



Neutral Citation Number: [2020] EWHC 2138 (Comm)

Case No: CL-2020-000434

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

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

Date: 17 July 2020

**Before :**

**Mr Justice Foxton**

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**Between :**

- (1) PALESA SARL  
(2) SUPERB SPORT LIMITED  
(3) MR ANTONIO CONTE  
(4) MRS CATERINA CARMÌ  
(5) MR RICCARDO RIZZARDI  
(6) MR ANTONIO MASSIMINO  
(7) MS MARIA AZZURRA MASSIMINO  
(8) MRS PATRIZIA BACCI

**Claimants**

- and -

- (1) MR MASSIMO BOCHICCHIO  
(2) KIDMAN ASSET MANAGEMENT LTD

**Defendants**

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**Peter De Verneuil Smith QC and Paul C K Wee (instructed by Herbert Smith Freehills  
LLP) for the Claimants**

Hearing dates: 17<sup>th</sup> July 2020  
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**RULING**

**Mr Justice Foxton**  
(1:26 pm)

**Friday, 17 July 2020**

**Ruling by MR JUSTICE FOXTON**

1. This is an application made before me today by the claimants for a worldwide freezing order and ancillary relief against the defendants, Mr Massimo Bochicchio and a company called Kidman Asset Management Limited (“Kidman”). The application has been made on an urgent basis but was served on the defendants by a contractually agreed method on Monday. It follows that three clear days' notice was given of the application. The defendants have not responded and they did not appear at this hearing before me.
2. It is well-known that to obtain worldwide freezing order relief, an applicant has to show a good arguable case on the merits, evidence of assets within or without the jurisdiction, a real risk of the unjustified dissipation of assets so as to render any judgment the claimant obtains nugatory and that it is just and convenient to grant the order.
3. So far as good arguable case is concerned, I can deal with this very briefly. The claims are all brought pursuant to settlement deeds which the defendants entered into with various of the claimants in late May and early June of this year. Those settlement deeds were entered into against the background of what the Claimants contend was the discovery of what was potentially a major fraud perpetrated by the first defendant using Kidman. Under the settlement agreements, the defendants promised to pay Euros 33.1 million to the claimants by 30 June 2020. That sum has not been paid and therefore, on the face of the things, there is not simply an arguable, but a very strong claim to that debt.
4. Then there was a claim by some but not all of the claimants, who I think are referred to as the Massimino parties, in relation to investments in shares quoted on the New York Stock Exchange which the claimants refer to as the BABA shares. There was a clause in the settlement deed concluded with those parties that said they were to be paid the proceeds of the sale of 47,069 BABA shares. No such sum has been paid. Once again therefore, absent some explanation by the defendants, there is a good arguable case that there was a breach of the obligations in that settlement deed, either in not selling the shares or in not paying over the proceeds. While the precise quantification of that claim will ultimately be a matter of evidence at trial, I am satisfied there is a good arguable case that the figure of around US\$10.5 million claimed is the appropriate quantum.
5. The third head of claim has been described as the “returns claim”, which is that under the settlement deeds the defendants promised to disgorge to the claimants any interest or gains made on the amounts invested in Kidman, those interest or gains to be set out in a statement of account to be provided by 29 June 2020.
6. The defendants sent an email on 7 July 2020 setting out what the defendants claim is the quantification of those amounts. I can see there may well be real issues down the line as to the accuracy of the figures in that email and there is, of course, the possibility that it was simply part of the pattern the claimants are content to allege elsewhere of buying time by presenting a false account. But for present purposes, I think the claimants can fairly rely on the defendants' own account for the purpose of quantifying the return claims. So I am satisfied there is a good arguable case as to those three heads of monetary claim.
7. So far as risk of dissipation is concerned, it is clear that the claimants must establish a real risk, judged objectively, that a future judgment will not be met because of the unjustified dissipation of assets. Mr de Verneuil Smith QC for the claimant referred me to the Court of Appeal guidelines in Lakatamia Shipping v Morimoto. That makes it clear there will be some cases where merely relying on a good arguable case that the defendant has been dishonest will not, of itself, establish a real risk of dissipation, but other cases where the

very nature of the allegations giving rise to the claim against the defendant will also bear heavily on the risk of dissipation.

8. I am satisfied here that there is solid evidence of a real risk of dissipation by the defendants. There is, first of all, a good arguable case that the claimants were induced by the first defendant to invest through Kidman on the basis of what was said to be a close connection between Kidman and HSBC with HSBC having an interest in Kidman. The effect of recent investigations undertaken on the claimants' behalf establishes a good arguable case that that was a dishonest misrepresentation. HSBC have recently stated they are unable to identify any ownership or control of Kidman by any company in their group. The first defendant has since warranted that he is the sole ultimate beneficial owner of Kidman, which is inconsistent with HSBC involvement.
9. Further, in the course of dealings with one of the claimants, Mr Conte, the first defendant appears to have produced a document called the direct deposit transfer letter purporting to come from HSBC. A recent communication from HSBC, to put it at its lowest, raises very real questions as to the authenticity of that document.
10. Second, when investors were looking to redeem their investments in 2019 and 2020, on the evidence before me, they were met with evasive and inconsistent responses, assurances of imminent payment and, in some cases, assertions payments had already been made but no payments were forthcoming. And absent some explanation by the defendants, those communications raise a legitimate concern that the money had not been invested as promised and that the investors were being fobbed off when they sought money back while the defendants took steps to make recovery of the money more difficult.
11. Finally, it must be noted that this claim arises very shortly after the settlement deeds were concluded, so the defendants, despite having made promises in late June and indeed orally in early July of payment being imminent or sums already having been paid, have paid nothing. That of itself must raise a genuine concern as to whether the defendant ever really intended to perform the settlement deeds or whether the deeds were just a mechanism to buy time and, if so, whether the purpose of buying time was to make the recovery of assets more difficult.
12. That leaves the question of whether it is just and convenient to grant the order sought. I have mentioned that the application was brought on notice and it is obviously been brought in circumstances in which the defendants know that the claimants are actively seeking to recover their lost investments because that was the context in which the settlement agreement was concluded. But there remains a real prospect of the claimants being able either to freeze assets still held by the defendants or obtaining information which will allow "hot pursuit" of those assets that the defendants may already have made it more difficult to enforce against. Adopting Mr Justice Cooke's colourful analogy in Antonio Gramsci Shipping v Reoletos [2011] EWHC (2242) at [29], the risk that any order I make may only freeze a Shetland pony because the shire horses have already been let out of the stable is not a reason not to grant the order if I am otherwise satisfied it is appropriate. I am so satisfied.
13. Further, there is the fact that the defendants here promised, as a term of the settlement agreement, not to dispose of or deal with assets otherwise in the ordinary course of business. That does not mean the injunction I am giving is by way of specific performance of that obligation, but the fact that the defendants have made such a promise weighs strongly in the claimants' favour in suggesting that the order is just and convenient and I think makes it correspondingly much more difficult for the defendants to suggest the order is a disproportionate and unjustified invasion of their rights.

14. There is no issue on jurisdiction because the settlement deeds contain agreements for exclusive jurisdiction and the contractual address for service in this jurisdiction, and on the evidence before me the first defendant has assets in this jurisdiction with a flat in London and various shareholdings in English companies as well as assets abroad. Kidman has bank accounts in this jurisdiction. There is no clear picture at the moment of what other assets it holds, but there must be a real prospect that it holds some assets that represent the proceeds of the sums invested through it.
15. In those circumstances, I am satisfied that it is appropriate in principle to grant the worldwide freezing order sought.