



Neutral Citation Number: **[2020] EWHC 1819 (Comm)**

CL-2020-000240

Case No: CL-2020-000240

**IN THE HIGH COURT OF JUSTICE**  
**OF ENGLAND AND WALES**  
**QUEEN'S BENCH DIVISION**  
**COMMERCIAL COURT**

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

Date: 9 July 2020

**Before :**

**MRS JUSTICE COCKERILL DBE**

**Between :**

**Valla PTC Limited (acting as Trustee of  
the Westline Trust)**

**Claimant**

**- and -**

**Jonathan Moss Faiman**

**Defendant**

**Mr James Duffy** (instructed by **Eversheds**) for the **Claimant**  
**The Defendant** appeared in person

Hearing dates: 3 July 2020

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Thursday 9 July 2020 at 10:30.**



## **Mrs Justice Cockerill :**

### **Introduction**

1. In this case the Claimant Valla PTC applies for permission to issue an application for, and an order for summary judgment against the Defendant Jonathan Moss Faiman.
2. There are two issues which I need to consider:
  - i) The jurisdiction to grant summary judgment in this case;
  - ii) The application for summary judgment.
3. I will first however outline the relevant procedural history, which is relevant to both questions.

### **Summary of the claim**

4. The Claim is brought in relation to a Loan Consolidation Agreement (the "LCA") entered into between the Claimant and the Defendant on 3 September 2019, pursuant to which the Claimant agreed to consolidate certain of the Defendant's debts and the Defendant agreed to repay to the Claimant a total sum of EUR 29,763,040 by 31 January 2020. I have before me a copy of that agreement and a witness statement which sets out the history of the Defendant's indebtedness which has its origin in loans made in 2017 and 2018 and prior defaults, which resulted in the loan consolidation. In summary the Defendant indicated that via various business interests, in particular in a company called Energicon, he anticipated being able to pay off his indebtedness by early 2020.
5. The LCA arrangements have a number of complexities, arising out of past dealings, but for present purposes encapsulate a fairly simple debt arrangement. The key terms of the LCA are in particular:
  - i) By Clauses 13.1 and 13.2, the LCA is governed by English law with an English court jurisdiction clause;
  - ii) By Clause 3.1, the Defendant agreed to repay the Claimant the sum of EUR 29,763,040;
  - iii) By Clause 3.3, the Defendant agreed to pay interest at a rate of 8% per annum;
  - iv) By Clause 5.1, the Defendant agreed to repay the full amount of the loan, together with interest, by the "*Repayment Date*", which is defined as "*31 January 2020*";
  - v) By Clause 7.1, the Defendant agreed, within one month of the "*Effective Date*" (i.e. by 3 October 2019), to: (a) pledge in

favour of the Claimant assets with a value not less than the amount of the consolidated loan as security for all its present and future payment and performance obligations under the LCA (the “Security”); and (b) execute and deliver the agreements conferring the Security on the Claimant in a form and substance satisfactory to the Claimant (the “Security Agreements”). The security envisaged was apparently shares in Energicon.

- vi) By Clauses 7.2 and 8.1(c), it was agreed that any failure by the Defendant to satisfy the Security requirements of Clause 7.1 would amount to an immediate Event of Default;
  - vii) By Clause 8.2, on an Event of Default, the Claimant may give notice to the Defendant to accelerate the loan, requiring the full loan to be immediately due and repayable and;
  - viii) By Clause 3.4, the parties agreed that interest in the event of default would be payable at 8% on any amount due.
6. However, despite having agreed to pledge his shares in Energicon as Security in accordance with Clause 7.1, the Defendant failed, by 3 October 2019, to execute the Security Agreements in breach of the LCA. He informed the Claimant that he could not do so without consents which he had not obtained.
  7. On 11 October 2019, the Claimant gave written notice of this default to the Defendant pursuant to the notice terms of the LCA, declaring the full amount of the loan due and payable.
  8. To date, the Defendant has still not repaid any amount of the loan or interest (simple and default).
  9. As is also apparent, the term of the loan has also since expired: pursuant to Clause 5.1, the loan was due to be repaid by 31 January 2020.
  10. As is explained in the first witness statement in support of the application, the Claimant has followed the Pre-Action Protocol for Debt Claims. On 4 November a Letter of Claim was served on the Defendant.
  11. While the Defendant failed to respond to the substance of the Claimant’s letter before action, he did return a Reply Form dated 3 December 2019 in which he confirmed: *“I agree I owe the debt”* and *“I will pay, but I need more time to pay”*. That was a partial but not a full completion of the reply letter. He did not include proposals for repayment, or include details of his financial position.
  12. A draft Claim Form was served on 3 April and 21 days was given for response. No response was received so on 24 April 2020 the Claim Form was issued.

13. Service of the Claim Form is explained in detail in the first witness statement of Mark Cooper in support of the application. In short, pursuant to section 1140 of the Companies Act 2006, the Defendant, as a director of a number of companies with UK registered addresses, can be validly served at the service address filed under the Act. I have read the evidence on this point and am satisfied that valid service was effected at two of these addresses. A certificate of service was filed promptly at court in respect of this service.
14. Moreover, it is clear that the Defendant is aware of the proceedings, the application and the hearing date:
- i) The Claim Form and Particulars of Claim were also emailed to the Defendant to an account from which he has continued to correspond with the Claimant's solicitors. He responded to at least one email after being informed of the fact of proceedings.
  - ii) The proceedings were also sent to his Monaco address by post, with delivery being evidenced.
  - iii) On 18 May 2020, the Defendant acknowledged that he had received the documents sent to his Monaco address (which includes the Claim Form and Particulars of Claim) and responded to the email from the Claimant's solicitors which had explained that he was required to file an Acknowledgment of Service and that, if he did not, the Claimant would apply for summary judgment. It is worth setting out this communication, from the same address to which the Claim Form was emailed "*I have got back to Monaco. I have the documents. I can accept service*".
  - iv) Although the Defendant was keen to enter into discussions, and did not appear to dispute the debt, no payment was made, and no late acknowledgement of service filed.
  - v) This application was then issued on 22 May 2020. The application was served at the same registered addresses, and also sent to his Monaco address and emailed to him.
  - vi) On 2 June 2020, the Defendant replied to the Claimant's solicitors' email regarding the application notice, and then spoke with Mr Cooper to agree the dates of availability for the listing of the application.
  - vii) The Defendant was copied to the Court's email notifying the parties that the application had been fixed for a hearing on 3 June 2020, and subsequent exchanges regarding the hearing.
  - viii) On 1 July 2020, in an email exchange with the Defendant, the Claimant's solicitors confirmed to the Defendant that the hearing would proceed on 3 July 2020.

- ix) The Defendant has confirmed to me orally that he understood that the application was not just for permission to issue an application for summary judgment but was a combined application and that this hearing would deal with the substantive question of summary judgment.

### **The jurisdiction to grant summary judgment pursuant to CPR 24**

15. Since the Defendant has not even filed an Acknowledgement of Service, the Claimant requires permission under CPR 24.4(1) to apply for summary judgment. The Claimant seeks summary judgment, as a judgment on the merits, rather than a default judgment essentially in order that the judgment may be more readily enforced in other jurisdictions. That is a reason which is not uncommon.
16. The relevant principles have very recently and very helpfully been summarised by Henshaw J. in *DVB Bank SE & ors v Vega Marine Ltd & ors* [2020] EWHC 1494 (Comm):

“[56.] CPR 24.4(1) provides:  
‘A claimant may not apply for summary judgment until the defendant against whom the application is made has filed – (a) an acknowledgement of service; or (b) a defence, unless – (i) the court gives permission; or (ii) a practice direction provides otherwise.’

[57.] There is no requirement for a party to obtain permission under CPR 24.4(1) before issuing a summary judgment application: both applications can be made in the same application notice: *F BN Bank (UK) Ltd v Leaf Tobacco A Michailides SA* [2017] EWHC 3017 (Comm) § 17 (Andrew Baker QC); *European Union v Syria* [2018] EWHC 1712 (Comm) § 62 (Bryan J); and *Punjab National Bank (International) Ltd v Boris Shipping Ltd* [2019] EWHC 1280 (QB) § 30-32 (Christopher Hancock QC).

[58.] Bryan J summarised the principles relevant to the exercise of the court's discretion under CPR 24.4(1) in *European Union v Syria* :

‘(1) The purpose of the rule are to ensure that no application for summary judgment is made before a defendant has had an opportunity to participate in the proceedings and to protect a defendant who wishes to challenge the Court's jurisdiction from having to engage on the merits pending such application.

(2) Generally, permission should be granted only where the Court is satisfied that the claim has been validly served and that the Court has jurisdiction to hear it. Once those conditions are met there is generally no reason why the

Court should prevent a claimant with a legitimate claim from seeking summary judgment.

(3) The fact that a summary judgment may be more readily enforced in other jurisdictions than a default judgment is a proper reason for seeking permission under CPR 24.4(1) .’ (§ 61)

I would add, in relation to (3), that it would in my view be sufficient that the claimant has a reasonable belief that a summary judgment may be more readily enforced than a default judgment. There is no justification for the court subjecting any such belief to minute examination, when the permission the claimant is seeking is in reality no more than the opportunity to obtain a reasoned judgment on the merits of its claim”.

17. Here the position is that:

- i) The Defendant has plainly been validly served with, and is aware of the, proceedings;
- ii) The Defendant has had an opportunity to participate in the proceedings and to serve evidence;
- iii) The Defendant has been aware that summary judgment is being sought today, not simply permission to issue an application for summary judgment;
- iv) He has nonetheless not disputed the application;
- v) The Claimant fairly considers that a judgment on the merits may be more readily enforced abroad (and the Defendant appears to have assets outside of this jurisdiction);

I am satisfied in the light of these facts both that permission pursuant to CPR 24.4(1) should be granted and that it is appropriate to consider the application now.

18. As to the merits of the application this is the simplest of the questions. The claim is clear and well evidenced. The requisite procedural steps have been taken to verify the claim. In particular at paragraphs 53-57 of the first witness statement of Mark Cooper the requirements of PD24 paragraph 2 are entirely complied with.

19. There is correspondence with the Defendant in which he appears to acknowledge the debt. There is the reply form to the letter before action which says: “*I agree that I owe the debt*”. There is nothing in the documents which suggests any defence to the claim.

20. The Defendant has on or around 2 July 2020 executed a security agreement which recorded his acknowledgment of these proceedings

and that the principal amount of the LCA loan, plus interest, remains outstanding: and that agreement says that it is without prejudice to the LCA and does not constitute a release or waiver in respect of these proceedings. Clause 6.7 of that recent agreement in fact specifically sets out the sums due under the LCA, including interest, which the Defendant "*acknowledges and agrees*".

21. Finally I have seen and heard the Defendant today at the hearing and he has candidly accepted the debt is due. He has explained that he has every intention of paying that sum. His only point was that if judgment were granted he is confident that it will be counterproductive. He says that granting this judgment will destroy his company and thereby make it impossible for him to pay.
22. I have considered whether this submission engages the provision at CPR 24.2(b) as to whether there is some "*other compelling reason why the case or issue should be disposed of at a trial*". It seems to me clear that this submission does not engage this provision. Absent some evidence (which is lacking) the hurdle could not be met. The point appears to be contentious in at least some degree. I am told by Mr Duffy for Valla that Valla has taken this submission on board and that it still wishes to proceed, which implies a scepticism about that outcome. Valla has made plain that it has no wish or intent to destroy the Defendant's company; indeed it wishes it every success.
23. But even were evidence forthcoming it would not go to a reason for trial (the requirement of the rule) – the question would rather be whether it justified a delay in the hearing of this application. That is an entirely separate point. To engage "*some other compelling reason for trial*" there would need to be a reason which made the use of the trial process (and the extra Court resources) justifiable.
24. Accordingly, I conclude without any reserve that the conditions for summary judgment are made out. I grant judgment accordingly.
25. I am told that in terms of figures, as at the date of the hearing, the Defendant owes:
  - i) Principal in the amount of EUR 29,763,040 (GBP £26,779,890.50);
  - ii) Simple interest in the sum of EUR 1,983,115.43 (GBP £1,784,506.42); and
  - iii) Default interest in the sum of EUR 1,852,837.47 (GBP £1,667,071.99).
26. I do have GBP equivalents but those are doubtless based on the exchange rate yesterday or the day before, and will require to be updated if the GBP figure is to be inserted into the order on judgment.



