

[2011]JRC042

ROYAL COURT
(Samedi Division)

18th February 2011

Before : M. C. St. J. Birt, Esq., Bailiff, and Jurats de Veulle and
Fisher.

Between	1. Jomair Leasing Limited	Plaintiffs
	2. Corporate Wings inc	
And	Greig William Hourigan	Defendant
And	Abbey National International Limited	Party cited

Advocate J. M. P. Gleeson for the Plaintiffs.

The Defendant did not appear and was not represented.

Advocate W. Grace for the Party Cited which rested upon the wisdom of the Court.

JUDGMENT

THE BAILIFF:

1. This is an application by the plaintiffs for an order that the party cited disclose certain information about the assets which it holds for the defendant.

Factual background

2. The background is that on 31st December, 2002, the plaintiffs obtained judgment against the defendant in the Second Judicial District Court of Davis County in the State of Utah, United States in the sum of US\$874,676.30 ("the Utah Judgment"). The claim arose out of the lease of an aircraft. Initially the defendant had contested the jurisdiction of the Utah Court but he appears not to have pursued this aspect because the judgment was entered in default, on the basis that the defendant had failed to plead or otherwise defend the proceedings.

3. The defendant is a pilot. At the time of the Utah Judgment he was residing in Saudi Arabia. Since then he has apparently resided at various times in Bahrain and Dubai and now resides in Egypt. Despite considerable efforts, the plaintiff has not recovered any monies owing under the Utah Judgment.
4. During the course of 2010, the plaintiffs discovered that the defendant held certain bank accounts in Jersey with the Party Cited. Accordingly, on 23rd December, 2010, the plaintiffs presented an order of justice seeking judgment pursuant to the Utah Judgment together with interest accrued thereon in accordance with the terms of the Utah Judgment. The order of justice also sought *ex parte* relief by way of a freezing injunction against the defendant and the party cited and disclosure orders against the defendant and the party cited in relation to the assets of the defendant. The Deputy Bailiff granted the freezing orders and the disclosure order against the defendant but refused to grant the disclosure order against the party cited on an *ex parte* basis.
5. Leave was given to the plaintiffs to serve the order of justice out of the jurisdiction personally on the defendant in Egypt but this proved impossible. Following an application by the plaintiffs, the Deputy Bailiff amended the order of justice so as to give leave to serve on the defendant by recorded delivery to an address in Egypt and by e-mail to the defendant's e-mail address. This was duly effected by the plaintiffs.
6. The matter came before the Court on 28th January, 2011. The defendant did not enter an appearance and accordingly judgment in default was given in the sum of US\$1,177,242.41 together with continuing interest to date of payment and costs on an indemnity basis. The case in respect of the party cited was adjourned *sine die* with liberty to apply and the injunction to remain in force.
7. The plaintiffs now seek the disclosure orders against the party cited which were refused by the Deputy Bailiff so as to aid in the enforcement of the judgment. The information sought by the plaintiffs includes not only the assets currently held in the bank accounts but also details of any transfers in excess of £500 into or from the accounts since the date of the Utah Judgment. Notice of this application and copies of all documents filed in support have been served on the defendant at the e-mail address referred to above.

Decision

8. This Court has in a number of cases made it clear that there is jurisdiction to grant an order for disclosure in order to aid enforcement of a judgment. See Goldtron Limited-v-Most Investment

Limited [2002] JLR 424 at paras 25 – 28; Apricus Investments-v-CIS Emerging Growth Limited [2003] JLR N 40, [2003] JRC 151 at paras 16 – 20; and Africa Edge SARL-v-Incat Equipment Rental Limited [2008] JLR N 41, [2008] JRC 175 at paras 8 – 10.

9. All of these cases approved the dicta of Coleman J in Gridrxsime Shipping Co-Limited-v Tantomar –Transportes Maritimos LDA [1994] 1 WLR 299 as follows:-

At 310:-

“It is to be observed, however, that both in Ashtiani-v-Kashi and in Derby & Co Limited-v-Weldon (Nos 3 and 4) the courts were concerned with pre-judgment orders which included Mareva injunctions. The orders for disclosure were therefore orders ancillary to those injunctions. There was no question of there being any other order in support of which a disclosure order could be justified. Where, by contrast, one has the position that a judgment has been already obtained or an award made and where a Mareva injunction in aid of execution is justified, the jurisdiction to make a disclosure order arises both as a power ancillary to and in support of the injunction and independently of the injunction as a power in support of the execution of the judgment or award. ...”

At 312:-

“That case was concerned with a pre-trial worldwide Mareva injunction coupled with a worldwide disclosure order. In my judgment, quite different considerations apply in the case of a post-judgment or post-award disclosure order. In such cases it is just and convenient that the judgment or award creditor should normally have all the information he needs to execute the judgment or award anywhere in the world. It does not need the supervision of these courts to ensure that double execution is not achieved or that the information is not otherwise abused.”

10. The cases referred to make it clear that the threshold for obtaining disclosure in aid of execution of a judgment or award is much lower than where disclosure is sought in support of a pre-trial freezing injunction. Thus at paragraph 26 of Goldtron the Court said this:-

“However, the fact that a particular Mareva injunction is made post-judgment in order to aid enforcement is clearly a material factor for the courts

when considering the exercise of its discretion. In such cases, the plaintiff has established judicially that he is owed money by the defendant. It is therefore comparatively straightforward for the court to make an order freezing assets and requiring accompanying disclosure so as to ensure that the court's order is given effect and the judgment is not rendered nugatory. Conversely, in a pre-trial case, a plaintiff merely asserts a claim. The court does not know whether the claim is well founded. It may be that the defendant will show in due course that he does not owe the money claimed. The threshold for obtaining a Mareva injunction in the latter case will clearly be much higher than in the case where the court has already held that the amount is due, and it is simply a question of enforcement. ..."

11. We should add that the weight to be given to a foreign judgment will of course vary according to whether it appears that the plaintiff is entitled to enforce the judgment without reinvestigation of the merits or whether it is a case where he will have to start afresh.
12. In this case, the defendant has failed to satisfy the Utah Judgment for over 8 years and this Court has now itself granted judgment in respect of the same matter. We are quite satisfied that the interests of justice require disclosure of his assets in Jersey. We note that disclosure is sought from the party cited rather than the defendant but this does not affect the position. The essential principle remains that the Court can make disclosure orders whether against a defendant or third parties in order to aid in the execution of a judgment or award and the interests of justice would usually point in favour of ordering such disclosure.
13. The order originally sought seemed to us somewhat onerous and we have seen correspondence from the party cited to the same effect. In the circumstances we order the party cited to disclose to the plaintiffs' Advocates all bank statements in respect of the three accounts from the date of the Utah Judgment until today's date, together with full details and documentation in relation to such transfers into or out of the accounts as may be specified by the plaintiffs' Advocates following inspection of the bank statements.
14. We order that the plaintiffs be responsible for all reasonable costs incurred by the party cited in complying with this order and that the defendant pay the costs of the plaintiffs (including what they have to pay to the [party cited]) on an indemnity basis.

Authorities

[Goldtron Limited-v-Most Investment Limited](#) [2002] JLR 424.

[Apricus Investments-v-CIS Emerging Growth Limited](#) [2003] JLR N 40.

[Apricus Investments-v-CIS Emerging Growth Limited](#) [2003] JRC 151.

[Africa Edge SARL-v-Incat Equipment Rental Limited](#) [2008] JLR N 41.

[Africa Edge SARL-v-Incat Equipment Rental Limited](#) [2008] JRC 175.

Gridrxsime Shipping Co-Limited-v Tantomar –Transportes Maritimos LDA [1994] 1 WLR 299.