



Neutral Citation Number: [2019] EWHC 2466 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES COURT
INTERIM APPLICATIONS LIST (ChD)

No. CR-2018-006183

Rolls Building
Fetter Lane
London EC4A 1NL

Wednesday, 11 September 2019

**IN THE MATTER OF GROSVENOR PROPERTY DEVELOPERS LTD (In
Liquidation)**

AND

IN THE MATTER OF THE INSOLVENCY ACT 1986

Before:

MRS JUSTICE FALK

B E T W E E N :

(1) PAUL ATKINSON AND GLYN MUMMERY
(as Joint Liquidators of Grosvenor Property Developers Limited)
(2) GROSVENOR PROPERTY DEVELOPERS LIMITED Claimants

- and -

(1) SANJIV VARMA
(also known as SANJEEV VERMA)
(2) ARJUN KHADKA
(3) GROSVENOR CONSULTANTS FZE
(4) SIDDHANT VARMA
(also known as SID VARMA)
(5) JONATHAN ENGLAND Defendants

A P P E A R A N C E S

MR R. BROWN (instructed by Gunnercooke LLP) appeared on behalf of the Claimants.

THE FIRST DEFENDANT appeared in Person.

THE SECOND, THIRD, FOURTH AND FIFTH DEFENDANTS did not appear and were not represented.

Judgment Approved

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MRS JUSTICE FALK:

- 1 I am now going to give my ruling on the application made by the First Defendant (“Mr Varma”) on 28 August for the return of his passport.

- 2 I should note first that while Mr Varma appeared before me in person, at the start of the hearing Mr Jonathan Lyons of counsel appeared on his behalf. However, Mr Lyons has been instructed only in relation to the contempt proceedings to which I will refer further, and has not acted for Mr Varma in the matter with which I am concerned today. Mr Brown appears for the joint liquidators.

- 3 I need to go over the history to some extent to explain what has happened. An order for the retention of Mr Varma’s passport was first made by Birss J on 1 May as part of an order for a freezing injunction. That prevented Mr Varma from leaving England and Wales until he had complied in full with certain paragraphs of an order of ICC Judge Jones, which had been made in connection with the liquidation of Grosvenor Property Developers Limited (the Second Claimant), and until he had attended a private examination under s.236 of the Insolvency Act that had also been ordered by Judge Jones.

- 4 At the return date on 15 May the freezing injunction came before me. I decided that Mr Varma had not complied with one of the information provisions in Birss J’s order, namely the requirement to serve an affidavit. In my order of the same date, which continued the freezing injunction, I varied Birss J’s order in relation to the passport to forbid Mr Varma from leaving England and Wales until he had attended the private examination, which was at that time fixed for 13 June, and complied with para.5 of my order “to the satisfaction of the [joint liquidators] or the court”. Paragraph 5 of my order required the swearing of an affidavit setting out truthful, full and accurate answers to questions set out in a schedule to

an affidavit of one of the joint liquidators. The joint liquidators' position was, and remains, that Mr Varma had not complied with para.5 of my order to their satisfaction because he has not, in their view, set out truthful, full and accurate answers to the questions.

5 As far as the court was concerned, Mr Adam Johnson QC, sitting as a deputy High Court judge, ordered a cross-examination of Mr Varma because he was not satisfied that para. 5 had been complied with. In other words, neither the court nor the joint liquidators were so satisfied. I have read the transcript of the judgment of Mr Johnson QC, which was delivered on 3 July after two full days of hearing before him over the preceding two days, so it was effectively a reserved judgment. It is worth noting the precise words he used at para.29:

“... I have come to the conclusion that the disclosures provided so far by Mr Varma are inadequate and, indeed, that the deficiencies in his evidence are both serious and significant.”

The same point was essentially repeated at para.38. That conclusion led Mr Johnson QC to order the cross-examination and to refuse at that stage to return Mr Varma's passport.

6 He did, however, remark at para.46 that it seemed to him that the cross-examination should take place in short order and he said:

“... I think there should be a very strong presumption that once it has happened Mr Varma will get his passport back.”

However, Mr Johnson QC's finding that the disclosure was inadequate, and that the deficiencies were serious and significant, has not been challenged.

- 7 There followed the cross-examination. That took place before Andrew Hochhauser QC, again sitting as a deputy judge of the High Court, on 26 July. The order he made on 26 July provided at para.3 that the joint liquidators should notify Mr Varma by 31 July whether they were satisfied with his answers in cross-examination and with the documents that Mr Varma was required to provide under the same order, in which case they should make arrangements for the return of his passport. The order then went on to say that the joint liquidators must also notify Mr Varma if they were not satisfied with those responses, in which case Mr Varma could renew his application to discharge the requirement for the passport to be retained.
- 8 Matters were then somewhat confused by a further order made by Mr Hochhauser QC on 1 August. That order recited that there had not been full compliance with the order of 26 July. It contained provisions varying and extending the list of documents that Mr Varma was required to provide by the order of 26 July and addressing further matters that had arisen in cross-examination. It provided for Mr Varma to “forthwith” sign and return certain authority letters provided in draft by the joint liquidators’ solicitors. In fact, rather than being provided immediately, those authority letters were provided 13 days later.
- 9 Importantly, para.5 of that order provided that upon Mr Varma complying with previous paragraphs of the order (including providing certain documents), the joint liquidators “shall make arrangements... for the return as soon as reasonably practicable of [Mr Varma’s] passport”. However, there is nothing in the order that expressly varied, discharged or sought to set aside either Birss J’s order or my order varying Birss J’s order, so there is a somewhat confused position. It is also rather unclear, on the face of Mr Hochhauser QC’s order, what complying with earlier provisions of the order precisely entailed. The joint liquidators’ position, not surprisingly, is that it effectively incorporates full compliance with the earlier order of 26 July, and that the condition has not been met.

- 10 Given the confusion and given, in particular, the material developments there have been since both Birss J and I made our respective orders, I consider that, whatever interpretation might be placed on the orders of 26 and 31 July, it is appropriate to consider the matter afresh and, in doing so, take account of the fact that Mr Varma, a litigant in person, has, for better or worse, been led to understand that if he did certain things, which he considers that he has done, he would get his passport back.
- 11 Important other developments since the dates of the orders of Birss J and myself include, most significantly, the committal application, but I should also mention briefly what has been happening with the claim to which the freezing injunction relates. The current position is that points of claim have been served by the joint liquidators, but Mr Varma has not served a defence. Pursuant to an unless order, which has not been complied with, Mr Varma is debarred from defending the claim. He has however made more than one application to extend time, which have not yet been heard. Effectively, therefore, there are outstanding applications for relief from sanctions.
- 12 Furthermore, the private examination under s.236 of the Insolvency Act, which was referred to in the original orders, has, on Mr Varma's application, been adjourned generally pending the outcome of the claim against him. The joint liquidators' position is that they still wish to conduct such an examination, but they accept that its scope will be limited to the position of third parties who may have been involved in the receipt of company funds.
- 13 The most significant development has been an application which was filed on 9 September by the joint liquidators for leave to commit Mr Varma for, it is fair to say, numerous alleged breaches of court orders. On a brief review, I counted at least eleven alleged breaches, together with a number of alleged false statements in documents verified by statements of

truth. The application is supported by a lengthy affidavit. As clarified before me this morning, the joint liquidators' current position is that the order they are now seeking is for retention of Mr Varma's passport pending the hearing of the contempt proceedings.

14 In relation to those contempt proceedings, directions have been agreed with the legal team instructed by Mr Varma (with the benefit of legal aid). At Mr Varma's request the time limit for Mr Varma to serve evidence in reply is proposed to be 29 November, as compared to the joint liquidators' proposal of 1 October, with ability for the joint liquidators to file any evidence in response by no later than 13 December. It follows from the shift of dates that the earliest proposed date for a committal hearing would now be the first available date after 1 January 2020, and the time estimate at the moment – understanding that it is difficult to be accurate – is four days. During the short adjournment today I checked with Chancery Listing as to whether it would be possible to expedite the hearing. I understand that it would be possible to expedite it, including into this autumn term (although that does not fit with the current proposed dates for serving evidence). In any event expedition to the beginning of the term that starts in January 2020 should be possible.

15 I should explain now Mr Varma's case for the return of his passport. I hope I am summarising accurately what he has said to me this morning. Mr Varma has explained that he has been coming to this country for twenty-five years. He has no intention of ceasing to do so. His only child, a son, lives here. However, Mr Varma is present on a tourist visa and is not permitted to work as a result of that. He says he is essentially living out of a suitcase. He also says that he requires medical tests. He has been a diabetic for many years although the particular tests required, I understand, relate to potential cardiac issues. He says that he needs to return to his home country of India to undertake those tests, because they can be done there at a small fraction of the cost of the tests in the UK.

- 16 As already indicated, Mr Varma says that he assumed that he would get his passport back having, he thought, complied with the relevant court orders and having appeared at the cross-examination and answered, he says, all the questions. He says he has no more information available. He says he needs to talk to family members and the elders of his community in India in person in order to be able to raise funds properly to conduct his defence. He also says he has an aunt in India with whom he was very close who is dying, and that he wishes to visit her.
- 17 In response to the serious allegations of fraud against him and the allegation, in particular, that of around £7 million invested in Grosvenor Property Developers, he received over £4.5 million of that either into accounts in his name or accounts it is said he controlled, he says that part of the amount received represented commission, but around £4 million was consideration for assets he transferred in the form of diamonds and other jewellery. His case is that the Second Defendant, Mr Khadka, has those assets. Mr Varma says he has done nothing wrong.
- 18 Mr Varma also says that he needs to travel to Dubai both to obtain evidence that he wishes to use in the committal proceedings to help clear his name, and also because he has friends there from whom he hopes to obtain financial support. He says he is prepared to undertake to be present both at the committal proceedings and at any private examination under s.236 of the Insolvency Act.
- 19 As already indicated, I thought it was appropriate to take a fresh look at the question of retention of Mr Varma's passport, particularly in the light of the committal application and other developments, including the terms of the orders made on 26 July and 1 August. In deciding whether to restrict a person's power to travel by impounding their passport, I have considered the guidance identified by Mostyn J in *Young v Young* [2012] Fam 198, recently

cited by Zacaroli J in called *Corbiere v Ke Xu* [2018] EWHC 112 at [34]. The important points to draw out are that whilst the power to impound a passport in aid of court procedures clearly exists, it involves a restriction on the subject's liberty and so must be exercised with caution. The authorities emphasise the short-term nature of the restraint and the fact that the law favours liberty. Mostyn J goes on to say that a good cause of action must be established. The applicant, here the joint liquidators, must establish that there is a probable cause for believing that the respondent is about to quit the jurisdiction and that his absence from the jurisdiction will materially prejudice prosecution of the action.

20 I have considered these tests carefully and I have decided that, in all the circumstances, the appropriate course is not at this stage to return Mr Varma's passport but to order that the committal hearing take place on an expedited basis. I appreciate that this is a material restriction. I also appreciate that Mr Varma says that he needs to travel to raise funds and be able to work. But I must also take account of the fact that he has now, through the legal aid system, got proper legal representation in relation to the immediate matters he has to deal with, namely the committal proceedings.

21 In addition I must take account of the very strong public interest in ensuring that court orders are obeyed and the fact that contempt proceedings, which clearly require the individual to be present in the jurisdiction, are one of the few weapons available to the court in relation to failures to comply with court orders and, in particular, with failures to comply with the disclosure aspects of freezing injunctions. Those disclosure provisions are very important, and non-compliance with them risks very significantly undermining the effectiveness of freezing orders. The courts have repeatedly said that substantial breaches of the disclosure provisions of freezing injunctions are a serious matter.

- 22 I am not persuaded by what Mr Varma says about his medical position, or at least not to the extent of regarding it as so urgent that the course that I am proposing is the wrong course to take. What he has said has changed somewhat over time. Essentially, he seems to be relying now on a letter from a cardiologist that dates from as long ago as April, recommending certain tests on an urgent basis. Those are the tests that I understand that Mr Varma has not undertaken and wishes to undertake in India. Nevertheless, we are already in September and there has been no additional meaningful evidence beyond that April letter. The only other piece of medical evidence shown to me was some blood test results from July with no covering letter, which did appear to show a glucose level outside the normal range. I cannot comment on that, apart from saying that it is not obviously directly relevant to the cardiology position as opposed to Mr Varma's ongoing diabetes.
- 23 I note that there was no mention this morning of Mr Varma not taking medicine for his diabetes. That was raised before Mr Johnson QC on the basis that he could not afford it. It has not been raised before me, and I did not understand Mr Varma this morning to put particular reliance on his diabetes as opposed to the tests he has been recommended to have by his cardiologist.
- 24 In summary, there is no material up to date medical evidence. Further, whilst Mr Varma claims that he did not attend the originally ordered private examination under s.236 for valid medical reasons, that was not accepted by ICC Judge Mullen and, in his decision in relation to that, he said he was not satisfied that Mr Varma was genuinely unable to attend the private examination.
- 25 Mr Johnson QC, who as I said had two full days of hearings, also commented on Mr Varma's medical position in relation to the proposed cross examination. At para.42 of his judgment he noted that no evidence had been put forward by any qualified medical

practitioner, although Mr Varma had had plenty of opportunity to procure an appropriate letter or report. He said: "I am not persuaded that he has been unable to do so simply because of the cost". He noted that if the proposed cross-examination really did pose a threat to health, it was reasonable to think that Mr Varma's family and friends could have been prevailed upon to fund the cost. He referred to Mr Varma's statement that he was not presently taking the injections require for his diabetes and said that it might be expected that family and friends would help with the cost. He also referred to the earlier determination by the Companies Court judge in respect of the private examination that the medical evidence was inadequate.

26 As regards Mr Varma's statement that he needs to attend in person in India and Dubai in order to be able to raise funds, I am not persuaded that that is the case. If this was a genuine emergency, and given that his passport is not available, then even if it were the case that, as a cultural matter, it is necessary to meet elders in the community in India in person, Mr Varma says that there are friends in Dubai who may be able to assist. In any event, as already indicated, Mr Varma has legal aid and a proper legal team in place for his committal proceedings. I also explained to Mr Varma that, as regards his argument that he needed to travel Dubai to obtain evidence, he would be able, if so advised, to raise his inability to do so in the committal proceedings. Mr Brown accepted that that would be the case.

27 Most importantly, there are really serious questions to answer in this case. There has been an undoubted substantial fraud in relation to Grosvenor Property Developers. That is not simply my view but that of other judges who have looked at this. Whilst Mr Varma says that he provided consideration for much of the cash that appears to have been paid into accounts of his or controlled by him, the fact of the matter is that the assets which he said he transferred in exchange have not appeared, and there has been no sign of the Second Defendant, despite, I understand, a warrant being issued.

28 The joint liquidators' strong conviction is that the freezing orders will be completely undermined if Mr Varma is permitted to leave the jurisdiction. I think it may be worth referring briefly to the comments of Rix LJ in *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411, where he said at [188]:

“The authorities demonstrate that it is vital for the court, in the interests of justice, to have effective powers, and effective sanctions. Without these, it would be possible for a defendant ... to flout the orders of the court, which are the court's considered means by which to keep the scales of justice for the parties even. If once it became known that the court was unable or unwilling to maintain the effectiveness of its orders, then it would lose all control over litigation of this kind, with terrible consequences for the administration of justice. Those wrongly accused of fraud would be relieved of a certain amount of inconvenience, but fraudsters would rejoice and hitch a free ride to interminable litigation on the back of ill-gotten gains.”

It is of paramount importance for orders of the court to have teeth.

29 Given the undoubted fraud, the fact that the evidence indicates that Mr Varma received funds from the company in a substantial amount, and the fact that there are clear indications of asset dissipation, and given also that the Second Defendant, who is said to hold relevant assets, has not appeared and there appears to be no sign of him or the assets in question, I am not persuaded that the return of Mr Varma's passport is appropriate at this stage. I am, however, concerned about the length of time for which Mr Varma's passport may continue to be retained, preventing him from leaving the jurisdiction. That is why I am taking the step of ordering an expedited hearing of the committal proceedings, which in the circumstances I consider to be the best course of action. As I said earlier, Chancery Listing have indicated

that they should be able to list this on an expedited basis for January. I would also anticipate that the hearing could be further accelerated if Mr Varma agreed that the timings for provision of evidence can be brought forward.

CERTIFICATE

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