



Neutral Citation Number: [2024] EWHC 3132 (Ch)

Case No: BL-2024-001677

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

7 Rolls Building
Fetter Lane, London,
EC4A 1NL

Date: 5 December 2024

Before:

The Honourable Mr Justice Thompsell

Between:

**THE COMMISSIONERS FOR HIS MAJESTY'S
REVENUE AND CUSTOMS**

Applicant

- and -

(1) DUCAS LTD

Respondents

(2) ENIX SERVICES LTD

(3) FL CAPITAL HOLDINGS LTD

Mr Adam Tolley KC, Ms Anna Lintner, Ms Laura Inglis and Ms Alice Defriend (instructed
by **The Commissioners for His Majesty's Revenue & Customs**) for the **Applicant**

Hearing date: 29 November 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties
or their representatives by e-mail and by release to the National Archives
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THE HONOURABLE MR JUSTICE THOMPSELL

Mr Justice Thompsell:

1. This judgment follows a hearing on 29 November 2024 relating to an Application made by HMRC without notice for a freezing injunction and ancillary orders (including evidence preservation orders) against:
 - i) Ducas Ltd (“**Ducas**”) on the basis of a very substantial alleged liability to pay secondary Class 1 National Insurance Contributions;
 - ii) and two other companies, Enix Services Ltd (“**Enix**”) and FL Capital Holdings Ltd (“**FL Capital**”) on the basis of the ‘enforcement’ principle (explained further below).
2. The overarching test for the court to apply when considering an application to issue a freezing order is the “just and convenient” requirement that applies to injunctions and to the appointment of receivers under s.37(1) of the Senior Courts Act 1981 (“**SCA 1981**”). To establish this an applicant for a freezing injunction must show:
 - i) a good arguable case on the merits;
 - ii) that the respondent has assets in the jurisdiction; and
 - iii) a real risk that a future judgment would not be met because of an unjustified dissipation of assets,

(see the summary at White Book, Volume 2, at 15-65 and the restatement by the Court of Appeal in *Lakatamia Shipping Co Ltd v Morimoto* [2019] EWCA Civ 2203, [2020] 2 All ER (Comm) 359, [33]-[38]).

The case for a freezing injunction against Ducas

3. Ducas is said to be involved in fraudulent conduct relating to the supply of thousands of individual health care workers to NHS Trusts via recruitment agencies in a manner calculated to defraud HMRC of secondary Class 1 National Insurance Contributions (“**Employer NICs**”).
4. Ducas supplies a number of UK recruitment agencies (the “**Agencies**”) with individual health care workers. The Agencies in turn supply those workers onward to a large number of organisations seeking workers, principally, NHS Trusts. HMRC estimate that the arrangements which have been operated in the present case involve about 30,000 such workers. Ducas contracts with its customers (the Agencies) on terms that Ducas will be the employer of the supplied workers, and that it will deduct PAYE income tax and primary Class 1 National Insurance Contributions (“**Employee NICs**”) from those workers’ earnings and return any amounts due, including Employer NICs, to HMRC.
5. The NHS Trusts pay to the Agencies, which in turn pass on to Ducas, a gross amount for the services of each worker supplied. This gross amount is calculated to be sufficient to pay the Agencies’ commission (out of which is paid Ducas’ commission); the net of tax pay due to the workers; their PAYE income tax and Employee NICs; and (importantly for the current proceedings) the amount payable in respect of Employer NICs. However, contrary to these contractual obligations and contrary to

representations made by Ducas to the Agencies, Ducas passes these amounts to its associated company, Enix which pays a substantial percentage (apparently well in excess of 90%) of these workers gross – i.e. without deduction of PAYE income tax and Employee NICs via personal services companies (“PSCs”) set up for each such worker who is paid gross. The result is that in respect of these workers (the “**Enix Workers**”) no Employer NICs have been paid to HMRC in respect of the Enix Workers’ earnings. It may also be the case that PAYE tax and Employee NICs are not paid for these workers either, but HMRC is not currently pursuing this aspect. The monies paid over by the end client such as the NHS Trusts intended for payment to HMRC by way of Employer NICs have, on HMRC’s case, been extracted in whole or in part by Ducas and passed on to Enix and/or FL Capital.

6. HMRC has produced credible evidence showing how this position appears to have been hidden from the Agencies through false accounting in the form of false payslips and Real Time Information (“RTI”) documents purporting to show that the correct deductions have been made (in respect of PAYE income tax and Employee NICs) and to show that the correct amounts (including Employer NICs) have been returned to HMRC in respect of the Enix Workers’ earnings, whereas HMRC has no record of such payments being made.
7. If and to the extent that HMRC is able to make good this case as regards the fraudulent documentation - and it has produced copious evidence to back up these assertions -, then HMRC has a very good argument that the effect is to fix Ducas with statutory liability for Employer NICs in respect of the Enix Workers’ earnings under the Social Security (Categorisation of Workers) Regulations 1978 (SI 1978/1689).
8. Ducas’s liability for Employer NICs has been quantified by HMRC at £171,296,046.05. HMRC have prepared to issue a decision to Ducas (the “**Decision**”) under s.8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 in respect of that liability and will undertake to serve it on Ducas as soon as possible after the making of the requested freezing order.
9. I note that this quantification of liability (as well as the facts relating to false accounting) involves a certain degree of estimation by HMRC as it has based its calculation on a sample. However, this is quite a large sample – it covers records relating to ten of the Agencies recruiting the most numbers of staff within these arrangements and thereby covering something around 28% of the total employees. I understand that the quantified figure assumes that the remaining employees will follow a similar pattern where a similar majority of staff will be engaged via Enix and a PSC. It is possible that the final figure assessed will be higher or lower.
10. The primary forum for debating the amount will be through the usual channels for challenging a tax decision (via internal reviews within HMRC and/or an appeal to the First-tier Tribunal (Tax Chamber)). Until otherwise successfully challenged HMRC’s Decision will stand. I consider it is appropriate therefore that I accept HMRC’s figure which has, as far as I can tell at this juncture, been produced relying on the best information available to HMRC having undertaken very substantial investigative work.
11. I am satisfied on the basis of this argument and the facts put before me that there is a serious issue to be tried against Ducas in respect of which HMRC have a good arguable case.

12. I am satisfied also from the evidence shown of bank statements that Ducas has assets in the jurisdiction.
13. I am satisfied also, on the facts and argument presently before the court, that there is real risk of dissipation of assets prior to judgment and enforcement of the debt arising from the Employer NICs liability. I find this on the basis that:
 - i) there is ample evidence of dishonesty in the form of Ducas providing fraudulent documents to its customers;
 - ii) it appears that Ducas has made payments of very substantial sums to its parent company FL Capital, without any apparent commercial justification and has entered into financial arrangements with Enix apparently in deliberate breach of agreements with the Agencies in each case where Enix and FL Capital share common directors with Ducas;
 - iii) the assets of Ducas (comprising mainly cash or rights to receive cash) are liquid and readily capable of dissipation; and
 - iv) Mr Monk, who appears to be the ultimate beneficial owner, resides outside the jurisdiction in Cyprus.
14. A matter for the court to consider is whether a winding-up petition would be more appropriate than a freezing injunction. I am satisfied that it would not be realistic in this case. This is both because it would involve a degree of delay during which there is a risk that Ducas's assets could be dissipated and because Ducas is likely (having regard to existing correspondence) to challenge the basis for the petition.

The case for a freezing injunction against Enix and FL Capital

15. As noted at paragraph 15-63 in Volume 2 of the White Book, the court can in certain circumstances apply freezing orders also against a third party as a further defendant and can grant a freezing injunction against it to support the claimant's claim against the defendant, even though there is no cause of action against the company.
16. This jurisdiction is sometimes said to be based on the "enforcement principle" and sometimes is described as the *Chabra* jurisdiction, after the case where the principle is credited as having first been elucidated: *TSB Private Bank International SA v Chabra* [1992] 1 W.L.R. 231.
17. The principles for the exercise of the *Chabra* jurisdiction were approved by the Court of Appeal in *Lakatamia Shipping Co Ltd v Su* [2014] EWCA Civ 636; [2015] 1 W.L.R. 291, and were stated (at [32]) to be as follows:
 - i) the jurisdiction is exercisable where there is good reason to suppose that assets held in the name of a defendant against whom the claimant asserts no cause of action ("the **NCAD**") would be amenable to some process, ultimately enforceable by the courts, by which the assets would be available to satisfy a judgment against a defendant against whom the claimant asserts a cause of action ("the **CAD**");

- ii) the test of “reason to suppose” is equated with a “good arguable case” i.e. more than barely arguable but not necessarily one the judge believes has better than a 50% chance of success;
 - iii) it is just and convenient to exercise the jurisdiction, which is exceptional and to be exercised with caution;
 - iv) a common example of assets falling within the *Chabra* jurisdiction is where there is good reason to suppose that assets in the name of the NCAD are in truth assets of the CAD;
 - v) establishing substantial control by the CAD over NCAD assets may be relevant, but will not necessarily justify freezing NCAD assets. Substantial control may be relevant in two ways. First, evidence that the CAD exercises substantial control over the assets may be evidence from which the court will infer that the assets are held as nominee or trustee for the NCAD as the ultimate beneficial owner. Secondly, such evidence may establish that there is a real risk of dissipation of the assets in the absence of a freezing order, which the claimant will have to establish in order for it to be just and convenient to make the order. But the establishment of substantial control over the assets by the CAD will not necessarily be sufficient: a parent company may exercise substantial control over a wholly owned subsidiary, but the principles of separate corporate personality require the assets to be treated as those of the subsidiary not the parent. The ultimate test is always whether there is good reason to suppose that the assets would be amenable to execution of a judgment obtained against the CAD.
18. It is suggested further in the same passage in the White Book (referring to *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 906; [2015] W.T.L.R. 1759, CA, at [29]) that, if there is a real risk that the *Chabra* defendant may deal with assets to prevent enforcement of a judgment against the defendant, a *Chabra* order should be made without notice. Once the assets held by the *Chabra* defendant are frozen, any disputed questions of ownership or control can be dealt with on notice.
19. Whilst there is no pre-condition that the third party’s assets must be controlled by or directly connected to the primary defendant, the court considers, as part of the exercise of its discretion, the extent of that connection or interest. In *Yukos Capital S.a.r.l v OJSC Rosneft Oil Co* [2010] EWHC 784 (Comm); [2011] 1 All E.R. (Comm) 172 the assets were held by special purpose companies which, whilst not subsidiaries of the primary defendant Rosneft, had no business or assets of their own, and which existed solely to provide a portal for transfer of purchase monies whilst preserving a bank’s security. The assets were made the subject of a freezing order.
20. HMRC’s case for a freezing injunction against Enix and FL Capital is summarised by them as follows:
- i) Ducas has transferred very significant sums to Enix and FL Capital for which there is no apparent commercial justification and for which Ducas appears to have received no consideration. HMRC argues that it is to be inferred that these payments represent the extraction from Ducas of sums that should have been paid over to HMRC as Employer NICs.

- ii) Accordingly, there is a serious issue to be tried –
 - a) that, in the event that Ducas’s liability to HMRC is established, these transactions are voidable under section 423 of the Insolvency Act 1986 (“IA 1986”) as transactions entered into for the purpose of putting assets beyond the reach of creditors or otherwise prejudicing the interests of creditors;
 - b) further or alternatively, that Enix and FL Capital hold the sums received on trust for Ducas;
 - c) further or alternatively, if Ducas goes into liquidation (as appears likely based on the quantum of HMRC’s claim and the value of Ducas’s known assets), that the appointed liquidator would be able to pursue various claims against Enix and FL Capital to recover the sums paid to them by Ducas.
- iii) As a result, Enix and FL Capital are persons in possession or control of assets against which any judgment obtained by HMRC against Ducas could be executed through one or more of the above processes of enforcement.

The case specifically against FL Capital

- 21. HMRC has identified from Ducas’s bank statements that some £116,328,072.44 that appears to have been paid from Ducas to or for the benefit of FL Capital (net of payments going in the other direction). HMRC has considered, but has discounted an explanation that some of this money might relate to a group VAT liability, as Ducas separately made payment for VAT. HMRC is aware of no other explanation for these payments except that some £25,905,179.22 were identified in the bank statements as being payments for dividends.
- 22. HMRC argues that no dividends could have honestly been paid since the Ducas directors (who were also directors of Enix and of FL Capital) were fully aware of the wrongful actions made by Ducas and must have understood that Ducas has a liability for Employer NICs that would have wiped out the vast majority of the profits booked to its accounts. Logically, its profits could only be the small administration fee that it charged, less its costs of operating.
- 23. Taking into account that HMRC appears to have a good argument that none of these payments have been justified, for the purpose of this interim freezing order I have been content to accept HMRC’s suggested figure as representing amounts that have wrongfully been paid away to FL Capital and which may be available to HMRC (and any other creditors of Ducas) if Ducas is unable to pay the Employer NICs which HMRC has a good arguable case are owing. Accordingly there is a good reason to suppose that the assets would be amenable to execution of a judgment obtained against Ducas.
- 24. I am satisfied also from the evidence shown of bank statements that FL Capital has assets in the jurisdiction.

25. I am satisfied also, on the facts and argument presently before the court, for the same reasons given at [13] above, (having regard to the fact that FL Capital has the same directors and ultimate beneficial owner as Ducas) that there is real risk of dissipation of assets prior to judgment and enforcement of the debt arising from the Employer NICs liability.
26. Similarly for the same reasons given at [14] above, I do not think that a winding-up petition would realistically be more appropriate than a freezing order.

The case specifically against Enix

27. I originally considered that there were flaws in HMRC's case as stated, as it relates to Enix, in that I do not think that there is a good arguable case to say that there is no consideration for the payments made to Enix.
28. These payments were apparently made under a so-called "Contract for Services" made between Enix and Ducas on 6 April 2017. This is a somewhat curious agreement – it appears to be based on the type of drafting that would be used between a company engaging the services of a PSC to supply a worker. A key provision is Clause 24 where it is stated that:

“The Consultancy [i.e. Enix] is responsible for how it engages any Staff and is responsible for any tax and National Insurance contributions due by any Staff or by the Consultancy.”
29. Accordingly it appears that Enix has provided consideration in taking over Ducas's liability to pay the Enix Workers, in amounts that include Employee NICs and PAYE income tax for those workers and any Employer NICs.
30. However, on reflection, it seems to me that this apparent flaw in the argument disappears on closer scrutiny. If Enix is contractually obliged to pay Employer NICs in relation to the Enix staff and fails to do so, then Ducas (or its liquidator or administrator) would be able to enforce this. If Enix is not so contractually obliged then HMRC has its argument that these were transactions at an undervalue or transactions to defraud HMRC as a creditor. Either conclusion is sufficient to support a good arguable case to say that monies received by Enix would be amenable to execution of a judgment obtained against Ducas and so provide a foundation for the enforcement jurisdiction.
31. I am satisfied also from the evidence shown of bank statements that Enix has assets in the jurisdiction (although the amount of the cash held by it does fluctuate substantially).
32. I am satisfied also, on the facts and argument presently before the court, for the same reasons given at [13] above, (having regard to the fact that Enix has the same directors and ultimate beneficial owner as Ducas) that there is real risk of dissipation of assets prior to judgment and enforcement of the debt arising from the Employer NICs liability.
33. Similarly for the same reasons given at [14] above, I do not think that a winding-up petition would realistically be more appropriate than a freezing order.

Conclusion

34. Whilst I must acknowledge and bear in mind that I have heard only one side of the argument, I find as follows.
35. I find that HMRC has demonstrated a good arguable case, creating a serious issue to be tried against Ducas and has otherwise satisfied the requirements for granting a freezing order against that company. It is clear to me that on the facts presented it is just and convenient to grant a freezing order against Ducas.
36. Secondly, I find that HMRC has demonstrated a good arguable case, creating a serious issue to be tried against FL Capital that it is or has been in receipt of funds representing some of the Employer NICs that Ducas has sought to avoid, without providing any equivalent consideration in return. This creates a good arguable case to say that monies received by FL Capital would be amenable to execution of a judgment obtained against Ducas so that it is appropriate to apply the enforcement principle in this case, particularly having regard to the common management of FL Capital and the lack of reason for making payments to that company. Accordingly it appears to me to be just and convenient to grant a freezing order against FL Capital also.
37. Thirdly, I find that HMRC has demonstrated a good arguable case, creating a serious issue to be tried against Enix that Enix is or has been in receipt of funds representing some of the Employer NICs that Ducas has sought to avoid and that it is appropriate to apply the enforcement principle in this case, having regard again to the common management of Enix and Ducas, and that either there has been a lack of reason for Ducas to make payments to Enix in the amounts made or that there is an effective indemnity due from Enix for the amount of Employer NICs under Clause 24 so that either way monies received by FL Capital would be amenable to execution of a judgment obtained against Ducas. It is perhaps also of relevance that Enix has been an active participant in what appears to be a concerted scheme to defraud the Revenue, although as HMRC has not framed its case that way, I will not take account of this factor.
38. HMRC is offering, at least for this interim order a full undertaking in damages. It has based the order on the normal form of order except that it has added some further requirements relating to the retention and non-destruction of records for reasons which seem obvious to me given the strong *prima facie* evidence of dishonesty here.
39. Given the *prima facie* evidence of dishonesty, I have also accepted amendments to the usual form of order so that HMRC is told about proposals to make use of exceptions to the freezing injunction to allow the use of funds to pay legal costs or for payments in the ordinary and proper course of business.
40. As it is HMRC's contention that the current arrangements involving Enix cannot be said to involve the "proper course" of business, I have been concerned that HMRC might use the freezing injunctions not just to hold the ring in relation to historic non-payment of tax, but also to close down the current business. That is not the purpose of the freezing order. Accordingly I have included some additional wording in relation to the exception for "ordinary and proper course of business" to clarify that for the purposes of the freezing injunction (only) payments to PSCs via Enix will be accepted as being within this exception (but that payments to shareholders will not be).

41. I have also extended the definition of “banks” where this occurs in the order to include regulated payment services firms, as restricting the definition to authorised banks can sometimes cause difficulties if a firm handles its money in this way.
42. I have included a return date of 12 December 2024 but this can be extended if the Respondents require more time.