

Neutral Citation Number: [2019] EWHC 3294 (Ch)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Dated: 14 November 2019

Before:

The Honourable Mr Justice Marcus Smith

Between:

VB Football Assets

- and -

(1) Blackpool Football Club (Properties) Limited
(formerly Segesta Limited)

(2) Owen Oyston

(3) Karl Oyston

(4) Blackpool Football Club Limited

Petitioner

Respondents

Fraser Campbell (instructed by **Clifford Chance**) for the **Claimant**
Matthew Collings QC (instructed by **HHB Solicitors**) for the **Second Defendant**

Hearing dates: **14 November 2019**

JUDGMENT

Mr Justice Marcus Smith:

1. On 6 November 2017, I handed down judgment in a section 994 petition, brought by the Petitioner, VB Football Assets (“VBFA”) against the four above-named Respondents. My judgment was in favour of VBFA. Given the substantial sums that were due and payable pursuant to my judgment, time for payment was needed going beyond the usual period of 28 days. Although time was given in light of the sums involved, a freezing order (the “Freezing Order”) was put in place over, amongst other things, the assets of the Second Respondent, Mr Owen Oyston (“Mr Oyston”) to prevent any disposition of assets to the detriment of VBFA.
2. The Freezing Order was made on the same date as my judgment was handed down, that is on 6 November 2017. Over the course of the protracted enforcement phase of these proceedings, that is the period from 6 November 2017 to date, the Freezing Order been extended and varied and been the subject of some debate. Nevertheless, it is the order as originally framed that matters for present purposes. A dispute has arisen as to the true scope and effect of the Freezing Order.
3. Fylde Coast Farms Limited (“Fylde Coast Farms”) is a company incorporated in England and Wales under company number 2359330. It was formerly known as Oyston Estates Limited. As such, it was one of the companies captured in the annex to the Freezing Order. That is because the sole shareholder of Fylde Coast Farms is Mr Oyston, the Second Respondent in the petition and a person bound by the Freezing Order.
4. So, the sole shareholder of Fylde Coast Farms, is Mr Oyston. The assets of Fylde Coast Farms, on one view, fall within the scope of paragraphs 11 and 12 of the Freezing Order. The Freezing Order contains what one could call “reach-through” provisions: provisions which prevent indirect dealing by Mr Oyston with assets not held by him directly, but held by him through companies owned or controlled by him.
5. On one view – the view taken by VBFA – paragraphs 11 and 12 of the Freezing Order prevent not merely the diminution of the value of the shareholding of those companies as are owned or controlled by Mr Oyston, they also prevent dealings with not merely the shares in those companies but with the assets of those companies themselves.
6. Before me today, VBFA contends that there has been a breach – a most serious breach – of the Freezing Order:
 - i) An asset held by Fylde Coast Farms, Home Farm, a property with Land Registry title LA839152, has been dealt with by Mr Oyston and Fylde Coast Farms. This came to the notice of VBFA and (through its solicitors, Clifford Chance LLP) VBFA sought information regarding this dealing from Mr Oyston’s solicitors, Haworth Holt Bell (“HHB”).
 - ii) I should, pausing there, make clear that HHB are one of two firms of solicitors instructed by Mr Oyston, and possibly also by Fylde Coast Farms. The other firm is Slater Heelis LLP (“Slater Heelis”).
 - iii) HHB initially refused to provide any information to Clifford Chance, on the basis that the information was confidential and Mr Oyston did not consent to its production. VBFA obtained an order from me, requiring Mr Oyston to provide information regarding any dealing with Home Farm. In response to that order, which I made on the papers and

without a hearing on 17 October 2019, information was provided in the form of an affidavit by Mr Oyston. This affidavit made clear that Home Farm had indeed been sold for a consideration in excess of £13 million, and that that money had been dealt with in various ways described by Mr Oyston in his affidavit.

- iv) A substantial amount of these monies, of the order of about £3 million, appears to have been dissipated. I stress that I use that word neutrally, and I am saying nothing about whether that dissipation was proper or improper. It is simply the case that there is now left a balance of £10,848,112.87 which, until the hearing this morning, I understood was in the “client account” of HHB. Which client, I do not know and have not been told. It may be Mr Oyston, it may be Fylde Coast Farms.
 - v) Mr Collings QC, who appeared before me both for Mr Oyston and for Fylde Coast Farms, told me on instructions that very recently the monies with HHB had now been re-transferred from HHB back to Slater Heelis, where they had originally been received. I do not know any more than this.
7. VBFA says that these dealings represent an extremely serious breach of the Freezing Order, which – as is common with such orders – has a penal notice prominently attached.
8. Mr Oyston and Fylde Coast Farms read the Freezing Order differently. Mr Collings QC has indicated to me that:
- i) Both Mr Oyston and Fylde Coast Farms do not read the Freezing Order in the wide way contended for by VBFA, and do not understand the Freezing Order to enjoin dealings with assets held indirectly by Mr Oyston.
 - ii) If, contrary to that submission, VBFA’s reading of the Freezing Order is correct, then the Freezing Order is unconscionably and impermissibly wide, piercing the corporate veil.
 - iii) Furthermore, the width and ambit of the Freezing Order was debated before me on 15 May 2018 and resulted in a Ruling by me on that date (Neutral Citation Number [2018] EWHC Civ 1232 (Ch)). Mr Collings contends that, in paragraph 35(3) of that Ruling, I made clear that the width of the Freezing Order was not as contended for by VBFA, but as contended for by Mr Oyston and Fylde Coast Farms.
- Mr Collings has said, most emphatically, that Mr Oyston has no desire to breach the Freezing Order and has been most concerned to stay within its limits.
9. I cannot possibly reach a concluded view on the true meaning and scope of the Freezing Order; nor, in consequence, can I reach any concluded view as to the propriety of the dealings described in paragraph 7 above. This application by VBFA – which I treat as being made *ex parte* but on notice to Mr Oyston and Fylde Coast Farms – has been brought before me on short notice because of these dealings. It will be necessary, at another hearing, to determine which construction of the Freezing Order is correct and – as a result – whether the dealings described in paragraph 7 above are or are not in breach of the Freezing Order.
10. The question, then, is what should happen in the meantime. For the purposes of today (but today only: I regard any future characterisation of the conduct of any person as being entirely at large), I am quite prepared to accept that Mr Oyston (and Fylde Coast Farms) believe that they have

conducted themselves entirely in accordance with the Freezing Order. Mr Collings has said in terms to this court that Mr Oyston, and the solicitors instructed by him, are keen to stay absolutely within the letter of what has been ordered, and that they would not dream of or contemplate breaching the Freezing Order.

11. It seems to me that it is necessary, pending determination of the true meaning and effect of the Freezing Order, for the *status quo ante* to be maintained. I do not consider it remotely satisfactory simply to maintain the wording of the current Freezing Order, given what Mr Collings has submitted. There must be clarity as to what dealings are permissible in relation to the proceeds of the sale of Home Farm, pending resolution of the issues regarding the meaning of the Freezing Order. That is necessary not merely for the protection of VBFA (which remains a substantial judgment creditor of Mr Oyston, in an amount in excess of the proceeds of the sale of Home Farm), but also of Mr Oyston himself, Fylde Coast Farms and the solicitors instructed by Mr Oyston and Fylde Coast Farms.
12. The fact is that Mr Oyston and Fylde Coast Farms deserve protection from inadvertently – because of a misreading of the Freezing Order – breaching that Freezing Order. Whilst one might expect Mr Oyston and Fylde Coast Farms to act conservatively given the divergent readings of the Freezing Order, I consider that (for their own protection) the position must be clear and unequivocal and without any ambiguity.
13. The same goes for HHB and Slater Heelis. It is obviously the case that one would expect any firm of solicitors, as officers of the court, to abide by an injunction affecting their client. I am quite sure that both HHB and Slater Heelis both fall within that category, and certainly that is the basis upon which I am proceeding today. I would be reluctant for this Ruling to be regarded as in any way a criticism of either firm of solicitors. But the fact is that both solicitors have seen fit to deal with the proceeds of Home Farm in the manner I have described in paragraph 7 above, and that is no doubt because they have adopted or been persuaded to adopt the reading of the Freezing Order taken by Mr Oyston.
14. For that reason, it is necessary to create a level of clarity regarding the balance of the sale proceeds of Home Farm which is so unequivocal as to provide protection to VBFA, to Mr Oyston and – most specifically – to the two firms of solicitors that I have mentioned. I would not want them to be in a position of facing unequivocal instructions from their client, be that Mr Oyston or be that Fylde Coast Farms, to deal with the Home Farm proceedings, and be accused of breaching those instructions if they do not act in circumstances where it could be said that the Freezing Order does not prohibit Mr Oyston from giving such instructions. It therefore seems to me that the Freezing Order must be buttressed by an interim order ensuring that the situation is made clear.
15. Given that neither firm of solicitors is before me today in their own person, the only way of achieving this is by joining the two firms of solicitors, that is to say HHB and Slater Heelis, and injunctioning them as well as Mr Oyston from dealing in any way with the balance of the proceeds of the sale of Home Farm. To be clear, I want these monies, wherever they may be, be they with HHB or Slater Heelis, locked down and not dealt with until this matter can come back before me for this question to be sorted out.
16. There is an incidental and additional form of protection that VBFA seeks. That is simply a notification requirement, which is an extension of the order in paragraph 16 of the Freezing

Order, requiring Mr Oyston to pre-notify on five days' notice any dealing that he proposes to make regarding any of his assets (as defined in the Freezing Order) where that transaction exceeds in amount £10,000. I make clear that I make such an order as well the interim injunction described in paragraph 16 above.