Neutral Citation Number: [2025] EWHC 270 (KB)

Case No: QB-2022-002901

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 February 2025

Before:

MR JONATHAN GLASSON KC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between:

MR. GUIDO DE SANCTIS

Respondent

- and –

DR. FRANCESCA ROMANA BOTTARI

Applicant

- -

Mr Peter Knox KC and **Mr Adam Riley** (instructed by Ronald Fletcher Baker LLP) for the Applicant
Ms Nora Wannagat (instructed by Phillips Lewis Smith Limited Solicitors) for the Respondent

Hearing date: 29 January 2025
Draft judgment sent to the parties: 7 February 2025

- -

Approved Judgment

This judgment was handed down remotely at 2 p.m. on 10th February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JONATHAN GLASSON KC :

1. Dr Francesca Bottari ("*the Applicant*") applies for an interim prohibitory injunction to restrain her former husband Mr Guido de Sanctis ("*the Respondent*") from enforcing the Order of Master Yoxall, dated 19 March 2024 ("*the Order*"), pending her application for a stay of execution of the Order. In the Order Master Yoxall ordered the Applicant to give up possession of her home, a studio flat at 607 Chelsea Cloisters, Sloane Avenue, London SW3 ("*the Property*"), on 15 November 2024. That Order followed a charging order on the Property made on 10 February 2022 consequent upon the judgment of the Rome Court of Appeal dated 29 January 2021 ("the Judgment") and its registration as a Foreign Judgment in England and Wales on 16 November 2021.

2. On the day on which the Applicant had been ordered to give up possession, she issued an application for a stay of the Order on the basis that the Judgment was under challenge by way of an application for the Court of Cassation (Italy's highest court). The hearing of the application is due to be heard on 31 January 2025, with a decision likely to be reached by the end of April or May 2025. The application for a stay is predicated upon a report dated 12 November 2024 from an Italian lawyer, Sig. Vincenzo Pagano, who says that her application possesses a potential for success and that there are "*compelling*" reasons for it being accepted.

3. The application for a stay has yet to be listed. On 19 December 2024 the Respondent said that he would apply for a warrant of possession on 6 January 2025 if the Applicant did not agree to give up possession by that date. Consequently, on 2 January 2025 the Applicant issued an application for an interim injunction. Although in the Respondent's skeleton argument it was unclear whether the writ of possession had been applied for, Ms Wannagat clarified in her oral submissions that there had been such an application. It had however been unsuccessful as the wrong form had been completed.

THE HEARING BEFORE ME

4. For the purposes of the hearing, I was provided with a 379-page bundle as well as bundles of authorities from the Applicant and from the Respondent. Both parties submitted skeleton arguments in advance, and I was also provided at the hearing with the skeleton arguments that were before Master Yoxall as well as previously instructed counsel's note of the hearing before Master Yoxall. At the hearing I heard detailed oral submissions.

5. I am grateful to both counsel for their assistance.

THE BACKGROUND

6. The background to the application before me is set out in two witness statements from Mr Benjamin Frost, the Applicant's solicitor.

7. Mr Frost explains in his statement that the parties were married in July 1986 and had two children, born in 1993 and 1998. He goes on to say that, to meet the family's needs, the Applicant left her job in 1993 to follow her husband abroad in his work as a diplomat from 1993 to 2006 and that the Applicant co-managed the household finances with him as well looking after the children.

8. The parties separated in 2008 which was legally confirmed the following year. The divorce was finalised by the Italian courts in 2014 although Mr Frost says that there were "modifications" in 2016.

9. The Italian litigation that led to Master Yoxall's order began in February 2009 when the Respondent accused the Applicant, then his wife, of misappropriating funds of his which he had deposited into two accounts held in the parties' joint names and into one account in the Applicant's sole name. The Applicant defended those proceedings on the basis that she had not misappropriated the funds and that the funds spent from those accounts were to cover the family expenses.

10. In a judgment handed down on 2 February 2017, the Tribunale di Roma civil dismissed the Respondents' claims in respect of two of the three accounts on the basis that *"In the case of spouses, the above presumption [of equal ownership with a right to dispose of 50% even if only one of them provided the money] applies with even more reason, especially in the case of legal separation, since each spouse is required to contribute to the family needs in relation to their own assets and professional and household work capacity. All sums deposited and used for family needs cannot be definitively claimed as exclusive property: instead, they may relate to the residual balance*". Sig Pagano explains in his report that this principle follows from Article 143 and 316 *bis* of the Italian Civil Code which recognises that "*funds allocated for family needs are not to be treated as personal debts between spouses*". In respect of the other account, the Applicant was ordered to pay one half of the sums held in that account as she had been unable to prove that it had been used for the family.

11. Both parties appealed to the Rome Court of Appeal. On 29 January 2021 the Applicant's appeal was dismissed and the Respondent's claim upheld on the basis that the first instance court had not taken into account that the payments to the accounts came from the Respondent alone. That judgment was then registered as a Foreign Judgment with reference number FJ 166/21 on 16 November 2021. This being a judgment in proceedings that commenced before the end of the Brexit transition period, the registration took place under the EU regime.

12. On 10 December 2021, the Respondent applied for a charging order over the Property which is a leasehold registered in the Applicant's sole name. An interim charging order was made on 23 December 2021 which was made final on 10 February 2022.

13. The Applicant appealed the Judgment to the Court of Cassation. Pending the determination of that appeal, on 13 December 2022 Master McCloud adjourned the Respondent's application for an order of sale of the Property.

14. On 10 May 2023 the Court of Cassation dismissed the Applicant's appeal. Inter alia, the Court of Cassation held that the Applicant's first ground of appeal that the Court of Appeal had failed to take into account that Article 143 of the Civil Code treated the parties as if they were not a married couple with two children had not been previously argued.

15. On 4 July 2023, the Applicant challenged the Court of Cassation's decision by a "*revocation*" procedure, and on 16 October 2023 she applied for that process to be expedited.

THE HEARING BEFORE MASTER YOXALL AND THE ORDER

16. Both parties were represented by counsel at a hearing before Master Yoxall (sitting in retirement) on 21 March 2024. Neither counsel were those representing the parties at the hearing before me. In advance of the hearing before Master Yoxall each party submitted skeleton arguments.

17. At paragraph 7 of the Applicant's skeleton argument her then counsel stated: "*Counsel is instructed that D believes that that application will be determined in July or thereabouts. The court may consider it appropriate to await the outcome of those proceedings*."

18. The Respondent also addressed the revocation issue in his skeleton argument at paragraphs 23 -25. He cited the terms of Article 319 *bis* of the Italian Code of Civil Procedure and drew particular attention to the provision that specifies "*[i]n the event of an appeal for revocation of the sentence of the Court of Cassation, the suspension of the execution of the final sentence is not permitted, nor is the referral judgment or the deadline for resuming it suspended*". The Respondent relied upon a witness statement from his Italian barrister in relation to the revocation proceedings and, at paragraph 27, the Respondent noted that "*[i]n any event, no formal application has been made to the court for a stay*".

19. I was provided with previously instructed counsel's note of the hearing as well as Master Yoxall's ruling. The note records the ruling in abbreviated form as follows (with explanation added, where necessary and where the meaning is clear, for those abbreviations in square brackets and with emphasis added for passages which I discuss further):

> "This is appn by C for an order for sale of a property. Subject property is 607CC. This is a 6th floor leasehold flat. Studio apartment. D think

any dispute that his is relatively small. Under 18m2. Sometime ago the [valuation] was agreed at £280,000. Grateful for subs of [counsel] in this case, AG and SH. Take into [account] the written and oral subs. The [background] to the case is C and D were married in 1985. In 2008/9 they separated. D came to UK in 2013, married in Italy and are Italian. In 2016 they divorced. N told about any in re what happened in terms of financial provision directly arising from the divorce. History of proceedings between the [parties]. Ones that matter are that there was [judgment] in Civil Ct of Rome 2 Feb 2017 in C's favour. Appeal by D an x-app by C. That resulted in substantial [judgment] in C's favour. That was registered in this [court] on 16 Nov 2021. On 23 Dec 2021 ICO was made. Then the [judgment] was £1.256m. FCO made in re that [judgment] and appn for sale arises from the FCO. That appn has been made by separate proceedings. Further appeal to the SC in Rome. That appeal resulted in the appn for sale being adjourned pending outcome of that appeal. SC, n sure of exact date, think 10 May 2023, dismissed D's appeal and therefore became poss for C to resume his appn for sale. That is not end of it. D has issued appn, gather rather rare appn (from evidence that has been adduced from It lawyer) for revocation of SC decision. Said to be rare and for what it is worth and that unlikely to be successful. D go into that. Is an outstanding appn which is to be dealt with in It. Said for D that thought that the appn will be heard in Jul. C is less optimistic about the progress of It appeal hearings, and that it may take years before that is concluded, possible 1-2 years from now. [Not] something I'm in [position] to resolve. Sitn, human one, is that D lives at 607CC, and her evidence is that it is her home and her place of work. Also that it provides from time to time a home for her son. As far as the D's residence is concerned, satisfied on material before me that she resides 607CC. Is an issue about it, query, to extent that there is another property in Italy – Via Cassia – in which very recently D has completed a cert of registration that in It, gather, one is required to complete to say where you reside. D says living Via Cassia. May be, but seems to me that evidence that she actually resides 607CC. As far as Via Cassia is concerned, that was recently, late Feb, sold in auction, C was successful bidder and it was transferred to him. That has diminished the outstanding debt so that as of today the figure outstanding is €980k. Other than that credit against the [judgment] debt, no other payments by D v the [judgment] debt. Mentioned D's son Tancredi. He is 24yo and has been studying and completed a Masters. Completed internship in 2023. Willing to accept that from time to time, although [position] n totally clear, he has resided at 607CC, but d think that this is a property which can be regard as suitable for 2 adults on a long term basis. D think it can be described as T's permanent home but accept he is there from time to time. May be suitable for a couple, but would get rather awkward, for it to be a permanent home for 2 people. Looking at D's situation, satisfied on material before me that she does have a tumour. A p 109 there is a certificate. Refers to D being unable to work outside the home due to severe headaches [quoted]. Clearly according to this note D is said to be under surveillance at 3 hospitals. Said to be suffering from

meningioma and other visual defects. Ref to her being under review at neurology and ophthalmology. Satisfied that she is unwell, able to work, but not able to do so outside the home. D is a qualified a/c and [works] doing that and also she states that she works as lecturer. She did attend ct for questioning as to her means. Think was saying that she had income of £1,400pcm. Taken to b/s which indicated income of £2k pcm, but been said that [not] every statements shows an income. Ref in b/s to payments to Virgin money. Thought that that relates to a loan, but [not] been assisted as to the size and looks like D [did] give evidence when dealing with her debts on [questioning]. Against that C's situation is quite different. He is a man in diplomatic service. On a substantial income. D believes in the region of €150-200k pa. May be that he is provided with accommodation given his diplomatic duties. They are, must be said, in very difft financial circs. That overall [background]. Shld be said that this is significant, although n gone in in detail, said that the [judgment] sum to which the C has benefit, derives from fact that D misappropriated funds from various current a/cs, that is how [judgment] arises. Right to say that obo D that D d accept she took the money wrongfully, that she believed the It [judgment] made in error and the victim of miscarriage of justice. I c look behind the It jmts. They are [judgments] that have been made and appeals at several levels, and registered here. [Not] for me to look behind. Come to look at competing pns of C and D that factor that I take into a/c, that C has benefit of this substantial jmt, which 2st obtained in 2017 and then on appeal in 2021. Like all [judgment] [creditors] who obtain FCO, entitled to seek to enforce it so that the value is put to having the [judgment] and the FCO. Those are the competing [positions]. Said for D that in fact I sh make any order for sale at all in these circs given disparity of pns. Remind myself that the order for sale is discretionary. Supposed to be exercised judicially. Order for sale is an draconian order. Can have severe consequences. Do see D's difficulties in personal circs, d think I can say that an of sh ben made in this case. C has benefit of the [judgment] and the FCO an entitled to enforce. Been put to making efforts in It and here to recover [against] the [judgment] debt. Seems to me that the way to approach is in qn of how much time should be allowed to D before the sale takes effect. Think was said, as 2ndry pn for D, that should be 1 year. Taken by both counsel to *Pile*. Take into account. Take into account Art 8. Satisfied is D's home and her place of work. Think the appropriate period for pn to be postponed is 8 months."

20. Accordingly, the Order provided, at paragraph 8, that the sale of the Property should be postponed for 8 months until 18 November 2024 and that the Applicant should deliver possession of the Property to the Respondent by 4pm on 18 November 2024. At paragraph 9 of the Order, Master Yoxall provided that:

> "Either party may apply to the Court to vary any of the terms of this Order, or for further directions about the sale or the application of the proceeds of sale, or otherwise. Either party may apply to the Court to

vary any of the terms of this Order, or for further directions about the sale or the application of the proceeds of sale, or otherwise."

THE STAY APPLICATION

21. The Applicant has applied for a stay of Master Yoxall's order under CPR 83.7(4)(a) and/or under CPR 3.1(7) and/or under Article 38 of the Judgments Regulation.

    a) CPR 83.7(4)(a) provides that the Court may grant a stay of execution where "*there are special circumstances which render it inexpedient to enforce the judgment or Order*".

    b) CPR 3.(1)7 gives "*A power of the court under these Rules to make an order includes a power to vary or to revoke the order*".

    c) Article 38 of the Judgments Regulation provides that "*The court or authority before which a judgment given in another Member State is invoked may suspend the proceedings, in whole or in part, if: (a) the judgment is challenged in the Member State of origin*". Subsection (b) goes on to provide that the court may also suspend proceedings where an application has been made to refuse recognition of the foreign judgment (or conversely, that there are no grounds for refusing such).

22. In the application the Applicant also indicates that she will seek to set aside the registration of the Judgment, on the basis the registration of the Judgment was *ultra vires* of the Judgments Regulation. Further or alternatively the Applicant intends to argue that enforcement would be contrary to public policy because it is offensive to fundamental principles of English family law.

23. The Applicant relies upon the breadth of paragraph 9 of Master Yoxall's order (cited above at paragraph 20). The Applicant says that there are "*special circumstances*" which should lead the court to stay Master Yoxall's order because of the opinion of Sig Pagano. She draws particular attention to:

    a) The fact that Sig Pagano reviewed the complete case records, including documents and all the judgments;

    b) Sig Pagano's conclusion that there appears to have been a relevant error by the Court of Cassation in assuming that the "*family dimension*" of the funds had not been addressed in the courts below. This is said to be a substantial error, as it formed the basis of the Court's inadmissibility declaration, and such factual errors *"can strongly justify revocation"* (under Article 395(4) of the Civil Procedure Code).

c) Sig Pagano's view that the Court of Appeal and the Court of Cassation (because of its error in holding the Article 143 point inadmissible) wrongly had regard only to the general rules about joint obligors set out in Article 1298 of the Civil Code, and treated the funds provided by the Respondent to the joint bank accounts *"as personal resources and not as family support"*

d) Sig Pagano's statement that "*It is well-established in jurisprudence [i.e. under Article 143 and 316-bis] that during marriage, contributions to family expenses are made without any right of reimbursement by one spouse against the other for indistinguishable expenses of family needs. Various Cassation rulings support this principle (e.g., Cass. No. 10927/2018], confirming that, within marriage, funds allocated to family needs cannot be treated as sums subject to individual claims."*

e) His conclusion that *"the revocation request has a solid foundation as it is based on evident error of fact and a questionable interpretation of family law provisions. Given the documentation and the factual error, I believe that the revocation request presented on behalf of Dr. Bottari has merit and potential for success."*

24. Sig Pagno says that if the Judgment is revoked there are two possible outcomes. The first is that the Court of Cassation would order a new examination of the case, in which case all the bank records in the case (including those not considered by that court) could be reviewed, and all the sums in the accounts would be recognised as having been advanced for family purposes. Alternatively, the Court of Cassation could reinstate the first instance judgment for €192,500. The Applicant says that even if that happens, she would not have to pay anything she has already paid down a sum in excess of this €192,500 by selling her Roman property.

25. Sig Pagano has said that the Applicant's revocation appeal is likely to be determined within 60-90 days of the date on which it is listed. As it was heard on 31 January 2025, the judgment is therefore likely to be available some time between April and May 2025.

THE APPLICATION FOR AN INJUNCTION

26. The application before me is for an interim injunction ancillary to the stay application. Therefore, if the Applicant is successful, she will not obtain an order staying enforcement pending the determination of the revocation application in Italy, but only an order preventing enforcement pending the determination of the stay application.

27. The parties were agreed as to the legal principles to be applied. The test for determining whether to grant the injunction is well established by *American Cyanamid v Ethicon* [1975] A.C. 396 at pp 406-409. The Court will consider (a) whether there is a serious question to be tried, (b) whether damages will supply an adequate remedy and (c) where the balance of convenience lies. The predominant

focus of the submissions before me focused on the threshold question of whether or not there was a serious issue to be tried.

28. In considering an application for an interim injunction it is not part of the court's function to resolve conflicts of evidence nor to decide difficult questions of law which call for detailed argument. The court is not conducting a mini-trial. On *"an application for an interim injunction, the court must take the claimant's pleaded and evidenced case at face value, unless it is shown to be plainly false or fanciful. In evaluating whether there is a serious case to be tried, the [court] cannot disregard contested facts. When it comes to the balance of convenience, of course, the strength of the case and the evidential value of what is supporting it may be weighed (see Laddie J at pp 12 in Series 13 Software Ltd v Clarke [1996] All ER 853*." (per Sir Geoffrey Vos MR in *SportsDirect.com Retail Ltd v Newcastle United Football Co Ltd and another* [2024] EWCA Civ 532 [2024] 1 WLR 4324).

29. I turn then to consider the threshold question.

Is there a serious issue to be tried?

The submissions of the parties

30. The Applicant argued that Sig Pagano's opinion demonstrated that there was a real prospect of success for the stay application. The position was very different now from the position when Master Yoxall made the Order. There was a confirmed date for the revocation hearing and there was expert evidence as to the prospects of a successful revocation application. Moreover, Master Yoxall had clearly left open the possibility of the parties returning to court in paragraph 9 of his Order. The Applicant argued that the rule in *Henderson* was not applied so strictly in interlocutory matters, relying upon *Woodhouse v. Consignia plc* [2002] EWCA Civ 275. In that case the Court of Appeal had held that the court below had been wrong to dismiss a second application for a stay simply on the basis that the evidence in support of it could and should have been used in the first application.

31. The Applicant submitted that the principles applicable to seeking a stay of enforcement of an English judgment in circumstances where an appeal is pending in the foreign court were the same as those applied pending an appeal to the Court of Appeal against an English judgment and the applicable principles indicated that a stay was likely: *Motorola Solutions, Inc & Anr v Hytera Communications Corporation Ltd & Ors* [2024] EWHC 149 (Comm) at para 27 *per* Jacobs J at para 27 and paras 31-35. The essential question was whether there was a risk of injustice to one or other of the parties if a stay is granted or refused. Here, if the stay was not granted the Applicant would lose her home and her place of work, even though the Court of Cassation might revoke the Judgment.

32. The Respondent argued that nothing of substance had changed since Master Yoxall's order. Master Yoxall had been aware of the revocation application and had taken into that account. The revocation hearing, at that time, was said to be a few months away, which is the same position now. The stay application was an attempt to relitigate the same matters that were already before Master Yoxall. He relied on the commentary to the White Book at 3.1.17.1.1 that *"the interests of justice, and of litigants generally, require that a final order remains final unless there are proper grounds for an appeal, or unless there are exceptional grounds for varying or revoking it without an appeal*". For the Order to be varied there needed to be a material changes of circumstances (*Tibbles v SIG plc* [2012] 1 W.L.R. 2591) and there was no such material change here.

33. The Respondent submitted Sig Pagano's opinion was not compliant with CPR Part 35. In submissions however, Ms Wannagat accepted that I was entitled to take his opinion into account. Ms Wannagat noted that Sig Pagano's independence was open to question as he was now acting for the Applicant.

34. The Respondent argued that the court was bound to follow the provisions of Italian procedural law which provided (as indicated above) that in "*the event of an appeal for revocation of the sentence of the Court of Cassation, the suspension of the execution of the final sentence is not permitted, nor is the referral judgment or the deadline for resuming it suspended*" The Applicant should be no better a position in England than she would be in Italy, relying on *Windhorst v Levy* [2022] 2 BCLC 264.

35. Finally, the Respondent argued that I should disregard the Applicant's arguments that the Judgment should not be enforced as it had been incorrectly registered and/or that it was not enforceable because it was contrary to public policy.

Discussion

36. In the *American Cyanamid* case, Lord Diplock said that, in addressing the threshold test, it is sufficient if the court asks itself: is the applicant's action "*not frivolous or vexatious*"? Is there "*a serious question to be tried*" and is there "*a real prospect that he will succeed in his claim for a permanent injunction at the trial*". The threshold requirement does not require the court to be satisfied that the applicant will probably succeed.

37. I remind myself that it is not appropriate in addressing the threshold test to conduct a mini-trial or to resolve issues of law that would require detailed argument. Applying that approach, I have concluded that, on the material before me, the application for a stay is not frivolous or vexatious and that there is a real prospect of success that the Applicant will succeed.

38. *First*, Sig Pagano's opinion is thorough and based on a review of all of the case records. Although he has accepted instructions to act for the Applicant subsequently,

the report itself reads as an independent and objective assessment. The Respondent accepts that I should take it into account for the purposes of this application.

39. Sig Pagano states that revocation is a "*rare tool*" and that "*in practice, revocations are rarely granted, as the petitioner must clearly demonstrate the error or new decisive evidence*." He does not downplay therefore the hurdle facing the Applicant. Nonetheless, he concludes that, "*the revocation request has a "solid foundation" and "has merit and potential for success."*. The basis for that conclusion is that the grounds "*strongly justify revocation*" and that there is "*a compelling reason for revocation*".

40. *Secondly and relatedly*, Sig Pagano's opinion, and the fact that the Court of Cassation will give its determination in the next few months, is arguably a material change of circumstances since Master Yoxall made the Order (thereby meeting the requirement in *Tibbles* for the discretion under CPR 3.1(7) to be exercised (see para 39(ii) of the judgment of Rix LJ)). The position has changed from the time of the Order when Master Yoxall was being told on behalf of the Respondent that the application "*might take years before [it] is concluded, possibly 1-2 years from now*." Understandably on that basis the Master concluded that it was "*not something I am in a position to resolve*" (see underlined passages in the note of his ruling, set out above). The position is now different. The revocation application has been heard, and the outcome will be known within 60 to 90 days.

41. *Thirdly*, although Master Yoxall rightly said that he could not look behind the Italian judgments (see passage underlined in his ruling, cited above), the revocation application was a relevant factor. Similarly it was a relevant factor when Master McCloud adjourned the Respondent's application for an order for sale pending the Applicant's first appeal to the Court of Cassation. However, the extent to which Master Yoxall could take into account the revocation application was informed by the limited information that was then available. The position has now materially changed.

42. *Fourthly*, the terms of Master Yoxall's order are significant. Paragraph 9 of the Order is notable in expressly allowing the parties to apply to vary "*any of the terms of this Order*". Master Yoxall made plain in his ruling that an order for sale was a draconian order and that it was discretionary. Indeed, he exercised that discretion in postponing the sale for 8 months, by applying the principles in *Close Invoice Ltd v Pile* [2009] 1 F.LR 873, paras 10-13. Given the breadth of Paragraph 9, there is a real prospect that the Applicant would succeed in arguing that the Order should be stayed for the relatively limited period of time until the outcome of the revocation application is known.

43. *Fifthly,* applying the principles in *Motorola*, there is a serious issue to be tried as to whether to grant the stay application under CPR 83.7(4)(a). Whether the court should exercise its discretion to grant a stay "*will depend on all the circumstance of the case,*

but the essential question is whether there is a risk of injustice to one or the other or both parties if it grants or refuses a stay." *(Motorola* at para 32, citing the judgment of Eder J in *Otkritie International Investment Limited and Others v Urumov* [2014] EWHC 755 (Comm), Whilst the starting point is that a successful claimant is not to be prevented from enforcing his judgment even though an appeal is pending, the court has a discretion to grant a stay. The Respondent says that there is no question that the stay would "*stifle the appeal*" but he accepts that that is not the end of the matter. Indeed, it is clear that granting the stay would not result in the Respondent later being unable to enforce the Judgment (if the revocation application is unsuccessful).

44. *Sixthly and finally*, the issue as to whether or not the fact that under Italian law enforcement may not be suspended pending a revocation application should be determinative of whether a stay can be granted by the court gives rise to a serious issue to be tried. It is a question that will require further detailed argument. In *Sukhoruchkin v Van Bekestein* [2014] EWCA Civ 399, Sir Terence Etherton C., referred to relevant authority and stated (at para.32) that it is now well-established as a general principle that, on an application for an interim injunction, the court should not attempt to resolve "*critical disputed questions of fact or difficult points of law*". This is one such difficult point of law and will require detailed consideration at the hearing of the stay application.

45. For the avoidance of doubt, for the purposes of determining whether there is a serious issue to be tried, I have not had to consider the arguments that the Applicant has indicated that she will advance in relation to whether or not the Judgment is unenforceable on the grounds that it was not correctly registered and/or contrary to public policy. I note the Respondent's objections to those arguments (see paragraphs 42-44 of his skeleton argument). Those will be matters for the court determining the stay application.

Adequacy of damages

The submissions of the parties

46. The Applicant submitted that this question of the adequacy of damages was closely linked with the question of which route (the granting or withholding of the injunction that has been sought) was most likely to cause the least irremediable damage. The Applicant relied upon *National Commercial Bank Jamaica Ltd v Olint Corp. Ltd* [2009] UKPC 16 [2019] 1 WLR 1405.

47. In this case refusing the injunction would risk the Applicant losing her home and her place of work. The loss to the Respondent by comparison, were the injunction to be granted, would be "de minimis". To the extent that there would be any loss then the Applicant would pay into court the sum of £5,000 to support her undertaking in damages.

48. The Respondent argued that whilst the warrant of possession would mean that the Applicant would need to vacate the Property and find alternative accommodation the

costs of that (should the application for a stay be successful) could be met by way of damages.

49. The Respondent submitted that he had been kept out of pocket for a very significant amount of time. The court should consider why the Applicant is not providing an unlimited undertaking as to damages should the injunction be granted but the stay application be unsuccessful. The Respondent questioned why the Applicant was only offering an undertaking of £5,000 in circumstances where she was able to instruct leading and junior counsel for this hearing and referred to the Statement of Costs that had been filed by the Applicant.

Discussion

50. I accept the Applicant's arguments. The nature and degree of harm and inconvenience to the Applicant if the injunction was not granted could not be adequately recompensed by way of damages having regard to the fact that she is at risk of having to vacating her home and her place of work. By comparison, the loss to the Respondent could be compensated by way of damages.

51. I take into account that the Applicant is disabled and earns £20,000 per year. I do not accept the Respondent's argument that the Applicant has failed to discharge the onus on her to explain why she cannot give an unlimited undertaking in damages (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2016] 1 W.L.R. 160, at para 85). The Record of Examination and the medical evidence in the bundle supports the submissions made on her behalf by Mr Knox KC.

52. I accept the Applicant's arguments that the loss to the Respondent would be at best modest reflecting the possible loss of interest on the proceeds of sale. Accordingly, in my judgment a payment into court of £5,000 to support the Applicant's undertaking in damages would be sufficient.

Where does the balance of convenience lie?

The parties' submissions

53. The Applicant submitted that for the same reasons advanced in relation to the adequacy of damages, the balance of convenience was strongly in favour of granting the interim injunction until the hearing of the stay application.

54. The Respondent argued that the court should take into account the fact that he has, for over three years, been trying to enforce against the Property. Despite costs orders having been made in his favour throughout this process, none of those have been paid by the Applicant. He is therefore worse off than he was when he started the process a number of years ago. It should also be noted that the Property is a leasehold of less than 100 years. As such, its value has been continuously decreasing. Interest continues to accrue on the judgment debt.

Discussion

55. The Respondent's arguments under this head are directed more to the question of whether or not the stay application should be granted rather than whether the balance of convenience favours the grant of the injunction.

56. In my judgment the Applicant is plainly correct that at this stage the balance of convenience falls in favour of her.

CONCLUSION

57. For the foregoing reasons I grant the application, and I invite the parties to agree an approved draft order. If there are aspects which cannot be agreed, then the parties should file brief submissions setting out the points of dispute.