

Neutral Citation Number: [2021] EWHC 226 (Comm)

Case No: CL-2017-000107

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

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

Date: 5 February 2021

Before :

Mr Justice Calver

Between :

Griffin Underwriting Limited
- and -
Ion G. Varouxakis

Claimant

Defendant

Philippa Hopkins QC (instructed by Bryan Cave Leighton Paisner) for the Claimant

Hearing dates: **5th February 2021**

APPROVED JUDGMENT

Mr Justice Calver
(2.25 pm)

Friday, 5 February 2021

Judgment by **MR JUSTICE CALVER**

The application

1. This is an application made by the claimant, whom I will call Griffin, for a worldwide post-judgment freezing order against the defendant, Mr Varouxakis. It is plain that the defendant has, as Ms Hopkins QC put it on behalf of Griffin, played fast and loose with the court throughout this dispute, seeking to manipulate the court's processes wherever possible, in order to avoid complying with orders of this court and displaying a contempt for the same.

The factual background

2. The factual background is convoluted, but it is helpfully summarised in the affidavit of Jonathan Sacher, of Griffin's solicitors, as follows: Griffin insured the then owners and managers of the MV Free Goddess, later named Figaro, for a voyage passing through the Gulf of Aden under a policy of kidnap and ransom insurance. Whilst laden with a cargo of rolled steel coils, and *en route* from Egypt to Thailand, the vessel was seized by pirates and taken to Somalia. That was as long ago as February 2012. Griffin paid out around \$6.5 million under the policy, and hull and machinery owners are also understood to have made payments to the vessel's owners.
3. The vessel was eventually released and proceeded to Oman in October 2012. In January 2013, Griffin and the vessel's owners and managers, being two companies associated with Mr Varouxakis, concluded a settlement agreement. The settlement agreement recorded the sums paid out by Griffin, afforded Griffin subrogated rights in relation to various third-party recoveries, including claims in general average against cargo interests, and required the owners and managers to account to Griffin in relation to various sums that they might receive.
4. The settlement agreement was concluded on the premise that the vessel would be repaired and continue to Thailand to discharge her cargo as provided for under the bills of lading contracts which remained in existence.

5. However, that did not happen: the cargo was never delivered to its destination and was eventually offloaded and sold in Oman, having deteriorated.
6. Griffin initially brought proceedings in this court against the owners and managers for damages for breach of the settlement agreement, but these have not been pursued further. In essence, the owners/managers appear to have no assets.
7. The owners/managers, it is assumed through Mr Varouxakis, originally instructed solicitors, Hill Dickinson LLP, who pleaded a defence, but they suddenly then came off the record shortly before the case management conference in those proceedings.
8. In the present proceedings, Griffin claims damages against Mr Varouxakis for inducing or procuring breaches of the settlement agreement. In essence, it is said that in failing to cause the vessel to proceed to her discharge port, owners/managers were in breach of the settlement agreement, a breach that was induced by Mr Varouxakis. That breach led to cargo interests having very substantial claims against owners under the bills of lading contracts, which extinguished or substantially reduced the claims which owners would otherwise have had against cargo interests for general average contributions and, in turn, Griffin's subrogated claims.
9. Griffin therefore estimates its remaining damages claim at US\$4.9 million, being the total amount of general average expenditure paid out by it, less the US\$800,000 that forms part of an unsatisfied judgment and which represents a payment on account of general average made by a third party, for which owners/managers are liable to account to Griffin under the settlement agreement.
10. In consequence, Griffin served a claim form and particulars of claim on Mr Varouxakis on 8 March 2017. Mr Varouxakis personally filed an acknowledgment of service on 29 March 2017, indicating an intention to contest jurisdiction.
11. There were then numerous communications between Griffin's solicitors, who are called BCLP, and Mr Varouxakis, including through his Greek lawyer, a Mr Dalakos of Dalakos Fassolis Theofanopoulos Law Firm.

12. Mr Varouxakis did not take steps to issue his application to challenge jurisdiction, and that led to Griffin applying for default judgment against him. That in turn led to Mr Varouxakis seeking to revive his application. He instructed the firm Thomas Cooper International, as they were then called, who from 25 May 2018 were on the record for him in these proceedings. Mr Varouxakis' application challenging jurisdiction was dismissed after a hearing before Mr Justice Males (as he then was) on 28 November 2018, at which hearing Mr Varouxakis was represented by counsel. The court dismissed Mr Varouxakis' application for permission to appeal, and ordered him to pay Griffin's costs in the sum of £80,000 by 21 December 2018. He failed to do so.
13. Griffin filed an application for an unless order in respect of payment of those costs on 3 April 2019. On 12 April 2019, however, Thomas Cooper came off the record for Mr Varouxakis.
14. On 10 May 2019, Mr Justice Teare ordered that unless the outstanding costs were paid within 14 days, Mr Varouxakis' defence would be struck out. They were not paid, and on 19 September 2019, following a hearing which Mr Varouxakis did not attend, Mr Adrian Beltrami QC, sitting as a deputy judge of the Commercial Court, gave judgment in Griffin's favour.
15. The judge accordingly (i) struck out Mr Varouxakis' defence, (ii) ordered that Griffin have judgment on liability for the whole of its claim, (iii) awarded Griffin US\$800,000 of the damages it sought plus interest in the sum of US\$69,000-odd and accruing at a daily interest rate of US\$175.34, (iv) ordered Mr Varouxakis to pay the costs of the application for judgment assessed in the sum of £28,629.40, and (v) directed an assessment of Griffin's remaining damages. That assessment has in fact since been stayed on Griffin's application and by order of Mr Justice Jacobs dated 11 March 2020.
16. The reason for that is that Griffin has been unable to enforce its claim to date and is understandably anxious not to throw good money after bad any more than it has already done so. However, in the event that Griffin is able to identify assets against which it can enforce, it informs me that it will seek to lift the stay and pursue the assessment of further damages to which it is entitled.

17. It follows that Griffin has obtained judgment against Mr Varouxakis in summary as follows:
- (i) in the sum of US\$800,000 plus interest together with sundry costs orders, and I shall call that the "Unsatisfied judgment". As at 31 December 2020, I am told by Ms Hopkins that the total sum due to Griffin pursuant to the unsatisfied judgment was a little over US\$1.1 million and interest continues to accrue, and Mr Varouxakis has not paid this sum and continues to avoid paying it.
 - (ii) As well as judgment on liability in relation to its remaining claims in these proceedings, with damages to be assessed -- and I will call that the "Liability judgment" -- the value of those remaining claims prior to assessment, and without interest and costs, is said to be just over US\$4.9 million. It follows, say Griffin, that Mr Varouxakis is likely to have an overall liability to Griffin of some \$6 million, on a conservative basis.
18. Griffin has attempted, so far in vain, to enforce its judgment in proceedings in Greece, where Mr Varouxakis is believed to reside. Furthermore, recently Mr Varouxakis has launched an attack on the unsatisfied judgment in the form of what is called a Writ of Objections in the Greek proceedings. That is due to be heard, I am told, on 16 February 2021, and in consequence Griffin maintains that there is some urgency to the hearing of this application.
19. Furthermore, it has brought this application without notice to Mr Varouxakis because, it says, in view of his behaviour throughout, if he were to be given notice of it, he would likely seek to put his assets beyond the reach of Griffin, insofar as he has not already done so.
20. The Greek proceedings in which Mr Varouxakis has issued his Writ of Objections are an attempt by Griffin to enforce the unsatisfied judgment against a company called Aello NEPA, which owns a luxury vintage yacht, the Aello, the majority of shares in which are believed by Griffin to belong to Mr Varouxakis. They follow the obtaining by Griffin of a European enforcement order.
21. In the Greek proceedings, Griffin has obtained an order that the shares in Aello be sold at public auction, but that will not take place until Mr Varouxakis' Writ of Objections is heard.

22. The Writ of Objections is, itself, objectionable, as Ms Hopkins points out. Firstly, in it Mr. Varouxakis claims that the document instituting these proceedings was never served on him. That is patently untrue, and no mention is made of the fact that Mr Varouxakis challenged this court's jurisdiction, served a defence, and failed to pay costs orders.
23. Second, it is suggested that the orders in relation to service were made, "Under the pretext that I was of unknown residence", despite the fact that Mr Varouxakis has sought to avoid giving any sort of personal address in these proceedings.
24. Third, it identifies no address at which it is said that the application for the judgments could properly have been served, and fourth, it ignores the majority of the evidence which was before the deputy judge, to the effect the application had in any event come to Mr Varouxakis' attention, evidence which satisfied the deputy judge that that was, indeed, the case.
25. Accordingly, I take no account of Mr Varouxakis' complaints with regard to the validity of the judgments.
26. Finally, in his second affidavit, filed on 4 February 2021, Mr Sacher has updated the court. In paragraph 35 of his first affidavit, he had stated that searches by PPT Legal had identified that Mr Varouxakis owned 99% of the shares in the holding company Aello NEPA, the company which, as I have said, owns the luxury yacht Aello. The searches by PPT Legal revealed that the remaining 1% of the shares were owned by Mr Varouxakis' father.
27. Mr Sacher tells me in his updated affidavit that Mr Varouxakis' father has now served his own Writ of Objections in Greece, claiming that *he* owns all of the shares in Aello. As Mr Sacher states in his second affidavit, whilst there are serious reasons to question whether this is so, this merely reinforces the concern that Mr Varouxakis is keen to dissipate his assets so as to hinder the enforcement of the unsatisfied judgment against him.
28. I add that now that I have seen a copy of the translated version of the father's Writ of Objections before the Athens court, that in paragraph 1 of that document he refers to the fact that Mr

Varouxakis (his son, that is) is currently a resident of Piraeus at 93 Akti Miaouli. It turns out that that address is, in fact, the address of his former English solicitors, Penningtons Manches Cooper. So it is apparent that, once again, through his father, he is being evasive about his address.

The legal principles applied to the facts

29. I turn to the principles governing the granting of a worldwide freezing order. They are, of course, well known. The applicant must show: one, at least a good arguable case on the merits of its claim; two, that the defendant has assets; three, that there is a risk of dissipation of those assets, such that any judgment obtained by the applicant will go unsatisfied; and four, that it is just and convenient to make the order sought.

30. Before addressing each of those requirements, it is worth recalling the general approach to a freezing order which is sought after judgment has been obtained, such as in this case. The function of a post-judgment freezing order was restated in *Emmott v Michael Wilson & Partners* [2019] EWCA Civ 219 at 53, where Lord Justice Gross reviewed the earlier authorities and stated:

"... post-judgment Mareva injunctions are granted to facilitate execution, by guarding against a risk of dissipation over the period between judgment and the process of execution taking effect, where the judgment would remain unsatisfied if injunctive relief was refused ... post-judgment Mareva injunctions can no longer be described as rare ... Whether pre- or post-judgment, a Mareva injunction is not intended to confer a preference in insolvency and does not form a part of execution itself. Secondly, by reason of its nature and as a matter of realism, a post-judgment Mareva will increase the pressure on a defendant to honour the judgment debt. The mere increase in such pressure does not make it illegitimate or 'in terrorem'."

31. In this context, the authorities have repeatedly emphasised that a freezing order will be granted more readily after judgment than before, see *Masri v Consolidated Contractors* [2008] EWCA Civ 288 at paragraph 134.

32. There are a number of reasons for this. First, this reflects the policy of the law strongly in favour of the enforcement of judgments, which is based on the principle that justice requires that the court should be able to take steps to ensure that its judgments are not rendered valueless by an unjustified disposal of assets. Second, the existence of a judgment which has not been satisfied may make it easier to infer a risk of dissipation; third, it is sometimes the case that factors which are said to weigh against the making of a freezing order, for example delay or the absence of assets within this country and the presence of related proceedings in another jurisdiction, have less weight where judgment has already been obtained, see *Great Station Properties v UMS* [2017] EWHC 330 at paragraphs 61 and 63.

33. I turn next to the good arguable case on the merits. The first requirement of a good arguable case is necessarily satisfied where there is a judgment debt, see *Great Station* at paragraph 53:

"It is unnecessary to establish that there is a good arguable case because the claimants have the benefit of an arbitration award and judgment in their favour."

34. Here, Griffin has obtained the unsatisfied judgment, together with judgment on liability in relation to the remainder of its claim. So I consider that is easily satisfied.

35. Secondly, the question of assets arises. The evidence before the court is that Mr Varouxakis does have assets, but that the whereabouts of those assets is not known. See Mr Sacher's first affidavit, paragraphs 28-40. He is not believed to have assets in England and Wales, but he has in the past owned a Maserati sports car and a luxury condominium in Miami, as well as, so Griffin understands, 99% of the shares in the SPV which owns the yacht that I have referred to previously, and I have already explained the uncertainty over the ownership of that yacht as at the present day, but there is reason to believe that Mr Varouxakis does still have ownership, at least in part, of that yacht.

36. Thirdly, I come to the question of the risk of dissipation. The following principles were set out by Mr Justice Males, as he then was, in *National Bank Trust v Yurov* [2016] EWHC 1913 at paragraph 70. He said this:

"a. The claimant must demonstrate a real risk that a judgment against the defendant may not be satisfied as a result of unjustified dealing with the defendant's assets.

b. That risk can only be demonstrated with solid evidence; mere inference or generalised assertion is not sufficient.

c. It is not enough to rely solely on allegations that a defendant has been dishonest; rather it is necessary to scrutinise the evidence to see whether the dishonesty in question does justify a conclusion that assets are likely to be dissipated.

d. The relevant inquiry is whether there is a current risk of dissipation; past events may be evidentially relevant, but only if they serve to demonstrate a current risk of dissipation of the assets now held.

e. The nature, location and liquidity of the defendant's assets are important considerations.

f. Whether or to what extent the assets are already secured or incapable of being dealt with is also relevant.

g. So too is the defendant's behaviour in response to the claim or anticipated claim."

37. In addition to that general guidance, the authorities indicate that the following factors may be relevant to establish a real risk of dissipation.

38. First, as I have already noted, the fact that as indeed is the case here, the judgment debt has not been paid. This has particular weight where, as here, the respondent has made no adequate attempts to meet the judgment. An example is where the respondent has been willing to expend considerable sums in applying to set aside the freezing injunction or in otherwise contesting the proceedings or, as here, in pursuing other proceedings -- here, in Greece -- and in seeking in that way to challenge the court orders in England.

39. Second, evasiveness or a failure to disclose information regarding the respondent's assets. See *ArcelorMittal USA v Essar Steel [2019] EWHC 724*, paragraphs 55 to 58. That is also the case here.

40. Third, findings of bad faith or dishonesty by the respondent. This has increased weight where the false evidence is of the sort of conduct that might be involved in evading enforcement or dissipating assets. In the present case, Mr Varouxakis has seen fit to give false evidence in Greece in his Writ

of Objections and, as Ms Hopkins says, and I am satisfied, he is playing fast and loose with the English courts, which also demonstrates bad faith on his part.

41. Fourth, improper conduct in the run-up to the litigation to evade due process. For example, in *Ivanhoe Mines v Gardner* [202] EWHC 144 at paragraphs 13 to 15, Mr Justice Foxton held that a debtor who wishes to take steps to make it difficult for his creditor to recover from him, and in particular to make it difficult for the creditor to take legal proceedings against him, may well be inclined to continue those efforts to avoid a financial reckoning at the post-judgment stage. This factor may have increased significance where the conduct cannot be dismissed as merely historic because, for example, the respondent is continuing to dispute the legitimacy of the judgment. That is precisely the position here.
42. So far as Mr Varouxakis' improper conduct is concerned, I should also refer to the fact that he has had solicitors come on and off the record. He has been, to say the least, coy about giving his address and that, as I have mentioned, is exacerbated by recent events before the court in Athens.
43. He has been found by this court, as Ms Hopkins submits, to be in contempt of it, in flouting arbitration awards made in favour of the owners of the cargo onboard the vessel.
44. Finally, there is the matter of the Aello shares. As Ms Hopkins submits, either what is said about the shares is not true, which obviously goes to Mr Varouxakis' honesty, or, if those shares have been transferred, that of itself gives rise to a suggestion of a risk of dissipation.
45. Fifth, and lastly, the degree to which the respondent's assets can readily be transferred or dissipated is relevant. It appears from Mr Sacher's evidence that Mr Varouxakis has assets, but he has been able to transfer them elsewhere to avoid enforcement of the judgment.
46. The other relevant points to be borne in mind are that it is not necessary to show that a judgment will go completely unsatisfied; it is sufficient to show a risk that enforcement will be made more difficult. That is undoubtedly the case here.

47. Secondly, it is common for an applicant not to be able to identify any specific act of dissipation which is taken or will take place; it is only necessary to justify an inference that a sufficient risk can be inferred, and I am satisfied that, in view of Mr Varouxakis' conduct to date, this requirement is easily satisfied in this case. Indeed, his recent alleged transfer of the shares in Aello, if true, proves the point.
48. Thirdly, the dissipation which is feared must be, as I have said, unjustifiable, however a disposal is more likely to be unjustifiable where it is post judgment, when a judgment creditor is entitled to be paid.
49. Finally, *Gee on Commercial Injunctions (6th Edn)*, paragraph 12-033, lists various factors which may be taken into account in assessing the likelihood of dissipation, which include the defendant's behaviour in respect of the claims. That can include a pattern of evasiveness about his assets (see *Global Maritime Investments v Gorgonia* [2014] EWHC 706 at paragraph 9), and persistent defaults in payment with implausible excuses. Once again, I am satisfied that that pattern of evasiveness applies here.
50. Finally, one comes to whether it is just and convenient to grant the order sought. Again, the starting point is that the existence of a binding judgment against the respondent, combined with a real risk of dissipation, as I have found to be the case here, gives rise to a powerful case for granting the requested worldwide freezing order, such that there would have to be particularly strong grounds for refusing the freezing order relief, see *Great Station* at paragraphs 56 and 63.
51. The greater willingness of the courts to grant freezing orders in a post judgment context reflects, amongst other things, “*the policy of the law [which is] strongly in favour of the enforcement of judgments*”: see *Emmott* at paragraphs 44 and 56.
52. Moreover, there is a particular need to protect the authority of the court and its orders in response to the conduct of Mr Varouxakis in this case. He has repeatedly shown disdain for that authority

through his deliberate breach of court orders. That sort of conduct is to be deplored and it deserves a robust response from this court.

53. Conversely, whilst it is right to acknowledge that freezing relief may have serious consequences for those subject to it, the likelihood of any freezing order turning out to have been wrongly granted is naturally reduced where, as here, liability has been determined by a binding order of this court.
54. The ultimate question on any application for a worldwide freezing order is whether it is just and convenient to grant the order, see *Holyoake v Candy* [2016] 3 WLR 357 at paragraph 34. I consider that it plainly is in this case. I do not consider that the delay in applying for this relief should lead to the court refusing to grant it when that delay is viewed against the background of Mr Varouxakis' misleading and obstructive conduct throughout, his contempt for orders of this court, and Griffin's many attempts to obtain satisfaction of its judgment without resort to this serious form of relief.
55. Finally, I should mention that Mr Sacher, in his first affidavit, as supplemented by the submissions before me of Ms Hopkins, sets out the full and frank disclosure of matters which may be advanced against the applicant. I am satisfied that none of those factors should lead me to refuse the application for relief. In all the circumstances, I grant the order sought by Griffin in the terms of the draft which I have discussed with Ms Hopkins.

Service of proceedings

56. Finally, I should mention in relation to service, Griffin invites the court to make an order for service of any order made on Mr Varouxakis at the address given by him in the Greek proceedings, see the affidavit of Mr Sacher at paragraphs 43 to 50. Because Greece is a party to the Hague Convention on service of documents, it is established law that special circumstances must be shown for alternative service to be made in such a case. See, for example, the judgment of Mrs Justice Cockerill in *Russian Commercial Bank (Cyprus) v FedorKhoroshilov* [2020] EWHC 1164 at paragraphs 96-97.

57. In my judgment, in a case such as this where a party seeks a freezing injunction, because the court is making a number of coercive orders with the risk of committal for contempt, as well as the claimant giving an undertaking in damages, it is important that the proceedings be constituted formally as soon as possible which, in my judgment, fully justifies an order for alternative service, despite this being a Hague Convention case.
58. That is all the more so, it seems to me, where Mr Varouxakis' Writ of Objections is due to be heard on 16 February 2020, and in circumstances where the evidence shows that Mr Varouxakis has instructed lawyers able to accept service, has taken a full part in the proceedings when it suits him to do so, only then to withdraw and to seek to make life as difficult as possible for Griffin when it does not.
59. I also take account of the fact that it is obviously difficult for Griffin to serve through the Hague Convention route in any event, because Mr Varouxakis has been, as I have mentioned, very coy about giving his actual address.
60. I therefore grant Griffin permission to serve the order made by this court and supporting evidence by registered post on the address given by Mr Varouxakis in his Writ of Objections, with a copy to be sent by email to Mr Dalakos, the Greek lawyer, for information. I am told by Ms Hopkins that service in that form, whilst not authorised by Greek law, is not illegal under Greek law, see Mr Sacher's first affidavit, paragraph 48, and *Abela v Baaderani* [2013] UKSC 44.
61. I should say, I also grant Griffin permission not to be required to translate materials into Greek, as that appears to be entirely unnecessary.
62. For all those reasons, I grant the relief sought in the draft order as amended as a result of the discussions which I had with Ms Hopkins immediately before giving this judgment, and which will be recorded on the transcript.