepts part ownership of the

Al Sari home compound. He did not say that there were no such assets, and FAL, IGPL, and IGPL GT, who were also respondents to the worldwide freezing order in their own right, have refused to disclose any assets at all. In those respects I regard there as having clearly been a contemptuous non-compliance with the orders in question.

- 4 0** Thirdly, there was a failure to disclose disposals to related parties or at an undervalue. Majid 2 did not purport to make any disclosures of related party or undervalue disposals, as required by paragraph 10(1)(d) of the worldwide freezing order. When the Claimants sought clarification of that, CRS said, by letter of 2 August 2022, that there were no such disposals by Abdalla or Majid Al Sari, considering the terms of paragraph 10(1)(d) of the worldwide freezing order, and, as regards the Fourth to Sixth Defendants, none that they were permitted to disclose. However, as regards the First and Second Defendants, that has not been confirmed on affidavit as it should have been. As regards the Fourth to Sixth Defendants, that letter appears to show that there have been such disposals but they refused to disclose them.
- 4 1** Fourthly, in relation to asset documents, under the worldwide freezing order the Defendants were required to give details of where asset documents were located, and the third parties holding such asset documents, as well as to deliver up any asset documents. These obligations were simply ignored. Majid 2 does not purport to comply with these obligations.
- 4 2** Therefore, in that respect, as well as the others, I am sure that the First to Sixth Defendants are in contumelious default of the orders of the court.
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CERTIFICATE

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