



Neutral Citation Number: [2024] EWHC 1245 (Ch)

Case No: BL-2018-000544

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

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

Date: 22/05/2024

Before :

MR JUSTICE ADAM JOHNSON

Between :

- (1) **TONSTATE GROUP LIMITED (in liquidation)**
(2) **TONSTATE EDINBURGH LIMITED (in liquidation)**
(3) **DAN-TON INVESTMENTS LIMITED (in liquidation)**
(4) **ARTHUR MATYAS**

Claimants

- and -

EDWARD WOJAKOVSKI & Ors

Defendants

Sam Goodman and Isabelle Winstanley (instructed by Rechtschaffen Law) for the
Claimants

The **Defendant** appeared in person assisted by Michael Marx

Hearing date: 14 May 2024

Approved Judgment

This judgment was handed down remotely at 3pm on Wednesday 22 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Adam Johnson:

Introduction & Background

1. This is a further Judgment in long-running proceedings concerning the Tonstate Group of companies. The background involves a very bitter falling out between Mr Edward Wojakovski (“*Edward*”) and his former business partner and co-shareholder in the Tonstate Group, Mr Arthur Maytas (“*Mr Maytas*”).
2. As explained in my recent Judgment of 26 April 2024 ([2024] EWHC 975 (Ch) – the “*April Judgment*”), the Tonstate Group has been the victim of an admitted fraud by Mr Edward, involving the unauthorised extraction of company funds totalling over £13m (the “*Extractions*”). In a Witness Statement dated 23 April 2020, Edward accepted that funds representing the Extractions had been paid via certain companies owned or controlled by him, referred to as the “*EW Companies*”, to a BVI company called Maxima Corporate Holdings Limited (“*Maxima*”). As I also explained in my Judgment of 26 April, the shareholdings in Maxima, which were once owned by Edward’s parents (both sadly deceased), are now understood to form part of an Israeli Trust constituted under his late parents’ Will (the “*Wojakowski Brothers Trust*”), of which Edward is a beneficiary, and one of his other brothers, Gil, the Trustee.
3. The Claimants have had partial success in recovering the Extractions, but have not recovered all of them. At an earlier hearing in the proceedings on 10 April 2024, I was told by the Claimants’ counsel, Mr Fulton KC, that many millions of pounds have still not been traced or recovered. The Claimants continue with their recovery efforts, and so by their present Application press for disclosure of further information from Edward.
4. Zacaroli J entered Judgment for the Claimants in late 2019, and in doing so recognised the proprietary nature of their claims to recover the Extractions. So that is the context. The Claimants are seeking information which will enable them to recover amounts which the Court has already determined are their property; or, if the Extractions have been used to acquire other assets, the traceable proceeds of such property. Since the Claimants have already obtained Judgment, the Order they seek is in support of the process of enforcement. It has been said that the Court has jurisdiction to make Orders in aid of enforcement, under s. 37 Supreme Court Act 1981, on the basis that it is “*just and convenient that the judgment creditor should normally have all the information he needs to execute the judgment or award anywhere in the world*” (*Gidrxslme Shipping Co Ltd v. Tantomar-Transportes Mritimos* [1995] 1 W.L.R. 298, per Colman J as p. 312F). I agree with that general statement of principle, and the logic of it is obviously compelling in the circumstances of this case, where the Judgment the Claimants seek to enforce is one which recognises their own proprietary interest, and where the disclosure sought concerns the whereabouts of their own property.

The Present Application

5. The present Application against Edward was originally scheduled for hearing on 10 April 2024, as part of a broader Application which also sought relief against Edward’s brother, Gil. I made an Order against Gil following that hearing (the reasons are set out in the April Judgment, referred to above), but the Application against Edward was adjourned, to allow him further time to secure legal representation. This was a generous concession, because the Application was issued in December 2023, and so Edward had

been aware of it for several months. Nevertheless, I considered it appropriate to allow Edward further time to obtain representation, given that he is presently subject to a suspended sentence of imprisonment, following a finding of contempt made against him by Edwin Johnson J in his Judgment of 5 December 2023 (see [2023] EWHC 3119 (Ch)). The conditions of the suspension require Edward to comply with any further Court Orders, and so I was concerned to allow Edward time to obtain representation if possible, before any further Order was made against him.

6. The adjourned application came on for hearing roughly a month later, on 14 May. However, Edward had still not secured legal representation by then. I refused Edward's application for a further adjournment, for the reasons given in an oral Judgment delivered at the hearing. Exceptionally, however, I permitted Edward's McKenzie Friend, Mr Michael Marx, the ability to speak on his behalf at the hearing. Again, I gave oral reasons at the hearing, but in summary those reasons were: (i) the particular importance to Edward of any further Order, given the possible consequences of non-compliance; and (ii) the information I had about Edward's medical condition. The latter is itself a much disputed topic, but in a Judgment in July 2022 ([2022] EWHC 1771 (Ch)), Falk J (as she then was) had acknowledged that while Edward had capacity to conduct the then-pending committal proceedings against him, he had had periods of severe mental illness, had suffered some decline in cognitive function, and had been diagnosed with Parkinson's disease (although there was evidence it was the well-controlled) (see the Judgment of Falk J at [61]). Such matters in combination to my mind justified permitting Mr Marx, who is very knowledgeable about the ongoing dispute, to speak on Edward's behalf. I am very grateful to Mr Marx for the assistance he provided.

The Substance of the Application

7. Coming on then to the substance of the Application, the relief now sought against Edward is essentially that he should provide certain information, so long as it is within his knowledge, possession or control. I set out in an Annex to this Judgment the form of Order I propose to make, which differs slightly from that in circulation at the hearing on 14 May, in light of comments and suggestions received from the parties since then. I will explain certain points of detail further below (see at [33]-[37]).
8. Dealing first though with the substance, the information sought from Edward is broadly (1) information about the assets currently held by Maxima or the Wojakowski Brothers Trust (to be set out in a schedule), and (2) information about the ultimate source of funds paid by Maxima, and used to purchase two flats in London, NW4.
9. The justification for (1) arises as follows. To begin with, as I have already mentioned, it is known from Edward's own evidence that funds from the Extractions were paid to Maxima. There is evidence of Maxima having at least one London bank account (April Judgment at [17] and [26]), the account statements for which, in 2013 at least, were being sent to Edward at an address in St James's (April Judgment at [17]). Later, in 2018, Edward was described in legal proceedings in the Jerusalem Magistrate Court involving Maxima, as its "*manager*". These personal connections with Maxima suggest it is a reasonable inference that Edward is likely to have information about Maxima's current asset position.

10. As to the relevance of assets of the Wojakowski Brothers Trust, that arises from two sources. The first is that it Maxima itself now appears to form part of the Wojakowski Brothers Trust (see above, and see the April Judgment at [5]). The second more general point, again accepted by me in the April Judgment, is that there is evidence of a pattern of reliance by Edward on inherited monies to disguise the destination of the Extractions, and so it is a reasonable inference that the Extractions have likely been commingled with family monies in order to disguise their destination (April Judgment at [27(iii)]). An example is Edward having told his former advisers, Mishcon de Reya, that funds paid to them in respect of legal fees were “*derived from an inheritance*”, when in fact (as later found by Master Pester in a Judgment dated 19 November 2022), they derived from the Extractions (April Judgment at [18]-[21]). Another example is Edward having given misleading information in his divorce proceedings that certain properties in Scotland had been acquired using funds left to him under his father’s will, when in fact – as Edward later accepted in proceedings before Zacaroli J – they had been acquired using Extractions (April Judgment at [22]). As Mr Goodman, counsel for the Claimants, pointed out in submissions, the Will establishing the Wojakowski Brothers Trust itself requires Gil (as Trustee) to consult with Edward in respect of all “*economic decisions*” concerning the Trust. So again, taking such matters overall, it is a reasonable inference that Edward is likely to have information available about the Trust assets (for example in the form of asset statements, investment reports and the like, or information gleaned from discussions with his brother Gil). As already noted, it is reasonable to think this will include information about Maxima’s current asset position, given Edward’s long association with that company and his personal connections to it.
11. As to information about the ultimate source of the Maxima funds used to pay for the two flats in London (point (2) at para. [8] above), I have mentioned immediately above the use of Extractions to acquire certain Scottish properties. In fact, there were three such properties, all in Edinburgh, the legal title to which was held in the name of a Jersey company, Quastus holdings Limited. In a Judgment dated 30 April 2021, Zacaroli J found that all three, together with two further properties in Bournemouth and in London, held respectively by Masteve Investments Limited (an Isle of Man company) and by Edward’s wife Nadine, had in fact been acquired using Extractions. Zacaroli J made declarations recognising the Claimants’ beneficial ownership of the properties, and orders for the transfer of legal title to the Claimants accordingly.
12. Given this pattern of conduct, the Claimants say it is a reasonable inference that the two London flats were likewise acquired using Extractions. The Title Register for one of them (at 101 Station Road, London, NW4) in fact shows Edward’s daughter, Nathalie, as having acquired title to it in November 2018; but there is a charge in favour of Maxima also from November 2018, and among the available documents is a rather cryptic exchange of emails in October 2018, between Edward’s wife, Nadine, and his brother, Gil, which refers to an intention to complete the purchase “*in Nathalie’s name to save stamp duty costs*”.
13. Looked at in the round, I agree that the circumstances surrounding the acquisition of the two flats are such as to require further explanation, because there are reasonable grounds to suspect that the same pattern followed in relation to other properties may have been followed again. It is therefore just and convenient to ask Edward what he knows, or what he can find out, about where the funds used to purchase the flats were ultimately sourced from.

Points made on Edward's Behalf

14. As against all that, Mr Marx made a number of points, including in a helpful and detailed Skeleton Argument filed for the hearing, which it appeared had been put together with at least the benefit of some informal legal advice. Ultimately, however, none of those points persuaded me that it would be wrong in principle to make the Order sought, subject to consideration of its detailed terms.

Consistency with Findings of Edwin Johnson J

15. One point, in fact the main point in the Skeleton Argument, was that making any Order would be inconsistent with findings made by Edwin Johnson J, in the Judgment I have already mentioned on the contempt application against Edward. In my opinion, however, this argument rested on a misunderstanding.
16. Part of the Judgment of Edwin Johnson J dealt with an allegation that Edward was in contempt for failing to comply with an earlier Order of the Court made in July 2020, which required him to give details of any assets he was “*due to inherit*” under his late parents’ Will (i.e., the Will establishing the Wojakowski Brothers Trust). Edwin Johnson J’s conclusion was that there was no breach of this provision by Edward, because although he had not provided information about Trust, that was excusable because he was not in any meaningful sense “*due to inherit*” anything. Although he was a beneficiary of the Trust, that did not give him any present entitlement to receive any distributions under it, because the Trust assets were all under the control of Gil as trustee, and Gil had an absolute discretion about when and how distributions should be made. Such an embryonic entitlement was not sufficiently certain to mean that Edward was “*due to inherit*” any assets under the Will, and consequently he was not in breach.
17. Based on this, Mr Marx’s point was that it was Gil who was in control of the assets forming part of the Wojakowski Brothers Trust, and all information concerning those assets. Thus, it would be wrong to make an order requiring Edward to produce such information, since he was not in control of it.
18. In my opinion, however, this is not a convincing argument, in light of the nature of the Order actually sought against Edward. It does not ask him to provide a comprehensive account of all the assets held in the Wojakowski Brothers Trust (including via Maxima). That *could* only be provided by a person exercising full control. Instead, the Order asks only that Edward provide such information as is “*within his knowledge, possession or control*” (my emphasis added). It is not a request for everything; only for what Edward knows or has a right himself to find out. There no inconsistency with the findings made by Edwin Johnson J, because Edwin Johnson J’s finding that *the Wojakowski Brothers Trust* is under the control of Gil says nothing about what information is within *Edward’s* personal control, perhaps derived from (as suggested above) documents in his possession or perhaps from information he has received from discussions with Gil.
19. In any event, the proposed Order builds in other safeguards for Edward. One (in paragraph 3) is a proviso to the effect that, in order to obtain the information required to be produced under the Order, Edward is not to be required to assert any rights he may have as a beneficiary of the Wojakowski Brothers Trust. This makes it clear that he is not required to press Gil for any fresh information, relying on rights under the Wojakowski Brothers Trust under Israeli law. A further safeguard (in paragraph 4) is

that if Edward is not able to provide exact information, then he is only required to explain the position to the best of his knowledge and belief. This acknowledges the fact that Edward's information may be imperfect and imprecise. If so, it will not matter, as long as he makes a reasonable effort to find out what he can and says what information he does have.

Zacaroli J's Order for an Account

20. Mr Marx also had certain points arising from an Order made by Zacaroli J dated 16 January 2020. By this Order, both Edward and Mr Maytas were required to provide an account of sums received by them or for their benefit, from companies in the Tonstate Group. There was provision for information to be supplied on Affidavit, with any party then having liberty to apply for directions. Mr Maytas agreed, and Edward was ordered, to hold on trust any relevant sums (i.e., Extractions), or their traceable proceeds.

21. In Edward's case, the paragraph in the Order making a declaration of trust was paragraph 4, which provides as follows (my emphasis added):

"The sum of £13,594,642.43 (in respect of which judgment was entered on 20 November 2019, but without regard for Mr Wojakowski's set off), any other sum for which Mr Wojakowski is required to account ... and in each case their traceable proceeds are, insofar as they remain in his ownership or control, held on trust by Mr Wojakowski for the relevant companies."

22. Based on this Order Mr Marx made two points.

23. The first was that paragraph 4 of Zacaroli J's Order made it clear that the only funds held on trust by Edward were those within his ownership or control. Since the Judgment of Edwin Johnson J had found that assets within the Wojakowski Brothers Trust were *not* within Edward's control, but within Gil's control, they could not be held on trust and so it would be wrong to require him to provide information about them.

24. On this, I follow the point that it is only assets within Edward's own ownership and control which can be held on trust *by him*, but that does not mean he should not be required to provide information about assets which were once in his ownership and control but arguably have passed into the ownership or control of another party.

25. The reason is that there may be claims against that other party, which mean that it *also* holds the relevant assets on trust for the benefit of the Claimants, or is otherwise liable to account or pay damages. For example, English law recognises the principle that a disposition of property for nil value which derives from a breach of fiduciary duty is liable to be set aside without any requirement to show wrongdoing on the part of the donee: see, e.g. Baron v Willis [1900] 2 Ch at 130-137, and Willis v. Baron [1902] AC at 276-278, 280-282. Alternatively, a third party who knows there is wrongdoing may be liable to account as constructive trustee or to pay damages for knowing receipt of property traceable to a breach of fiduciary duty (see, e.g., Agip (Africa) Ltd v. Jackson [1990] 1 Ch 265, at 291G).

26. In the present case, the point of requiring disclosure of information is to allow an assessment to be made of the viability of such potential claims, as well as to allow an

assessment of whether ownership and control has indeed passed from Edward to someone else, or has been retained by him. I do not think the conclusions reached by Edwin Johnson J, as to whether Edward was “*due to inherit*” anything under his late parents’ Will, was finally determinative of this latter question, which is not so much to do with Edward’s entitlement as beneficiary *under* the Wojakowski Brothers Trust, but with whether the manner in which certain assets found their way *into* the Trust means that he still has some degree of ownership or control over them.

27. Mr Marx’s further point was that Zacaroli J’s Order of January 2020 required a process of accounting which both Edward and Mr Maytas would take part in. Both were required to produce documents and to provide a written account on Affidavit. Thereafter, the Order contained a provision for liberty to apply. As Mr Marx explained it – I was not referred to any evidence on the point – there had been an application or applications made under the liberty to apply provision, for the examination of both Edward and Mr Maytas before a Master, but this had not proceeded.
28. Mr Marx said that the position as regards Mr Maytas had been compromised by means of a confidential settlement agreement, entered into with Edward’s Trustee in Bankruptcy, but that document was not available and as I understood it from Mr Marx, its confidential status is presently the subject of a separate ongoing dispute. Overall, therefore, the reasons for the examination process not being completed four years ago remained somewhat obscure, despite my questions about it at the hearing.
29. At any rate, what Mr Marx said was effectively that it would be wrong and unfair for Edward now to be pressed for further information and Mr Maytas not to be similarly pressed. His point was that a one-sided process involving Edward only would be inherently wrong, especially when Zacaroli J’s Order had expressly contemplated a two-sided process.
30. I am sympathetic to these points, but ultimately they do not persuade me that I should decline to make any Order against Edward.
31. Part of the problem is the basic lack of clarity about what has or has not happened, and why. As I have explained, I was not referred to any evidence about it. The points made by Mr Marx were only developed in his written and oral submission at the hearing, but that was too late for the Claimants to respond to them with evidence of their own. The resulting lack of any clear picture with proper evidential support means that particular caution is required before attaching any real weight to Mr Marx’s points.
32. More fundamentally though, I do not see why the Court should feel constrained to proceed against Edward, only on the basis that some similar process of information gathering is advanced at the same time against Mr Maytas. As I pointed out to Mr Marx at the hearing, two wrongs do not make a right. I understood him to agree with that. The fact is that a large proportion of the Extractions taken by Edward have not been properly accounted for. He should account for them, because they are the Claimants’ property. Edward cannot excuse his own default by pointing to someone else’s, or say that he will play ball only if they do as well. I do not know what the position is as regards Mr Maytas, but if he *is* in default (as Mr Marx seemed to suggest), the liquidators of the Tonstate Group will need to decide what to do about it. That may involve further investigation into the settlement agreement apparently entered into with Edward’s Trustee in Bankruptcy. At any rate, the liquidators can be expected to act

responsibly and professionally in deciding what course to take. If they do not, then they will have to answer for their own deficiency at some appropriate point. But none of that means the Court should refuse to act now against Edward, on the basis of what the Court *does* know, in response to the present Application, which is properly before it and which has been pending for several months.

Form of Order

33. Mr Marx also raised some specific points about the form of Order sought against Edward. I agree with him that it is important the Order is drafted as clearly as possible, so that Edward knows what he has to do to comply with it. At the same time, as I have said before in my Judgment on the Application against Gil (see [2024] EWHC 975 (Ch) at [30(iii)]), some realism is called for in a case where a claimant is seeking information as to the whereabouts of its assets, and they have been extracted and effectively hidden by the defendant. One cannot expect a claimant in such a situation to be totally precise about the information sought: the inquiry only arises because the detail has been hidden from him, and he should not be denied relief because he cannot formulate his request with complete precision.
34. Bearing these points in mind, Mr Marx's main issue was about para. 2(b) of the proposed Order, which covers provision of information in relation to the two London flats. Mr Marx had particular concern about the phrase "*the origin of*" in para. 2(b)(i). The form of Order in circulation at the hearing required Edward to confirm "... *the origin of Maxima's funds as used in the purchase of Flat 29c The Burroughs London NW4 4NT and Flat 1, 101 Station Road, London, NW4 4AR*". Mr Marx said it might be difficult if not impossible for Edward to trace back precisely the "*origin*" of the funds used to purchase the London flats. In email communications sent after the hearing, Mr Marx made a similar point as regards proposed paragraph 2(b)(ii), which requires Edward specifically to say whether either of the flats was purchased using Extractions. Mr Marx argued that Edward could not be expected to provide the confirmations sought without conducting a detail forensic exercise, which might have to involve unscrambling different sources of money which over time had been commingled together in accounts held by Maxima. Relatedly, Mr Marx expressed concern about para. 4 of the proposed Order, which in its original formulation said as follows: "*Insofar as the First Defendant does not have exact information, then he shall explain the position to the best of his knowledge and belief.*" Mr Marx said that the phrase "*exact information*" might be open to disagreement and if possible should be clarified.
35. I understand those points and the concerns which underlie them. I wish to make it clear that I do not envisage that Edward should be required to undertake an extensive exercise of detailed forensic reconstruction. The final form of Order as set out in the Annex to this Judgment is only directed to what Edward knows or can reasonably find out (see para. 2 and para. 4). I propose to amend para. 4 accordingly, from the version in circulation at the hearing, to add the following underlined wording: "*Insofar as the First Defendant does not, despite his reasonable efforts, have exact information, then he shall explain the position to the best of his knowledge and belief*". I will also add the following to para. 5 (my emphasis): "*If the First Defendant's case is that he is unable to provide some or all of the relevant information sought by this Order despite undertaking reasonable efforts to obtain it, he should confirm this in his witness statement and explain what efforts have been undertaken.*"

36. The result is that if Edward is not able to provide exact information despite undertaking reasonable efforts to obtain it, then he is required only to explain the position to the best of his knowledge and belief (para. 4), and to say what efforts he has made (para. 5). These provisions should provide enough leeway to Edward, to avoid him having to undertake work of disproportionate cost and complexity. He is only required to act reasonably. At the same time, the provisions are intended to flush out an account of what Edward does know or can reasonably find out. In the circumstances, I consider this approach holds an appropriate balance between the interests of the parties, and I think sufficiently addresses both of Mr Marx's points.
37. Finally, I have seen recent correspondence from Mr Marx indicating that the Order should contain a provision allowing Edward access to something referred to as the "*Relativity platform*". I do not propose to make any Order about that now, because the point has not been argued and as I understand it is disputed. If Edward wishes to apply to vary the present Order to require access, he will be at liberty to do so, but that will have to be done by separate application. For the avoidance of doubt, I do not suggest that undertaking "*reasonable efforts*" (see above) would require Edward to make such an application.

Edward's Health

38. Mr Marx also expressed a more general concern about Edward's ability to comply with any Order, given his health condition. As I have mentioned, however, this is itself a disputed issue. The Claimants are highly suspicious about his state of health, and say, for example, that he was well enough to attend a property investment conference in Berlin in December 2023. I cannot resolve such matters in the absence of evidence about them, but in light of the concerns expressed by Mr Marx, I indicated at the hearing that I would allow Edward a relatively generous period of time to comply, which I said would be six weeks. I will make that six weeks from the date of this Judgment, so the date and time for compliance will be 4pm on 3 July 2024.

Permission to Appeal

39. Mr Marx indicated at the hearing that Edward may wish to seek permission to appeal. He will be able to seek permission from me when this Judgment is formally handed down. If he chooses not to do so, or if permission is refused by me, the Order I will make contains a direction under CPR r.52.12(2)(a), extending time to the extent necessary, so that Edward will have a period of 21 days from the date of handing down of this Judgment, to make any application for permission to appeal to the Court of Appeal.

Conclusion & Disposition

40. I will make an Order in the form now attached to this Judgment.

ANNEX: FORM OF ORDER

IT IS ORDERED that:

1. The First Defendant's application for an adjournment is refused.
2. Insofar as within his knowledge, possession or control, the First Defendant shall produce to the Claimants' solicitors by no later than 4pm on 3 July 2024 a witness statement containing or exhibiting the following information:
 - a. a schedule setting out (as at 14 May 2024) the nature, location and estimated value of all assets over £5,000 owned by Maxima Corporate Holdings Limited or otherwise said to be held (directly or indirectly) subject to the trust purportedly created by the joint will of Gideon and Miriam Wojakovski dated 20 March 2008 ("*the Trust*"),
 - b. confirmation of:
 - i. the origin of Maxima's funds as used in the purchase of Flat 29c The Burroughs London NW4 4NT and Flat 1, 101 Station Road, London, NW4 4AR; and
 - ii. whether the properties referred to in sub-paragraph (b)(i) were or were arguably purchased with the proceeds of monies unlawfully extracted by the First Defendant from the Tonstate and/or THHL group of companies.
3. In order to obtain information required to be produced by this Order, the First Defendant is not required to assert any rights he may have as a beneficiary of the Trust.
4. Insofar as the First Defendant does not, despite his reasonable efforts, have exact information, then he shall explain the position to the best of his knowledge and belief.
5. If the First Defendant's case is that he is unable to provide some or all of the relevant information sought by this Order despite undertaking reasonable efforts to obtain it, he should confirm this in his witness statement and explain what efforts have been undertaken.
6. Pursuant to CPR r.52.12(2)(a), the deadline for making an application for permission to appeal against this Order shall be extended. The First Defendant shall have 21 days from the date on which the Court hands down its written judgment on the Application ("*the Hand Down Hearing*") in order to make such an application. The Hand Down Hearing shall be the hearing at which the relevant decision was made for the purpose of CPR 52.
7. The First Defendant shall pay the Claimants' costs of the application, summarily assessed in the sum of £24,183.07.

Dated: 22 May 2024

8. This Order shall be served by the Claimants.