Injunction - reasons for dismissing the Defendant's application.

[2018]JRC236

ROYAL COURT
(Samedi)

20 December 2018

Before : T. J. Le Cocq, Esq., Deputy Bailiff, and Jurats Crill and Ronge

Between	**Mr Oleg Sheyko**	**Plaintiff**
And	**Consolidated Minerals Limited**	**Defendant**
And	**Barclays Bank Plc Jersey Branch**	**Party Cited**

Advocate W. A. F. Redgrave for the Plaintiff.

Advocate R. J. McNulty for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF:

1. By Order of Justice signed by the Deputy Bailiff on 17th July, 2018, and served that day, Oleg Sheyko ("the Plaintiff") obtained interim orders restraining Consolidated Minerals Limited ("the Defendant") from removing from the Island, or disposing of, or dealing with or diminishing the value of any of its assets in the Island up to a value of US$10m. In addition, interim orders were made for the disclosure of information by the Defendant and by Barclays Bank Plc – Jersey Branch ("the Party Cited").

2. On 23rd August, 2018, the Court sat to consider an application from the Defendant to vary the interim injunction so that it would include the following exceptions:

   (i) The injunction shall not prohibit the Defendant from spending a reasonable sum on legal advice and representation;

(ii) The injunction shall not prohibit the Defendant from dealing with or disposing of any of its assets in the ordinary and proper course of business.

3. In addition, the Defendant sought an order that the Plaintiff fortify the undertaking in damages contained within the Order of Justice with a written guarantee in the sum of $2m.

4. The Defendant's application was a preliminary one. It had already prepared an application to discharge the injunction in its entirety which was scheduled to be heard on 3rd October 2018. The application before the Court on this occasion was, therefore, simply for a variation pending the main application to discharge.

5. During the course of the hearing before us, however, the Defendant sought to rely on an affidavit which was filed on the day before the hearing to seek an immediate discharge of the injunction on the grounds that the Plaintiff had not made full and frank disclosure and therefore, as a matter of course, the injunction should be discharged.

6. On 23rd August, 2018, we dismissed the Defendant's applications. We indicated at that time that we would provide reasons in due course. These are our reasons.

7. The Defendant argued before us that the interim injunction obtained by the Plaintiff did not contain what the Defendant referred to as the "standard wording" within the Practice Direction Royal Court 15/04 ("RC15/04") which applies to freezing orders.

8. RC15/04 states, at paragraph 2:-

> ***"The standard form should be used save to the extent that the Bailiff or Deputy Bailiff hearing a particular application considers there is a good reason for adopting a different form. If variations from the standard form are proposed, they should be clearly identified for consideration by the Bailiff or Deputy Bailiff when the application is made."***

9. Under the title "Standard wording for a freezing order" which forms part of RC 15/04, paragraph 3 is in the following terms:-

> ***"[Optional] To fortify the undertakings contained in the foregoing paragraphs 1 and/or 2***

[by paying the sum of £ to his Advocate on or before the day of and shall forthwith upon such payment notify the Defendant/Party Cited of the same] OR

[By causing a written guarantee in the sum of £ to be issued from a bank having a place of business in Jersey and shall forthwith upon such issue provide a copy of the guarantee to the Defendant/Party Cited].”

10. And, at paragraph 3 under the heading “Exceptions” it says:-

“Exceptions

(1) Paragraph 1 of this order does not prohibit the Defendant from spending £ a week towards his ordinary living expenses [and £ a week towards his ordinary and proper business expenses] and also £ a week [or a reasonable sum] on legal advice and representation. Before spending any money the Defendant must tell the Plaintiff’s Advocate the amount concerned and where the money is to come from.

[(2) This Order does not prohibit the Defendant from dealing with or disposing of any of his assets in the ordinary and proper course of business.]

(3) The Defendant may agree with the Plaintiff’s Advocate that the above spending limits should be increased or that this order should be varied in any other respect but any such agreement must be in writing.

(4) The Defendant may cause this order to cease to have effect if the Defendant provides security by paying the sum of £ into Court or makes provision for security in that sum by some other method agreed with the Plaintiff’s Advocate.”

11. It is apparent from its terms that the wording relating to the fortification of undertakings is expressly optional and the part relating to dealing with assets in the ordinary course of business set out in parentheses, might also be left out.

12. A number of authorities were placed before us.

13. In Motorola Credit Corporation-v-CEM CEGIZ UZAN and others [2002] EWCA Civ 989 the Court of Appeal of England and Wales said this at paragraph 35:-

> ***"35. When an order made without notice comes back before a judge on notice and is challenged in part, a hybrid situation arises. The judge is not expected to re-enact the original without notice hearing. The reality is that both parties are now before him. But he ought not, it seems to me, to be asking himself whether, a freezing order having been made without notice, he ought now to stay its mandatory element. That approach fixes the defendant with the entire disadvantage of having been excluded, albeit for good reason, from the initial hearing. The fact, as in this case, that the defendant accepts for the present that the freezing order should remain effective and seeks to stay only the mandatory disclosure element cannot logically or fairly make his position worse in this regard. What the judge, in my view, should be asking himself is whether, now that he has both sides before him, this is a proper case for mandatory disclosure, given the imminence of an arguable challenge to the entire freezing order. That puts the burden back on the claimant, which is where it belongs. It may well require the court to give methodical consideration to the question of proportionality since, as the judge recognised, mandatory disclosure impinges on the respect owed by the court to an individual's private life. This process, I venture to think, is appropriate equally on a full application to discharge. It is not, in other words, for the defendant to displace an order made in his absence. It is for the claimant, now in the defendant's presence, to show that it ought to be continued."***

14. In Parvalorem -v- Olivera and others [2013] EWHC 4195 (CH) which we refer to at some length, the court said, at paragraph 19,:-

> ***"There are a number of authorities which I have been referred to and which inform the debate and which I should refer to briefly. They are all extremely well known. Were I giving this judgment at more leisure I might deal with them rather more fully and analytically but I should mention the important points. The first is the well known decision of Mr Justice Robert Goff as he then was in A –v- C [1981] 1 QB 961. He said:-***
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> ***"But in the end the question at issue between the parties was reduced to one point, which was as follows. There was evidence before the court that the defendants were likely to incur substantial costs in the forthcoming proceedings; and they therefore applied, invoking the principle stated in Iraqi Ministry of Defence –v- Arcepey Shipping Co. S.A. [1981] Q.B. 65 for release of***

money to pay those costs. But no evidence whatsoever was placed before the court concerning any other assets of the defendants making the application; it was not therefore possible for the court to assess whether any other assets of these defendants were available to pay the costs or, if they were available, why the defendants were seeking to make use of the assets which were subject to the Mareva injunction for this purpose. I had therefore to consider whether it would be proper for the court, in such circumstances, to accede to the defendants' application."

In Iraqi Ministry of Defence –v- Arcepey Shipping Co. S.A. [1981] Q.B. 65, 70 it was said that:

"the fundamental purpose of the Mareva injunction is to prevent foreign parties from causing assets to be removed from the jurisdiction in order to avoid the risk of having to satisfy any judgment which may be entered against them in pending proceedings in this country."

From that statement of principle, of course the word 'foreign' has now to be deleted, having regard to subsequent developments. However, it was also stated in the same case that:

"it does not follow that, having established the injunction, the court should not therefore permit a qualification to it to allow a transfer of assets by the defendant if the defendant satisfies the court that he requires the money for a purpose which does not conflict with the policy underlying the Mareva injunction."

In that case, the court did permit the release of money in order to make certain payments bona fide in the ordinary course of business. However; that was a case where the fund which was the subject of the Mareva injunction, viz, the proceeds of insurance of the single ship of a one ship company, was the defendants' only asset. The question which fell for decision in the present case did not arise in Iraqi Ministry of Defence –v- Arcepey Shipping Co. S.A..

In the present case, I have to consider the position where the defendant has, or may have, other assets from which the relevant payment may be made. I have still to apply the basic principle, i.e. that I can only permit a qualification to the injunction if the defendant satisfies the court that the money is required for a purpose which does not conflict with the policy underlying the Mareva injunction. I do not consider that in normal circumstances a defendant can discharge that burden of proof simply by saying, "I owe somebody some

money". I put to the defendants' counsel, in the course of the argument, the example of an English based defendant with two bank accounts, one containing a very substantial sum which was not subject to the Mareva injunction, and the other containing a smaller sum which was. I asked counsel whether it would be sufficient for the defendant simply to say, "I owe somebody some money, please qualify the injunction to permit payment from the smaller account, without giving any consideration to the possibility of payment from the larger account." Counsel was constrained to accept that that would not be sufficient, because it would not satisfy the court that the payment out of the smaller account would not conflict with the principle underlying the Mareva injunction. The whole purpose of selecting the smaller account might be to prevent the money in that account from being available to satisfy a judgment in the pending proceedings. In my judgment, a defendant has to go further that that; precisely what he has to prove will depend, no doubt, upon the circumstances of the particular case. At all events, in the present case, if the defendants making the application have other assets, freely available – and I do not know, on the evidence, whether they have or not – it would be open to counsel for the plaintiffs to submit, on the evidence, that it can say at present that, on the evidence, it would be wrong for the court to vary the Mareva injunction. All I can say at present is that, on the evidence before the court the defendants have not discharged the burden of proof which rest upon them.""

15. And, at paragraph 25:-

"In <u>Derby & Co Limited –v- Weldon (No. Two)</u> [1989] 1 All ER 1002 at 1006-1007, [1990] Ch 65 at 76 Lord Donaldson MR stated the principle underlying the Mareva jurisdiction as follows:

"The fundamental principle underlying this jurisdiction is that, within the limits of its powers, no court should permit the defendant to take action designed to ensure that subsequent orders of the court are rendered less effective that would otherwise be the case."

But he went on to indicate two important qualifications:

"On the other hand, it is not its purpose to prevent a defendant carrying on business in the ordinary way or, if an individual, living his life normally pending the determination of the dispute, nor to impede him in any way in defending himself against a claim. Nor is its purpose to place the plaintiff in the position of a secured creditor."

In the present case we are concerned with the qualification relating to the defendant carrying on business in the ordinary way.

This qualification has been given effect to in many other cases. In Iraqi Ministry of Defence –v- Arcepey Shipping Co. S.A. (Gillespie Bros & co Ltd intervening), the Angel Bell [1980] All ER 480 at 487, [1981] QB 65 at 73 Robert Goff J varied a Mareva injunction to allow the defendant to repay loans because he was 'seeking in good faith to make payments which he considers he should make in the ordinary course of business.' This Angel Bell variation, as it has come to be known, has been treated as a proper and necessary modification to enable defendants 'to pay their trade creditors in the ordinary course as those creditors sought payment' (see K/S A/S Admiral Shipping –v- Portlink Ferries Ltd [1984] 2 Lloyd's Rep 1667 at 167) and to permit 'the payment of trade creditors in the ordinary course of business' (see Avant Petroleum –v- Gatoil Overseas Inc [1986] 2 Lloyd's Rep 236 at 242). But it remains important to ensure that the right balance is preserved between the rights of the parties. The injunction must not be used so as to amount to an instrument of oppression which would bring about the cessation of ordinary trading. On the other hand, the court must have regard to the interests of the plaintiff and consider whether the variation of the injunction would involve a real risk that a judgment or award in his favour would remain unsatisfied. The court must look at all the circumstances of the case in order to try to do justice between the parties. There are two features about the present case which, taken together, I regard as being of particular significance."

16. At paragraph 31, the court said:-

"The remainder of the quote refers to the proprietary injunction but Lord Justice Clarke goes on to say:

"As that passage shows, in the Mareva case in order to be allowed to spend frozen monies the defendant must show that he has no other assets which he can use."

17. At paragraph 44, the court said:-

"It is, he says, always open to a defendant to demonstrate by evidence that it has anticipated outgoings in the ordinary course of business which cannot be met out of the other assets – that is to say the ones not subject to

the freezing order – or that it is reasonable to meet the relevant outgoings of a particular frozen fund. But the respondents have not done so in this case."

18. Lastly, at paragraphs 52 and 53, the court said:-

"I do not dissent from the proposition that ordinarily the exceptions should be included. Thus, if there were a worldwide freezing over all a defendant's assets, the starting point must be to include the exceptions. Further, in the case of an English defendant with no apparent foreign connection or element in the case, a freezing order over domestic assets ought in the same way to include the exceptions.

At the other extreme if the freezing order was over English assets of a defendant with known valuable foreign assets not subject to any other injunction or process in another jurisdiction, the balance of justice might very well come down in favour of there being no exclusions in the English freezing order. The sort of example given by the judge in A –v- C are equally applicable to an original freezing order as to a variation."

19. In Goldtron Limited-v-Most Investments Limited [2002] JLR 424, the Court, at paragraph 14 says this:-

"… Accordingly it is fundamental and of the highest importance that a party applying for ex parte relief must be completely frank with the court and must put before the court any matters which militate against the making of the order in question."

20. And then, in quoting the words of Bingham J in Sporex Trade SE –v- Comdale Commodities Limited [1986] 2 Lloyd's Rep at 437 the court, at paragraph 15, went on to say:-

"It is no excuse for an applicant to say that he was not aware of the importance of matters he has omitted to state. If the duty of full and fair disclosure is not observed, the court may discharge the injunction even if after full enquiry the view is taken that the order made was just and convenient and would probably have been made even if there had been full disclosure."

21. The application before us for a variation to re-instate the wording contained in the Practice Direction was made primarily on the basis that the Plaintiff had shown no reason that the "standard" language should not have been retained.

22. The application to discharge the injunction was made, in essence, on the basis that the Plaintiff had not made full and frank disclosure.

The Plaintiff's affidavits and submissions in obtaining the injunctive relief

23. The Plaintiff's application for an interim injunction was supported by an affidavit dated 16th July, 2018 ("the First Affidavit"). In essence, the Plaintiff's claim is for damages arising out of breach of a service agreement between the Plaintiff who was previously a director and the Chief Executive Officer of the Defendant, and the Defendant. He claims repudiatory breach of certain terms as a result of which he tendered his resignation by letter dated 4th June, 2018.

24. It is not necessary to set out in full the background to the relationship between the Plaintiff and the Defendant and the factors alleged by the Plaintiff that gave rise to his resignation. Suffice it to say that he makes a number of allegations concerning the financial position of the Defendant, its corporate practices, such as transfer pricing, and the effect of a number of transactions which, so he alleges, puts the financial well-being of the group to which the Defendant belongs at risk. The Plaintiff further alleges that his role within the Defendant was undermined and over a period the Defendant, from the perspective of corporate governance, became dysfunctional.

25. In his affidavit, under the heading "Risk of Dissipation of Assets" from paragraph 140 et seq, the Plaintiff says:-

> *"140. I am very concerned that the defendant will not retain sufficient assets in Jersey to pay damages to me. Under the contract there are four payments of $3m owed to me. I am contractually entitled to be paid $12m. I am also entitled to a contractual bonus of up to $1m per annum. There is also an issue of stock options to be addressed.*
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> *141. The reality is that the company is more controlled from Hong Kong and China than Jersey. The NED is very close to Mr Jai whose whereabouts I do not know.*

142. There have been requests from the office in Hong Kong, the bank accounts are opened in Hong Kong. In fact bank accounts had been opened at CITIC …

143. The disappearance of Mr Jai and the allegation of corruption causes me great concern.

144. The trading arrangement with China Mining leads me to believe that the profits are being diverted elsewhere.

145. The defendant has loaned the shareholder $15,000,000 when capital investment was supposed to have flowed in the opposite direction.

146. I have asked for an undertaking that they retain $10,000,000 in Jersey accounts. I have received no response to the request for an undertaking. I fear that the defendant is not going to engage with me on this point. Mr Huang has indicated a wish to reach agreement on a revised service agreement which is substantially different from my present contract and entirely unacceptable. The seriousness of the situation has gone far beyond such matters.

147. I have substantial knowledge of the Defendant's finances. It received approximately US$30m per month from Australia alone. It should be able to be meet its needs from this. In the circumstances I ask the Court to exercise its discretion not to require me to make provision for ordinary business expenses or legal costs from the Frozen Sum as the defendant presently has ample funds available to meet these expenses without recourse to the frozen sum."

26. A second affidavit was provided by the Plaintiff, dated 26th July, 2018, correcting an error contained in his first affidavit. That error had been noted prior to the *ex parte* application to the Deputy Bailiff and was expressly brought to his attention by the Plaintiff's counsel.

27. Shortly before the hearing of this matter the Plaintiff filed a third affidavit dated 22nd August, 2018 (the "Third Affidavit") and it is on the basis of some of the assertions in the third affidavit that the Defendant asserts that the interim injunction should be raised forthwith. With reference to the contents of paragraph 147 of the First Affidavit quoted above he says, at paragraph 12 of the Third Affidavit:-

"Whilst I maintain that I was correct to say the defendant receives approximately such a sum monthly, I agree of course that some of the money coming

into the company is needed to make regular outgoing payments and I have never suggested otherwise. Indeed, paragraphs 146 and 147 of my first affidavit make clear that, although anticipated cash inflow from one source alone (Australia) is some $30 million per month, the sum I asked to be frozen was $10 million. The difference was, in my experience, quite sufficient to allow (and was intended by me to allow), the Defendant to carry out its function. Ms Senda's affidavits say nothing about this $30 million, or other cash inflows except those I have identified above in paragraph 9, into the defendant."

28. This, it is asserted by the Defendant, should have been pointed out on the *ex parte* application and the statement that US$30m was received monthly from Australia was an oversimplification. The Plaintiff, so it is asserted, had an obligation to be careful and accurate. We note that in paragraph 147 of the First Affidavit the Plaintiff refers to the figure as being an approximate one.

29. He makes this clear at paragraph 14 of the Third Affidavit in which he says:-

"Of course, when I refer to $30m from Australia and $5m from Ukraine per month, these are approximations, as prices can vary and sometimes shipments of payments can be delayed for various reasons, including bad weather. In some months, the payment from Australia has not been received; but when that has occurred there has been a double payment in the next month.

And, at paragraph 15 he says:-

"Accordingly I am giving my best estimate from my personal knowledge as to the general liquidity available to the Defendant on an ongoing basis given the contracts they have."

30. In paragraph 16 of the third affidavit the Plaintiff refers to other sources of income available for the Defendant for meeting its day to day expenses in the following terms:-

"a. It is open to the Defendant to increase the volume of ore sales to the Ukraine. Such shipments are paid for in advance under the current arrangements. I believe that by so doing the Defendant could substantially increase the inflow of funds.

b. The Defendant could substantially increase the price paid by China for the ore which, as I explained in my first affidavit, is well below the market price. If

the price were increased to a level closer to the market price, that would increase receipts. To my knowledge, price changes were contemplated by the ConsMin Group to take effect in June 2018.

c. The Defendant receives letters of credit from China in respect of shipments of ore. The credit term is 180 days but there is no reason why those letters of credit should not be used to provide interim finance from the bank issuing the letters or from some other finance house.

d. I note that, according to Ms Senda's first affidavit at paragraph 6(h), the Defendant is owed loans and receivables from related parties totalling $638,780,079.63. She has not provided any detail about these loans and receivables. I am not aware of any reason why at least some of the receivables should not be called in and collected for utilisation by the Defendant.

e. The Defendant currently owns, through its subsidiary Stratford Sun Limited [see the Structure Chart at OS/1, page 19), approximately 8% of the shares in a Bermuda company called OM Holdings Limited, whose shares are listed in Australia. The business of that company is not a strategically essential investment to the business of the ConsMin Group. Its shares are publicly traded. The market valuation of the company is $1.04 billion according to Bloomberg today (22 August 2018). There is no reason of which I am aware why, in order to raise, say, $10 million (or other working cash), the Defendant should not sell some of its shareholding";

and, at paragraph 17, the Plaintiff concludes:-

"In the light of the foregoing I maintain my evidence that the Defendant does not need to access the frozen $10 m in order to meet ordinary business expenses…..".

31. In submissions before us the Defendant stated that the matter of the shareholding contained in paragraph 16(e) should have been disclosed in the First Affidavit. Had it been disclosed it would have been apparent that the Defendant had substantial assets available to it from which any claim of the Plaintiffs could be satisfied and accordingly there was no need for the interim injunction. In response to this argument the Plaintiff submits that the Plaintiff's claim is easy to enforce if ultimately successful against monies in a Jersey bank account but would be much harder to enforce against shares in a foreign company and he derives considerable comfort from the fact that this Court has control over the assets that are subject to the injunction.

The evidence filed by the Defendant

32. The application by the Defendant was supported by affidavits provided by Katarzyna Agnieszka Senda of the 3rd August, 2018, (filed in discharge of the requirements of the disclosure order contained within the Order of Justice) (the First Senda Affidavit), the 16th August, 2018 (the Second Senda Affidavit), and of the 20th August, 2018 (the Supplemental Senda Affidavit).

33. Miss Senda is the financial controller of the Defendant which office she has held since the 1st March, 2017. She was an employee of the Defendant from the 1st July, 2014. She points out that the Defendant is central to the operation of the Consolidated Minerals group of companies and provides a centralised treasury service and funding support.

34. At paragraph 9 of the Second Senda Affidavit she points to a requirement to make certain payments which she characterises as being within the ordinary course of the business of the Defendant. She states, at paragraph 12 of the Second Senda Affidavit that the company that is scheduled to make those payments must itself look to the Defendant for sufficient funds to do so. She explains the financial position of the paying company, MTL Jersey, in the following terms at paragraph 12 of the Second Senda Affidavit:-

> *"As MTL Jersey currently only has a balance of US$ 1 million it will need to request additional funds of US$ 10.1 million from the Defendant. However since the Defendant only has a balance of US$ 2.7 million (excluding the frozen US$ 10 million) it has insufficient cash to make this payment."*

35. She goes on to suggest that an inability to have access to the monies frozen by the interim injunction may well cause the Defendant company and other companies within the group to default. At paragraph 13 in the Second Senda Affidavit she says:-

> *"As a result of the Defendant's function as centralised treasury and cash management for the ConsMin Group, if the Defendant is unable to access the frozen US$ 10 million, the ultimate effect is that other companies in the ConsMin Group are likely to default on their obligations. This enlivens the prospect of the Defendant, as the parent company of the ConsMin Group, suffering significant losses."*

36. In the Supplemental Senda Affidavit Miss Senda corrects the financial understanding set out in the Second Senda Affidavit by reason of the fact that payments had been received which had not been anticipated. She again, at paragraph 7 of the Supplemental Senda Affidavit points to financial needs in the company MTL Jersey and then says at paragraph 7(j):-

"MTL Jersey then has a further advance payment scheduled to be made to GMC again on the 31st August 2018 of which $7.4 million…. which it has no funds and in respect of which the Defendant has insufficient funds as things 'currently stand'."

37. At paragraph 9 of the Supplemental Senda Affidavit she states:-

"If the Defendant is unable to access the frozen $10 million, the effect of that is that the Defendant's trading subsidiaries are faced with a risk of defaulting on their obligations, which enlivens the risk that the Defendant as the parent company of those subsidiaries could suffer significant losses both financially and to its reputation."

38. The Plaintiff's Third Affidavit was filed in response to the Second Senda Affidavit and Supplemental Senda Affidavit. Exhibited to the Third Affidavit were a number of cashflow forecasts. We were taken through the cashflow information, provided by the Plaintiff, in sufficient detail to illustrate to us that it is seldom the case that the assets of the Defendant fall below US$10 million and even then for a short period. The financial information also confirmed that in general a figure of approximately US$30 million was received on a monthly basis from Australia.

39. In the Second Senda Affidavit and the Supplemental Senda Affidavit there was no detailed reference to cashflow nor any information that could lead the Court to the view that the Defendant's business needs could not be met from other sources of funds that it held or to which it had access. In fact, insofar as we were able to ascertain, the Defendant did have access to funds from which it could meet its ordinary expenses. Had it been clear that the Defendant would have been in material difficulties in maintaining the US$10 million freeze we cannot see that this could not have been made clear by appropriate cashflow forecasts. An absence of such persuasive information leads us to suppose and understand that in fact the Defendant is not seriously prejudiced by the injunctions in place.

Conclusion

40. In our judgment, the section in the standard wording of RC15/04 relating to payment of ordinary expenses and fortification of undertaking is optional (although there is a presumption in favour, potentially, of the latter).

41. The Defendant had not however established to the Court's satisfaction that it had no alternative means of meeting its debts and ordinary business expenditure such that the interim injunction needed to be varied.

42. We do not accept that the Plaintiff was guilty of a material or significant non-disclosure to the Court. His characterisation of certain receipts of the company as approximately $30 million monthly was to a very great extent proved accurate by the figures he subsequently deployed.

43. We found the affidavits provided by the Defendant wanting. It did not contain any cash flows nor was it persuasive that the Defendant was unable to meet the payments that fell due.

44. The fact that the Defendant or the ConsMin Group had access potentially to other assets did not in our judgment count against the injunction being granted in the first place as argued by the Defendant. Rather this made it clear to us that debts and other ordinary expenses could be met from other sources. The cash flow position demonstrated by the Plaintiff showed that it was only on very rare occasions that the balance remaining in the hands of the Defendant was less on a day to day basis than $10 million and in our view there were other sources available to it.

45. Further, in our judgment the Plaintiff was entitled to have any judgment he might obtain enforced if possible against assets within Jersey.

46. We could see no basis for requiring the Plaintiff to fortify any undertaking. It appeared to us that he was a man of substance and there was no reason to suppose he would not honour his obligations should damages be awarded. Furthermore, the Defendant provided no evidence to justify the quantum of a fortification in the $2 million suggested.

47. For these reasons the Defendant's application was dismissed.

Authorities

Practice Direction Royal Court 15/04.

Motorola Credit Corporation-v-CEM CEGIZ UZAN and others [2002] EWCA Civ 989.

Parvalorem -v- Olivera and others [2013] EWHC 4195 (CH).

Goldtron Limited-v-Most Investments Limited [2002] JLR 424.

Sporex Trade SE-v-Comdale Commodities Limited [1986] 2 Lloyd's Rep at 437