



Neutral Citation Number: [2024] EWHC 171 (Ch)

Case No: BL 2021 000121

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

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

Date: 31 January 2024

**Before :**

**HHJ JOHNS KC**

Sitting as a Judge of the High Court  
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**Between :**

**MERCY GLOBAL CONSULT LTD (IN LIQUIDATION)**

**Claimant**

**- and -**

- (1) MR ABAYOMI ADEGBUYI-JACKSON
- (2) ALAIN LUDOVIC BOISDUR
- (3) MR MICHAEL OSEMWEGIE
- (4) MR ABAYOMI AYANKUNLE OLUNLADE
- (5) MRS GIFT ENOCH
- (6) MRS FUNMILAYO OJUOLAPE  
ADEGBUYI- JACKSON
- (7) CORNERSTONE GLOBAL SYSTEM UK  
LTD
- (8) MERCY GLOBAL PROPERTIES  
SOLUTIONS LTD
- (9) DOMINION PAYROLL SOLUTIONS LTD
- (10) OLUGBENGA TITUS JONES SOMADE
- (11) OJUOLAPE ARCADE LTD
- (12) ADEKANMI (ALSO KNOWN AS KANMI)  
OLAOLU ADEDIRE

- (13) DMO CONSULTANCY & ACCOUNTING  
SERVICES LTD  
(14) PURPOSE IP CONSULT LTD  
(15) HANSTAL CONSULTING LIMITED

**Defendants**

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MS CLARA JOHNSON & MS HANNAH FRY (instructed by Wedlake Bell LLP) for the  
**Claimant**  
MS JULIETTE LEVY (instructed by Estate & Corporate Solicitors) for the **First, Third, and  
Sixth to Eleventh Defendants**

Hearing date: 24 January 2024

*This judgment is handed down by email to the parties' representatives and release to The  
National Archives at 2pm on 31 January 2024*

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**APPROVED JUDGMENT**

**HHJ JOHNS KC:**

A. Introduction

1. This is my judgment following a hearing on consequential matters in this case. I adopt the definitions employed in my main judgment (neutral citation number [2023] EWHC 3203 (Ch)) handed down on 13 December 2023 following trial. By paragraph 18 of my order of that date, the issues to be dealt with included (a) the calculation of equitable compensation to be ordered against the First, Second, Third, Fifth to Ninth, and Thirteenth to Fifteenth Defendants having regard to the findings in the main judgment and to recoveries and realisations, (b) interest, and (c) costs.
2. I also gave permission to apply at paragraph 21 of my order including for further directions in respect of rent paid or payable for the properties which I determined Mercy, on its proprietary claims, had an interest in.
3. In the event, I was also asked by Ms Johnson (continuing to appear for Mercy) at the hearing to make post-judgment freezing orders against some of the defendants excluding any exceptions for legal costs and living expenses, to make charging orders in respect of assets of some defendants for which no proprietary claim had been established, and third party debt orders.
4. Further, Ms Levy appeared somewhat unexpectedly for those defendants for whom E&C Solicitors have been acting. She asked for an adjournment of the hearing, sought permission to appeal my decisions of 13 December 2023, and made submissions on the amount of equitable compensation to be awarded as well as on the post-judgment relief sought.

B. Adjournment and permission to appeal

5. I refuse an adjournment of the hearing so far as it is concerned with determining the consequential matters of calculating equitable compensation, of interest, and of costs. My reasons are best given as part of considering the calculation of equitable compensation. They therefore appear at paragraph 14 below.
6. It is perhaps no longer possible to seek permission to appeal from me as the lower court. But so far as it is possible for me to do so, I refuse permission to appeal my decisions of 13 December 2023. The grounds put forward in requesting permission were that the defendants were unable to make submissions at trial. But that was not a decision of mine, whether on 13 December or otherwise. Those were the debarring decisions made on the pre-trial review, against which an application for permission to appeal is already on foot in the Court of Appeal. Further, there is no decision in the Court of Appeal that there is merit in the proposed appeals of the debarring orders, they were in the nature of case management decisions so are not lightly overturned, and no other ground is offered for an appeal against my December decisions. I am not therefore satisfied that an appeal has a real prospect of success. Ms Levy said she also now needed an extension of time for an appellant's notice. It may be that must now be sought from the Court of Appeal – see CPR 52.15. Even if not, it is best sought there, given the Court of Appeal is already seised of related appeals. I will not therefore make any order fixing a different period for the appellant's notice than that provided by CPR 52.12(2)(b).

C. Calculation of equitable compensation

7. Mercy accepted the principle that credit should be given for the assets to which a proprietary claim had been established.

8. But I was not satisfied that the figures put forward in the draft order gave appropriate credit for those properties. As against the loss of £24,364,399.60 I had found Mr Adegbuyi-Jackson liable for, subject to recoveries and realisations, credit was only offered for part of one of the real properties, being a 50 percent interest in Defoe House, and for 2 other assets, being the Bitcoin and the Hargreaves Lansdown account.
9. I consider, however, that credit should be given for all of the assets to which a proprietary claim was established. Mercy having established ownership of those assets acquired with the traceable proceeds of the fraud, to impose a personal liability which ignores those would seem to me to overcompensate Mercy. The sums used to acquire those assets have been traced into the assets, which remain available to Mercy. Such sums are not, as I see it, therefore losses, or reflective of losses, for which Mercy must receive equitable compensation. They are not part of the sum required to put Mercy into the position it would have been if Mr Adegbuyi-Jackson's breaches of duty had not occurred. I find support for this approach in *Snell's Equity*, 34<sup>th</sup> Ed. at 30-050: "*The value of any property recovered on a proprietary claim against the trustee or from a third party must be taken into account in determining the amount of the trustee's personal liability to account for losses which the trust has incurred.*" It also appears to be the approach applied by Edwin Johnson J in *Umbrella 2* at [85]; credit being given for a very substantial sum by way of realisations.
10. This point also effects the calculation of equitable compensation payable by the other director defendants of Mercy, being Mr Boisdur, Mr Osemwegie, and Mrs Enoch (the Second, Third and Fifth Defendants). No credits at all for assets to which a proprietary claim had been established were applied in arriving at the sums sought against them by way of equitable compensation. For like reasons, I consider that is wrong. Credit should be

given, in fixing the sum representing their personal liability for losses in the period for which they were directors, for assets acquired (as I have found in Mercy's favour) with the proceeds of the fraud in the same period. Again, that finds some support from *Umbrella 2* at [96].

11. The point has one further effect. Ms Johnson included in the draft order a provision that *"The total sum paid to or recovered by the Claimant from the Defendants pursuant to the terms of this Order shall not exceed £24,364,399.60 (exclusive of interest and costs)."* Such a provision should, indeed, be included. It serves the purpose of preventing double recovery; the sums for which each of the defendants is liable overlapping. As it is put in *Snell's Equity, 34<sup>th</sup> Ed.* of claims in knowing receipt and dishonest assistance, *"Each of these claims brought against third parties has the effect of reducing the amount of the beneficiary's loss resulting from the primary breach of trust. Any sum which the beneficiary recovers would therefore be counted towards reducing the amount of the trustee's primary liability for losses resulting from the breach."* (30-067), and *"The trust claimant may not recover his loss twice over. Any money that he recovers on the claims against the third parties must be deducted from the amount of his claim against the trustee for the losses resulting from his breach."* (30-003). However, the need for credit to be given for the proprietary claims means that the cap in such provision should be the total sum net of those credits, being the total liability of Mr Adegbuyi-Jackson after (not before) those credits.
12. As to the sums to be credited for each asset, Mercy put forward the purchase price (less an allowance for costs of sale). None of the assets had yet been sold.

13. Ms Levy asked for the hearing to be adjourned in order that the defendants could adduce evidence of the current value of the assets to which a proprietary claim had been established and make the argument that it was any increased current value for which credit should be given, not the purchase price.
14. There should, as I have said, be no adjournment. My reasons are these. First, given the debarring orders against the defendants, it is my judgment that they are not entitled to be heard on the amount of equitable compensation. Ms Levy argued that as the question was one of quantum, the defendants were not debarred from participating on the question. But the trial was not a split one. The trial, and claim which the defendants are debarred from defending, is one for, among other things, equitable compensation. Ms Levy was able to show me no authority suggesting that a general debarring order of the sort in this case did not exclude participation on the issue of quantum. Instead, the position is that, subject only to a narrow residual discretion, debarring orders should mean what they say – see the *Times Travel* case referred to at paragraph 5 of my main judgment. Second, if the defendants are not debarred on this question and the valuation evidence is relevant, it should have been put forward by now. Third, I would not expect the planned argument to succeed, even if it ended up being supported by valuation evidence. Where a proprietary claim is made to an asset, the beneficiary is usually entitled to take the benefit of any increase in value in the asset. It follows that there is little or no prejudice to the defendants in refusing an adjournment. The judgment to which Mercy is entitled would be delayed by an adjournment, and that delay would represent real prejudice.
15. The assets not having been sold, there being no evidence of value (only of the purchase price), and there being no rule - so far as I am aware - that credit must be given at the rate



of the current value (especially given that a beneficiary is usually entitled to take any rise in value), credit will be applied in the amount of the purchase price (less an allowance for sale costs). *Umbrella 2* gives support for that approach at [104].

16. I was persuaded by Ms Johnson that credit need not be given for a sum of around £2m held by Mercy in addition to the assets against which a proprietary claim was established. One, I do not know that these represent the proceeds of the fraud so might be considered property to set against the losses for which Mercy is to be compensated. Two, I cannot be satisfied they will be available to meet those losses, given that the liquidators have not yet completed their work. These sums may well go to meet further expenses of the liquidation. Three, it would be particularly inappropriate to require credit to be given for them when the costs of the liquidation could themselves be characterised as further losses flowing from the fraud.
17. For both Mr & Mrs Adegbuyi-Jackson the total sum given for equitable compensation in the draft order reflected a reduction equivalent to the value of the Nigerian naira which had formed part of the personal claim against them. The naira sum was then, by the draft order, to be the subject of a proprietary declaration.
18. But that did not reflect my judgment, the claim (at least as explained at trial), the revised annex produced during trial by Ms Johnson summarising the claims against each defendant, or even Ms Johnson's skeleton argument filed the day before the consequential matters hearing. Those were all on the basis that the naira sum formed part of the personal claims against Mr & Mrs Adegbuyi-Jackson and that no proprietary claim was made.
19. I am not prepared to consider a shift in Mercy's case on this so late. No reason for the lateness of that shift was offered. And there was insufficient time at the consequential matters hearing to consider properly this new proprietary claim.

20. There was another respect in which the sums Ms Johnson asked me to fix for equitable compensation did not reflect my judgment. Mr Boisdur and Mr Osemwegie were, I decided, liable before deductions for £8m odd and £23m odd respectively. Those sums reflected the liability incurred to HMRC during the period of their directorships. As with Mr Adegbuyi-Jackson, they also received sums from Mercy. I found those were misappropriations but made clear that represented an alternative basis for their liability to the extent of these misappropriated sums. But the draft order submitted by Mercy adds those misappropriated sums, resulting in a liability higher than the losses to Mercy in the period. That does not accord with my judgment. The sum I order will be limited to those losses.
21. I otherwise accept the calculations put forward; they being supported by the seventh witness statement of Mr Ainge.

D. Rent

22. By the draft order, Mercy invited the making of a declaration that rental income received by MGPS and Mrs Adegbuyi-Jackson is held on constructive trust for Mercy and an order for payment over to Mercy of rental sums held in Mrs Adegbuyi-Jackson's account.
23. In circumstances where no proprietary claim to rent had been specifically pleaded or made at trial, and I was aware of a dispute about rent in the context of freezing injunctions made, I gave only a liberty to apply in my order following trial.
24. There was no application issued for hearing by me at the consequential matters hearing. Ms Levy made clear any such application would be opposed. And told me that rent was indeed the subject of a dispute.

25. In that regard, there is an application by the E&C Defendants made in November 2023 to vary existing freezing orders. It is listed to be heard over 2 days in the week beginning 26 February 2024. Among other things, release is sought of the rental proceeds being held in accounts of MGPS and Mrs Adegbuyi-Jackson. I understand it is being said that consent was given by the liquidators for the use of part or all of those funds by the E&C Defendants.
26. A right to rent would usually flow from a declaration as to ownership of property. But it is an equitable claim. As the question of rent is set to be debated as part of an existing 2-day hearing which is only a short period away, there having being no application under my order of 13 December 2023, and any such application being one on which, at least arguably, the E&C Defendants may have a right to be heard, the right course is for any application for the post-judgment relief sought by Mercy in relation to rent to be heard at that forthcoming hearing. I will give directions designed to bring that about.
27. That is also the right occasion for the hearing of any applications for post-judgment freezing orders, charging orders, or third-party debt orders. I will give directions as to the making and hearing of those applications accordingly. They are applications on which the defendants are likely to have a right to be heard, which have not yet been made, and which – at least as to any freezing order applications – overlap with the existing application of the E&C Defendants to vary the terms of the existing freezing orders. Both sides agreed the current time estimate for the February hearing could accommodate such applications. I have already, in December when delivering my main judgment, continued the existing freezing orders until further order.

E. Costs

28. The draft order submitted for Mercy asked for an order that the defendants other than Mr Somade (the Tenth Defendant, against whom the claim failed) and Mr Olunlade and Mr Adedire (the Fourth and Twelfth Defendants, with whom settlements were reached) pay Mercy's costs of the claim.
29. I did not consider that took sufficient account of the failure of the claim against Mr Somade at least. Ms Levy also made a submission to that effect. In the event, Ms Johnson accepted for Mercy that the order should be one for payment of Mercy's costs of the proceedings save for the costs of the claims against Mr Somade, Mr Olunlade, and Mr Adedire. And that there should be an order that Mercy pay Mr Somade's costs of the proceedings. I will make those orders.
30. Mercy sought a payment on account. The figure put forward was £765,000. I consider that is a reasonable sum, being a relatively modest percentage (40-odd percent) of the costs said to have been incurred. Ms Levy questioned whether any sum would end up being payable by way of costs as, she argued, the costs incurred had been paid for out of realised assets of Mercy. I had no evidence, though, about any assets used to fund payment from which I could assess the merits of an argument that some credit would need to be given on an assessment. Any such argument seems to me one for assessment, and one which, in the absence of being able to consider its merits, it would be wrong to reflect in fixing a reasonable sum.

F. Stay, time to pay, and interest

31. In the absence of an adjournment, Ms Levy asked for a stay of the proceedings pending appeals in the Court of Appeal against the debarring orders made at the pre-trial review.

But I do not consider there is a proper basis for any such stay. First, there was no written application let alone with any evidence in support. Second, there has been no decision that there is any merit in the appeals. Permission to appeal has not yet been considered by the Court of Appeal, and they were case management decisions. Third, my orders in relation to the proprietary claims are for transfers of property. I would not expect realisations by sale to be imminent. There is therefore time for a stay, if one is appropriate, to be considered by the Court of Appeal.

32. In relation to the money judgments, Ms Levy said 60 days should be given for payment so as to enable proposals to be made or funds to be raised. But there was no evidence to suggest that it was at all realistic for funds to be raised if such an extended period was given. And proposals can be made in the standard period of 14 days, which is the period for payment I will order. There is also the point that there has already been over a month since the handing down of the main judgment from which it was plain that substantial money judgments would follow. There has therefore already been a significant opportunity for proposals, or to begin making arrangements for payment. But the defendants cannot have expected, and I see no good reason for, a forthwith order, which is what Mercy requested at the hearing. The defendants should have the standard 14-day period.

33. Mercy sought interest at the rate charged by HMRC for late payment. That is simple interest at 2.5 percent above base. Given that the loss in this case is Mercy's liability to HMRC, that rate is an appropriate one. I note that it was the rate at which interest was awarded by Snowden J in *Bilta (UK) Ltd v Natwest Markets plc* [2020] EWHC 2598 (Ch), another case involving VAT fraud – see that decision at [46] – [56].

34. I invite counsel to agree an order giving effect to the decisions in this judgment.