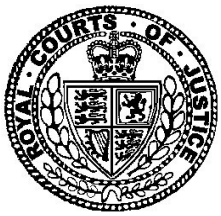

Neutral Citation Number: [2024] EWHC 1388 (Admin)

Case No: AC-2022-LON-002684

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 June 2024

Before :

MR JUSTICE CONSTABLE

- -

Between :

The Director of Public Prosecutions

Applicant

- and -

(1) The Estate of Mildred Edwards (Deceased)
(2) Mr Christopher Robin Edwards

Respondents

- -
- -

Mr Peter Caldwell (instructed by the DPP) for the Applicants
Ms Mairi Clancy (instructed by Nicholls & Nicholls) for the Second Respondent

Hearing dates: 5 June 2024

- -

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 7TH June 2024.

Mr Justice Constable:

Introduction

1. This is an application on behalf of the Second Respondent, Mr Christopher Edwards, pursuant to paragraphs 5B.2, 7.1 and 7A.1 to 7A.8 of the Practice Direction on Civil

Recovery Proceedings. The application is to vary the existing property freezing order ("PFO") to allow for a further exclusion from the property freezing order for reasonable legal costs. The legal costs are required for the purposes of: (a) challenging the property freezing order; and (b) challenging the subsequent application for a civil recovery order. The cost estimate and order for exception is in the sum of £28,555.50. The application is supported by a witness statement from the Second Respondent setting out his statement of assets, dated 4 October 2023. Without an exclusion, Mr Edwards says that he will have to represent himself in relation to these proceedings.

2. The application is opposed by the Applicant, the Director of Public Prosecutions ('the DPP'), through witness evidence of Mr Watkins, a financial investigator and member of the Welsh Regional Economic Crime Unit. This is dated 25 March 2024. It makes a number of points arising out of Mr Edwards' statements, including specific allegations that the information provided is incomplete and/or misleading. This was responded to by the solicitors for the Second Respondent in a document entitled 'Application', dated 30 May 2024 ('the Application Submissions'). There was no further statement from Mr Edwards responding to the allegations and he was not made available to give evidence or for cross-examination; instead the Application Submissions recites what the legal representative has been told 'on instructions'. There was no explanation as to why Mr Edwards was not able to provide further evidence, but only 'instructions'. Ms Clancy candidly accepted from the outset the evidential limitation, therefore, of the material before the Court purporting to provide an explanation arising out of Mr Watkins' evidence.

3. I refused the application following oral argument, on the basis that I would provide full reasons in writing to follow. These are those reasons. I am grateful to Mr Caldwell representing the DPP and Ms Clancy representing Mr Edwards for their efficient and helpful submissions.

Background

4. The PFO made by Mr Justice Chamberlain on 2 November 2022, prohibited the Respondents from selling, charging or otherwise dealing with three properties in Wales. Two were in the name of the deceased, and the third in the name of Mr Edwards. Following service of the PFO at HM Land Registry, it transpired that two of the three properties, subjects of the Order, had recently been sold and that the proceeds of those sales credit to what is referred to as "the Halifax Account", in the sole name of Mr Edwards. The proceeds of the sale were frozen pending further Order of the Court. Mr Edwards' evidence was that the only other funds in this account were from cashing in his pension, in the sum of £9,312.36. Notwithstanding the fact that the PFO was served on Mr Edwards on 2 November 2022, and he had notice of its contents, Mr Edwards contacted Halifax on a number of occasions in November. A summary of the calls made is given by Mr Watkins at paragraph 2.4 having listened to recordings of the calls, and the accuracy of his summary is not challenged. In short, Mr Edwards was seeking to transfer considerable funds from the account to Thailand where he said he wanted to retire. As is clear from the analysis below, Mr Edwards was evidently successful in transferring some sums from his Halifax Account.

5. Mr Watkins explains that it had been established that the Halifax Account held, in addition to the proceeds of sale of the two properties sold, a surplus of cash (unexplained by reference to the pension amounts). An application was made successfully by the Applicant on notice to subject these sums to an AFO on 13

December 2022. On 6 March 2023 an application was made before the High Court to vary the above mentioned PFO to include the surplus funds held in the Halifax Account, amounting to £139,917,72. This was ordered by Mr Justice Knowles. On 17 August 2023 two applications were made before the High Court. The first application made sought to extend the PFO and the second application was for a Disclosure Order ("DO"). Both applications were heard before Mr Justice Bourne and Orders were approved.

6. It is a matter of record that, in 2021, Mr. Edwards pleaded guilty to Fraudulent Evading of Duty Prohibition or Provision. He had initially absconded to Thailand following his arrest in 2019. In unchallenged evidence from Mr Watkins, he explains that during 2019, following his arrest, Mr. Edwards absconded to Thailand. Prior to absconding, he managed to transfer £150,000 to Thailand. During this time, he was able to maintain three properties in the UK and cover his living expenses in Thailand. On his return to the UK, he was arrested, at which point £242,000 was restrained and later subject to uncontested forfeiture proceedings. Mr Watkins also sets out in unchallenged evidence that following Mr Edwards' arrest and that of Ms. Pongvalai Salathiel, believed to be Mr Edwards' girlfriend, it was established that Ms Salathiel held a suitcase containing £78,000 in cash. Ms Salathiel claimed that she had given this to Mr. Edwards for investment, although a notebook was found, and this contained notes referring to withdrawals by Mr. Edwards.

The Law

7. The Second Respondent relied in the Application Submissions upon a series of decisions which relate to exclusions to freezing orders in civil recovery proceedings (Marino v FM Capital Partners Ltd [2016] EWCA Civ 1301; Sundt Wrigley & Co. Ltd v Wrigley , CA, Fitzgerald v Williams [1996] QB 657, CA; Independent Trustee Services Ltd v GP Noble Trustees Ltd [2009] EWHC 161 (Ch); GFH Capital Limited v Haigh [2018] EWHC 1187; and Sketteforvalningen v Edo Barac & Ors [2020] EWHC 377 (Comm)). That line of authority concluded with a three stage test, as summarised by Bryan J in GFH Capital Limited and Sketteforvalningen), as follows:

> (1) before there can be any question of using funds to which a claimant has a strong proprietary claim, the defendant must show that he has an arguable case for denying they belong to the claimant (I note that this is in effect an elision of the first two of Lewison J's four tests in Independent Trustees);
>
> (2) where there are assets which may belong to the claimant, the defendant should not be entitled to use those funds unless the court is convinced that the defendant has no other assets to use for this purpose, and the onus is firmly on the defendant to satisfy the court of this, and where there are any such funds, they should be expended before there is any question of expending funds subject to a proprietary claim;
>
> (3) if the court can be satisfied that there are no assets other than those subject to a proprietary claim, the court must nevertheless still weigh whether the balance of justice militates in favour of permitting or refusing the payment.

8. Mr Caldwell instead drew upon the parallel line of authority which exists in relation to exceptions from PFOs specifically in the context of actions under the Proceeds of Crime Act 2002. The leading case in this specific case is The Serious Organised Crime Agency v Amir Azam [2013] EWCA Civ 970, which provides as the applicable test at [66]:

> "(i) It is for the applicant to show that, in all the circumstances, it is just to permit him to use funds which are subject to the PFO in order to pay his legal expenses.
>
> (ii) If on the evidence the court is satisfied that there are other available assets which may be used for this purpose, to whomsoever they may belong, it will not allow the affected assets to be used.
>
> (iii) If the court is not satisfied of that, the court has to come to a conclusion as to the likelihood that there are other available assets on the basis of the evidence put before it. If the evidence leaves the court in doubt, but with specific grounds for suspicion that the applicant has not disclosed all that he could and should about his assets, then it may resolve that doubt against the applicant, as it did in SFO v X . But if the evidence does not provide any such specific indications or grounds for suspicion, then even if the court rejects the applicant's evidence as unreliable, it may not have any adequate basis for concluding that there are other available assets. In that case (Mrs Azam's application being an example) the court should not resolve the impasse against the applicant on the basis that it was for him to prove positively the absence of available assets. There may be objective factors which cast light on the probabilities one way or the other, as there were in the case of Mrs Azam. But if there is nothing of that kind, and nothing which indicates the existence of unexplained or undisclosed available assets, then the fact that the applicant has previously concealed relevant assets is not sufficient by itself to show that he is still concealing such assets, and thereby to deprive him of the ability to use his own assets, despite the constraints of the PFO , to defray the cost of legal representation to defend himself in the proceedings. I would therefore reject the proposition that there is a specific burden of proof on the applicant which requires him to prove that there are no other available assets which could be used for the relevant purpose, such that if he does not discharge that burden, his application must fail."

9. It can be seen that there, whilst there is some commonality of approach, there is an important distinction between the two applicable tests, the reason for which is explained by Lloyd LJ at [62]-[63]:

> "62. However, it seems to me that there is a material difference between such cases, on the one hand, and that of a PFO under the 2002 Act on the other. In the former, the proprietary claim is limited to assets which belong to the claimant, or assets which can be traced through from something which belonged to the claimant. In most cases an individual defendant will have, or at least will have had, other assets of his own, not traceable to the

> claimant's property. By contrast, even though a PFO relates to specific and identified assets, not (by definition) to all of the defendant's assets, nevertheless given the wide definition of what is recoverable, it may well be that in a case such as this the CRO claim extends, and accordingly the PFO also extends, to every asset known to SOCA, leaving nothing unaffected from which the defendant can pay his lawyers. It seems to me that this difference needs to be taken into account when making a comparison between the two types of case.
>
> 63. For that reason, it seems to me that it is not right simply to transpose to proceedings under Part 5 of the 2002 Act all of the principles applying in the case of freezing orders in ordinary civil proceedings to enforce proprietary claims."

10. The key point of distinction is, it can be seen, in relation to PFOs that relate to specific and identified assets (in which case there is a working presumption that there may be other readily available for living and legal expenses) and that which applies to all of the defendant's assets known to SOCA.

11. Mr Caldwell pointed out that, in this case, although this is a case under the Proceeds of Crime Act 2002, the PFO is a limited one, attaching to the proceeds of specific properties and not (for example) other unidentified assets or, specifically, assets out of the jurisdiction. In light of this, a gloss which might respectfully be put on the difference identified at the start of paragraph 62 by Lloyd LJ in the passage above is that the difference relates to substance not form: i.e. to consideration of the breadth of the PFO itself, rather than the type of proceedings in which the PFO has been obtained.

12. Nevertheless, in both cases, it is necessary to consider in the first place whether, on the evidence, the court is satisfied that there are other available assets which may be used for this purpose, to whomsoever they may belong, it will not allow the affected assets to be used. It is only if the court is not satisfied that there is a potential difference, although ultimately it remains always a question of whether it is just to permit the party seeking the exclusion to use funds which are subject to the PFO in order to pay his legal expenses.

Availability of Assets

13. It is for the Second Respondent to prove that there are no other available funds from which his legal expenses can be paid.

14. At paragraph 2.6 of his witness statement he refers to a '*Wise Currency Transfer Account CD 8321 – used to transfer money to Thailand for my family*' ('the WISE Account). As Mr Caldwell explained, and consistent with this statement from Mr Edwards, a WISE account is an electronic money transfer account by which a party transfers funds from A to B, together with a currency conversion, without the funds sitting in a 'holding' account.

15. Mr Edwards then makes further reference to the WISE Account at paragraph 3.9 of his statement which says, '*On 7 November 2022 a transfer of £29,000 was sent to Thailand for my family, for living costs. (I produce Exhibit CE/13 that shows the*

transfer to Wise)'. No other reference to the WISE Account is made in the statement of assets.

16. Mr Edwards' Halifax Account statement does show £200,000 leaving his account on 4 November 2022, after he was served with the PFO, and £171,000 entering his account on 7 November 2022. The reference for the £200,000 sum leaving the account does not explicitly refer to WISE. The statement also shows a further £10,000 leaving to the same, non-WISE reference on 3 November at 15.01 In contrast to these transactions, there is an explicit WISE reference on another transaction on 4 November in the sum of £1,000 leaving his account via a Debit Card. The £171,000 entering his account on 7 November 2022 is also referenced explicitly to WISE.

17. Mr Watkins gives evidence that a Disclosure Notice was served on WISE Payments Limited, and in response they provided a witness statement from Katlin Rimmeld, who is employed as an AML Law Enforcement Liaison Officer at WISE, along with an excel spreadsheet setting out the transactions between 11 April 2022 and 15 November 2022. The Court has not been provided with the witness statement (although Mr Caldwell was able to inform the Court, and I accept, that it did not in substance add by way of explanation to what might be surmised from the spreadsheet itself).

18. This shows :

Pre PFO

(1) 3 transactions totalling £20,500 to an account in Mr Edwards' name, with account number XXXX217327, converted to Thai Baht currency, on 3 November 2022 ('the Thai Account').

(2) 4 transactions of £1,000 each in June, July and August to a Pongvilai Salathial.

(3) 3 transactions totalling £3,000 (two to the Thai Account and one to Pongvilai Salathial which were 'CANCELLED'.

Post PFO

(1) A payment of £1,000 transferred to the Thai Account. This was paid by a Halifax debit card. It would appear, at least potentially, to match the £1,000 leaving his account by a debit card the following day.

(2) 4 payments totalling £39,000 on 4th and 7 November 2022, with the recipient account being the Thai Account and the source account being the Halifax Account. These payments are not shown on the November Halifax statement, which cuts off on 7 November 2022, and no later statements have been provided by Mr Edwards.

(3) A further payment of £10,000 intended for the Thai Account but said to be 'CANCELLED'. The source is not should (which appears to be the case if a transaction is cancelled). Therefore a total of £40,000 appears to have been transferred to the Thai Account from the Halifax Account.

(4) 6 payments totalling £54,000 between 7 and 9 November 22022 to Kitsopa

Satitsowat (who Mr Watkins says is believed to be Mr Edwards' girlfriend's daughter), which are marked 'CANCELLED'. The source for this is said to be an account in the name of Mr Edwards with a sort code and account number matching Mr Edwards' account at Chase ('the Chase Account'). The Court has been provided with a statement from the Chase Account dated 31 August 2023 which shows it containing £23.64.

(5) £41,000 being transferred between 9 and 14 November 2022 to Kitsopa Satitsowat from the Chase Account (£20,000 x 2) and £1,000 (from a debit card issued by JP Morgan, which is effectively the Chase Account debit card);

(6) £1,000 transferred from the JP Morgan card to Pongvilai Salathial (believed by Mr Watkins to be Mr Edwards' girlfriend).

19. The WISE transaction log does not show the £200,000 said to be a payment out from the Halifax Account through WISE, nor the transfer into the Halifax of £171,000 (which does explicitly refer to WISE). On the face of the documentary evidence provided, and without further explanation, I cannot accept Mr Edwards' statement that the £200,000 transferred out of the Halifax on 4 November 20024 was transferred through WISE or is effectively the 'same' as the funds transferred into the Halifax Account (less £29,000) through WISE on 7 November. The latter transaction is explicitly referred to in the Halifax Account as a WISE transaction, and the former is not, which is also to be contrasted with what a payment out to WISE looks like as demonstrated by the £1,000 payment. Even if I am wrong about this, there is, as I have explained above an identical transaction of £10,000, with an identical reference to the £200,000. Therefore, if the £200,000 *is* a WISE transfer out, then so is the £10,000 – a further sum belonging to Mr Edwards which his statement makes no reference to all. Ultimately, the combination of the Halifax statement and WISE transaction log do not (at least without further explanation, of which there is none) substantiate paragraph 3.9 of Mr Edwards' witness statement.

20. More fundamentally, the WISE transaction log identifies, on its face, a series of transactions both before and after Mr Edwards became aware of the PFO to him, his girlfriend and his girlfriend's daughter. The most substantial sums, post PFO, were to himself (£40,000) and to his girlfriend's daughter (£41,000). The figures rely upon are lower than those given in evidence by Mr Watkins, who in error appears to have included in his analysis those transactions which were cancelled.

21. It is not necessary for me to conclude whether or not these transfers were necessarily in breach of the PFO. That may or may not be an issue for another day. However, there is no explanation of these transfers whatsoever in evidence. The highest Ms Clancy was able to put her submission in this regard was to recite the explanation given 'on instructions' at paragraph 19 of the Application Submission. In relation to the transfer to himself, his partner and his partner's daughter's account, he merely references back to the suggestion in his witness statement that '*most of the funds were returned to his Halifax account*'. On the evidence before me, this is patently untrue. Even if one accepts that the £200,000 and £171,000 on the face of the Halifax Account were both WISE transactions which should be netted off against each other (which I do not), no explanation whatsoever is given for the transactions identified above totally over £80,000 from either his Halifax or Chase Account. None of which this money has been returned to either account.

22. In relation to the sums transferred into his own Thai Account, the existence of which Mr Edwards accepts, I reject his entirely incredible suggestion provided by his solicitors 'on instructions' that Mr Edwards is uncertain if the account is still active

due to his inability to access mobile banking. On the basis of the information before the Court, Mr Edwards transferred over £60,000 to this account shortly before or after the PFO. In the absence of any proper and documented explanation were provided as to how or why he is unable to access his own account (into which he was able to make deposits), whether remotely or through an agent in Thailand, I find as a fact that these sums are obviously available to Mr Edwards. As such, I also entirely reject his contention that he is presently living on a meagre pension allowance. I do so on the face of the documents I have seen and the absence of any sensible evidence from Mr Edwards, and do not take into account his past conduct. Were I to do so, it would only fortify my conclusion.

23. In relation to the £41,000 transferred immediately following the PFO, and potentially at least in breach of it, to his partner's daughter, the obvious inference – in the absence of any evidence explaining (or even acknowledging) the transfer – is that this money was transferred in an effort to remove sums from the jurisdiction and remains, in effect, Mr Edwards' money held on trust. This conclusion is fortified, were it necessary, by the previous behaviour of Mr Edwards by which his partner would hold cash for his use in the same way that it is likely that his partner's daughter is presently doing. I consider that these sums are also available to Mr Edwards should he need recourse to them.

24. Even if I were wrong in my conclusion that I am satisfied that there are sums available to Mr Edwards, and I was on the evidence in doubt, I consider that the obvious and unexplained inconsistencies between the documentary evidence and Mr Edwards' witness evidence, together with the absence of any evidenced explanations, amount to specific grounds for suspicion for the purposes of the third stage *Azam* test so as to resolve that doubt against Mr Edwards.

25. In the circumstances, I find Mr Edwards has not shown that, in all the circumstances, it is just to permit him to use funds which are subject to the PFO in order to pay his legal expenses. Indeed, on the evidence before me, I consider it likely that to permit him to do so would work an injustice to the DPP.