



Neutral Citation Number: [2019] EWHC 80 (Comm)

Case No: CL-2013-000683

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Friday, 18th January 2019

Before:

MR. JUSTICE ANDREW BAKER

Between:

- (1) KAZAKHSTAN KAGAZY PLC
(2) KAZAKHSTAN KAGAZY PLC
(3) PRIME ESTATE ACTIVITIES
KAZAKHSTAN LLP
(4) PEAK AKZHAL LLP
(5) ~~PEAK AKSENGER LLP~~
(6) ASTANA - CONTRACT JSC
(7) PARAGON DEVELOPMENT LLP

Claimants

- and -

- (1) BAGLAN ABDULLAYEVICH ZHUNUS
(formerly BAGLAN ABDULLAYEVICH
ZHUNUSSOV)
(2) MAKSAT ASKARULY ARIP
(3) SHYNAR DIKHANBAYEVA
(4) SHOLPAN ARIP
(5) LARISSA ASILBEKOVA

Defendants

- and -

HARBOUR FUND III LP

Additional Party

- and -

- (1) DENCORA LIMITED
(Applicant, and Respondent to the Charging
Order Application dated 6 November 2018)
(2) STANDCORP LIMITED
(Applicant, and Respondent to the Charging
Order Application dated 27 April 2018)
(3) PILATUS TRUSTEES LIMITED
(as trustee of the WS Settlement)

Applicants

- and -

- (1) COOPERTON MANAGEMENT LIMITED
(2) PERMAFAST LIMITED
(3) WAYCHEM LIMITED
(4) FABLINK LIMITED

Respondents

**(Respondent to the Charging Order Application
dated 27 April 2018)**

- and -

**UNISTAREL CORPORATION
(Respondent to the Charging Order Application
dated 14 November 2018)**

Respondents

MR. ROBERT HOWE QC and MR. JONATHAN MILLER (instructed by **Allen & Overy LLP**) appeared for the **First, Second, Third and Fourth Claimants**.

MS. ELSPETH TALBOT RICE QC and MS. ELIZABETH WEAVER (instructed by **Signature Litigation LLP**) appeared for the **First, Second and Third Applicants/Respondents**.

MR. ALEXANDER MILNER (instructed by **Gresham Legal**) appeared for the **Fourth Defendant**.

MR. RICHARD COLEMAN QC and MR. RICHARD POWER (instructed by **Russell-Cooke LLP**) appeared for the **Respondent (Unistarel Corporation)**.

Approved Judgment

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP
Tel No: 020 7067 2900 Fax No: 020 7831 6864 DX: 410 LDE

Email: info@martenwalshcherer.com

Web: www.martenwalshcherer.com

MR. JUSTICE ANDREW BAKER:

1. This has been the hearing in this court of an application issued by Mrs. Arip on 7th January and given an initial outing before Hildyard J as a duty judge sitting in the vacation the following day, that Mrs. Arip have further time to provide to the claimants the further information as to her assets that was ordered to be provided by 11th January. That was an order made by Mr. Salter QC sitting as a deputy judge in this court on 7th December last year. It followed repeated indications last term, by and on behalf of Mrs. Arip, that information of the sort ultimately ordered by Mr. Salter would be provided. This is all in the context of the fact that her asset disclosure, provided under the order for disclosure of assets within the worldwide freezing order imposed on her by me in this court in late September last year, provided information of assets an order of magnitude smaller than evidence already available to the claimants indicated had been Mrs. Arip's cash assets at all events some years, but not very many years, ago.
2. In those circumstances, Mr. Salter QC was minded rightly to conclude, on the evidence as it then stood and therefore as it still stands today, that it is a fair inference that Mrs. Arip has or may well have substantial additional assets not disclosed. In those circumstances, ancillary to the primary order for disclosure of assets, itself ancillary to and an important part of the enforcement and policing of the worldwide freezing order, Mrs. Arip was ordered by Mr. Salter QC to give disclosure of what had happened to the very large cash sums that she had received, her receipt of which was the subject matter of the evidence previously available to the claimants to which I have just referred.
3. At what in those circumstances Mr. Howe QC, in my judgment, rightly described as the very last minute, Mrs. Arip has sought to circumvent the order made in early December by requesting a distribution to herself of £13.2 million in cash from a trust referred to as the WS Settlement, of which she claims to be one of the discretionary beneficiaries, for the purpose, she says, then of making a payment into court of that sum so as, she would then further say, to discharge the freezing order and with it any ongoing obligation in relation to disclosure of assets.
4. In my judgment further Mr. Howe QC, with respect, is correct to characterise what Mrs. Arip is doing, although as with everything in this case its factual detail is more complex than this pithy summary, as in reality a plea to the court that she may be in a position to come into funds that may result in the discharge of the order and upon that basis she should no longer have to comply with the existing orders of the court as to disclosure of assets.
5. As it happens, the complexity of the particular facts in this case is in a factual sense in part the responsibility of the claimants. The sense in which that is true and which I mean to convey is that the claimants are able to say credibly to the court that it is likely to be the case that there is a very real question to be considered in respect of what is now an application also before the court, for permission for that distribution of funds to be made to Mrs. Arip, that no such permission should be granted.
6. The claimants are presently hampered by how much they can say in that regard by the fact that Mrs. Arip has obtained and, as things stand, continues to wish to maintain an anti-suit injunction issued in Nicosia, Cyprus, restraining what the claimants can or cannot advance in this court by way of allegation and argument in relation to the WS Settlement. Even without that particular complication, that is to say were the claimants

at liberty to advance that which I anticipate they would wish to be able to and may well be in a position to advance in resisting the application concerning the distribution of funds from the WS Settlement, the reality is that it will be, at a minimum, quite some months before that application can be resolved. That is even before considering any possible appeal.

7. In those circumstances something said by Jackson LJ in *VTB Capital Plc v Maloleev* [2001] EWCA Civ 1252 at the end of paragraph 42 applies absolutely to this case. He said this:

"Nothing in the history of this litigation inspires confidence that any party will readily accept an adverse decision or that there will be early and final resolution of the discharge application."

8. In that case he was referring to an application advanced by the parties subject to a worldwide freezing order for its discharge on either jurisdictional grounds, amounting to one form of argument that the injunction should never have been granted in the first place, or alternatively on the ground that even if originally properly made the freezing order had become no longer necessary.
9. The point of principle decided by the Court of Appeal in that case was, as it seems to me in terms, that an as yet unresolved application to discharge a freezing order is no reason to excuse or delay full compliance with whatever orders as to the disclosure of assets have otherwise been determined to be proper in the circumstances of the case. It seems to me that that is the applicable principle in the present case.
10. If there is a form of distinction at all, it is only the irrelevant distinction that whereas in *VTB Capital* there was a pending, as yet undetermined, application in terms for an order discharging the freezing order, whereas in the present case there is an application for permission for a certain event to occur, the occurrence of which, it is said on behalf of Mrs. Arip, would then lead to a prompt discharge of the freezing order.
11. The position is yet further complicated in this case by the fact that whether the distribution of funds from the WS Settlement, which Mrs. Arip desires to occur, if it then led to a payment into court, would in truth result in the removal of any freezing order and associated disclosure obligations against her is contentious. That is because there may be room even for an argument that if that which the claimants are likely to wish to be able to contend in relation to WS Settlement were ultimately pursued and established, then such payment would not be regarded as adequate automatically to discharge the freezing order; and in any event there will be room for a serious argument in favour of the claimant that the funds that had been used to seek to bring about a discharge of the freezing order had not been in reality Mrs. Arip's funds to use in that way, so that a freezing order should be reimposed with equivalent disclosure obligations in any event.
12. In those circumstances, it seems to me that the request for not so much an extension of time, but rather for the staying of Mrs. Arip's obligations to provide the disclosure which this court has determined is properly required in the context of the freezing order against her, pending the future determination of the application in relation to a possible distribution of funds by the WS Settlement, is not an application to which the court can accede.

13. When the matter came before Hildyard J on 8th January the court, as I understand it, was informed that the evidence Mrs. Arip intended to represent her compliance with the further information order of Mr. Salter QC was prepared and ready for service, and Hildyard J was made aware that the matter was returning, that is to say this case more generally was returning, for consideration in this court today, 18th January. In those circumstances he imposed, pending a proper consideration today of the application for, as I have put it, a stay of Mrs. Arip's disclosure obligations, a solution whereby she was still required to file and provide that which she had prepared, but on a basis that it would be sealed and was not to be examined, in particular by the claimants, until the matter had been considered in this court.

14. In those circumstances, in my judgment the appropriate order now is an order dismissing this aspect of the various applications that have come before the court today, and for the avoidance of doubt making an order in some appropriate terms if I need to as to the unsealing of the evidence that has been served. It may be that that latter is unnecessary as the order of Hildyard J may simply have expired three minutes ago, it now being three minutes past five o'clock. In the normal way I will in any event trust to counsel to put together a workable and coherent form of draft order that reflects the conclusion that I have reached and the order I have indicated should be made.
