Neutral Citation Number: [2024] EWHC 2136 (Comm)

Case No: CL-2024-000469

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Monday, 12th August 2024

Before:

HIS HONOUR JUDGE PELLING KC
Remotely via Microsoft Teams

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Between:

MS. SPYRIDOULA-MARIA ARMENIAKOU	**Claimant/ Applicant**
- and -	
MR. JAMES ALEXANDER SCOTT THOMSON	**Defendant/ Respondent**

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- -

MR. ALASTAIR THOMSON and MS. ZARA McGLONE (instructed by **Stokoe Partnership Solicitors**) for the **Claimant/Applicant**
THE DEFENDANT/RESPONDENT did not appear and was not represented

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Approved Judgment
(In Private)

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

HIS HONOUR JUDGE PELLING KC:

1. This is an application made without notice under section 25 of the Civil Jurisdiction and Judgments Act 1982 for a worldwide freezing order in aid of proceedings about to be commenced in Greece. The underlying dispute between the claimant and the defendant arises out of highly contentious matrimonial ancillary relief proceedings which took place in Greece and resulted, ultimately, in a compromise agreement by which the matrimonial affairs of the claimant and defendant were resolved by agreement. The applicant was a Greek national and she lives in Greece. The respondent is a UK national who resides and has resided, as I understand it, for many years, in Greece.

2. The underlying dispute concerns two varieties of cryptocurrency which came into existence in the course of a business operated, by the parties together prior to the matrimonial break down, being PYR, where the claim relates to 250,000 units of account, and what is described as EDVs, where the claim relates to about 11 million units of account which are said to have a value of the order of between US$11-13 million.

3. The circumstances giving rise to this claim, in reality, come down to this: the parties, prior to the breakdown of their marriage, operated a crypto industry business which involved both game development and marketing and latterly cryptocurrency development. By January 2021, the business operated under the style or title Vulcan Forged and it was in that context that they launched the PYR currency. There was, as I have said, an acrimonious divorce, which resulted in a settlement which involved the transfer of assets by the defendant to the claimant which is referred to in these proceedings as the mediation agreement. The local Greek law advice that is available and for which I give permission, is that the mediation agreement is enforceable according to the Civil Code of Greece. In so far as is material, the mediation agreement required the defendant to transfer to the claimant 250,000 PYR units as I have said, and 11 million odd EDV units. There was a back-to-back agreement which required the defendant to purchase back the EDVs as soon as he was financially able to do so, at a price of $1.2 per token, which placed the value of the tokens concerned, as I have said, at about €13 million-odd. At the time when the mediation agreement was being negotiated, the understanding was that the EDVs were available in the hands of the respondent. It subsequently became clear that they were not and there was a revision to the terms of the mediation agreement which required the defendant to transfer the EDVs to the claimant as and when they were minted. That has never taken place. There is some suggestion that it is about to take place, even though it is now about two years after or slightly more than two years after the mediation agreement was entered into. It follows that the promised buy back has not occurred either.

4. Although the PYRs were transferred as contemplated by the mediation agreement, the claimant alleges that the defendant has blocked the wallet or account to which they were transferred so as to preclude or limit the claimant's ability to access or otherwise deal with them.

5. The claimant, therefore, makes essentially three allegations of either tort of breach of contract. She claims that in breach of contract she has been unable to access the PYRs as promised. Secondly she alleges that she has not been supplied with the EDVs as she was promised. Thirdly, she alleges that the defendant has been guilty of misrepresentation in relation to the EDVs by representing At the time the mediation

agreement and its variation were being negotiated that they are imminently about to be issued when that was not the case. as I have said, the Greek local law that is available to me suggests that that gives rise to at least a *prima facie* case available to the claimant against the defendant.

6. In those circumstances, the claimant applies for a freezing order in aid of civil proceedings to be started in Greece by the claimant against the defendant. It is said that there will be criminal proceedings as well as permitted by Greek procedural law but that is immaterial to this application not least because the English courts have jurisdiction to make freezing order only in aid of foreign civil proceedings. The principles which apply in relation to applications of this sort, are well-established. In summary, there are four questions which an English court must ask itself when being asked to grant an application under section 25. The first is whether or not the relief sought would be granted in respect of civil proceedings brought inside England and Wales Therefore, the various tests which apply to the grant of a freezing order have to be satisfied – that is whether the claimant has shown a realistically arguable case on the merits of the proposed claim, whether the claimant has shown a real risk of dissipation and thirdly whether it is just and reasonable to grant the order sought. Where the application is made under s.25, the fourth question that arises is whether it is not inexpedient for the court to grant the order which is sought under section 25.

7. So far as the good arguable case issue is concerned, that requirement is satisfied to the low threshold standard required on an application of this sort. It is not necessary for me to go into any more detail than I have done already at this stage and on an application which is made without notice. The evidence supplied by the claimant satisfies me that there is a good arguable case on the merits in relation to the underlying cause of action.

8. The next question which arises, therefore, is whether there is a real risk of dissipation. The real risk of dissipation test has given rise to a significant amount of Court of Appeal jurisprudence in recent years For present purposes, it is necessary for a claimant to show there is a real risk of unjustified dissipation which, in this context, means either moving assets out of England and Wales or transferring them or otherwise concealing them which must be established by solid evidence, although the primary evidence in relation to the alleged cause of action may support an inference of a real risk of dissipation. Where there is an allegation of dishonesty, it is necessary to scrutinise the evidence in order to ensure that one is not simply inferring a risk of dissipation from the fact of dishonesty. A court determining an application of this sort must be satisfied that the evidence of dishonesty properly supports the inference that there is a real risk of dissipation by reason of the nature, extent and method by which the dishonesty was carried into effect. The availability of offshore structures are a relevant to the assessment, but of itself is not a sufficient ground for concluding that there is dissipation since there are legitimate reasons for establishing and using such structures.

9. There are a number of facts and matters which are relied upon as supporting the inference of real risk of dissipation, both historical and more recent. As long ago as June 2022, in the presence of lawyers acting for the parties at the process which led to the mediation agreement, the claimant alleges that the respondent lied until confronted by evidence about a National Westminster Bank account in England, which had more than £20 million in credit to it and had transferred crypto assets belonging to a company which the parties operated to himself personally. No doubt there will be a dispute about these allegations but for present purposes they provide a basis for inferring a real risk of

dissipation. There are other factors. For example, the respondent appears to have filed or authorised the filing of accounts in relation to Vulcan Forged Limited, the UK-registered company through which the business was or perhaps for a time was operated, which suggested that the company was dormant in a year when it was in fact trading. That is an allegation of false accounting that supports an inference of a real risk of dissipation. The respondent has apparently established offshore companies to masquerade as the claimant which suggests that there is not merely an offshore network of companies that may be available to the defendant, but the defendant is adept at using them for the purposes of hiding and manipulating as he considers appropriate in the circumstances. There is some suggestion that he has been less than truthful as to his current financial position, maintaining that he is in embarrassed financial circumstances, when other facts and matters which are available suggest that the underlying business is in good economic and financial health. The claimant also relies on the case she advances concerning who is responsible for the blocking the PYR accounts that are operated by her and to which the PYR units were transferred, as supporting an inference of real risk of dissipation. Sat this stage, this material satisfies me that there is a real risk of dissipation if I do not grant the injunction sought.

10. There are two further points which need to be made in relation to the risk of dissipation. The first is that there has been some modest delay since the commencement of these proceedings. The second is that there has been an exchange of correspondence between the Greek lawyers acting respectively for the claimant and the defendant concerning the underlying claim, from which it is necessarily to be inferred that the defendant is aware that proceedings are imminently about to be commenced against him in relation to the issues that arise, albeit there is nothing in the correspondence as I read it which would lead him to conclude that the proceedings would be anything other than domestic Greek proceedings.

11. Where delay has occurred, the question that arises is whether it is to be inferred from such delay as has occurred that the claimant has no real concern about risk of dissipation. I am satisfied that would be a wrong conclusion to reach on the evidence available to me in the circumstances of this case.

12. In relation to the point that correspondence that has taken place between the Greek lawyers in relation to the dispute, I am satisfied that is likely to have led only to the conclusion that proceedings will be commenced by the claimant against the defendant in Greece. Even if that is not so, and some steps have been taken by the defendant already to conceal his assets, that is not a reason for refusing to make the order sought even if the order is as a result less efficacious than it would have been had the application been made before the applying party's lawyers entered into correspondence about the underlying claim.

13. These conclusions lead to what I consider to be the real concern which arises in the circumstances of this case, which is whether or not it is just and convenient to grant the order sought or, put another way, whether it is not inexpedient to grant the relief sought. As I have already explained, the defendant is resident out of the English jurisdiction (in Greece) with nothing on the evidence which suggests he is imminently about to return to the United Kingdom. Therefore, and in those circumstances, the court's practical ability to enforce its order against the defendant is, at best, limited. There is some evidence about the National Westminster Bank account, which I referred to earlier in this judgment, which, if credited with the same substantial sums of money it is alleged

were credited to it about two years ago, provides a potential mechanism by which the court can coercively enforce its obligations. However, whether that is what is credited to the account in circumstances as they now are is a matter of speculation. In summary therefore, there is evidence that there is one or are perhaps two bank accounts which are maintained by the defendant with English banks. There is some evidence that he has in the past formed companies in other jurisdictions, including, for example, the BVI and that he has relatives resident in England and Wales. It is also said that he remain domiciled in England and Wales and so would be amenable to enforcement procedures if ever he retuned to the UK.

14. Applying the principles identified by Popplewell J (as he was then) in *ICICI Bank UK plc v Diminco NV* [2014] 2 CLC 647 at paragraph 27:

> "(1) It will rarely be appropriate to exercise jurisdiction to grant a freezing order where a defendant has no assets here and owes no allegiance to the English court by the existence of in personam jurisdiction over him, whether by way of domicile or residence or for some other reason."

15. So far as that is concerned, I am prepared to accept that the defendant remains domiciled in England and Wales, although the evidence on which that can safely be concluded is very limited, since he has been resident in Greece for many years and has carried out all his business activities in Greece. The connection with England is made slightly stronger by the one or two bank accounts maintained by the defendant in the English jurisdiction to which the evidence refers. For these reasons I am prepared to accept that this is not one of those cases where one should refuse to intervene at all.

16. The next stage which Popplewell J identified was to ask:

> "Where there is reason to believe that the defendant has assets within the jurisdiction, the English court will often be the appropriate court" – usually – "to grant protective measures by way of a domestic freezing order over such assets ..." as are located in England and Wales.

That is a principle which, in my judgment, applies in full measure in the circumstances of this case. The evidence focuses upon assets in the English jurisdiction in the form of the bank accounts. It is not alleged there are any other assets here (or for that matter on any sold basis anywhere else). In those circumstances I do not accept that it is just and convenient or expedient to grant an worldwide freezing order although I accept that it is appropriate to make a domestic freezing order, that is to say one that takes effect in England and Wales.

17. The question that then arises is whether there is some other discretionary reason why it would be appropriate to grant a worldwide freezing order. As to that, there is some evidence that, in the past, this respondent has formed companies in jurisdictions other than England and Wales and Greece, but no evidence that they are of any significance currently. Therefore, and in those circumstances, as it seems to me, the appropriate course, in principle, is to grant a freezing order, but to limit its effect to England and Wales. This will preclude the defendant from accessing the bank accounts he maintains here subject to the usual exceptions that appear in freezing orders.

18. However, before reaching a final conclusion it is necessary to consider whether or not there is any comity problem which would lead to the conclusion that an order should not be granted which it would otherwise be appropriate to grant. So far as that is concerned, there is no evidence as to whether there are any public order or policy issues that would make the grant of an order a source of objection in relation to proceedings started in Greece. There are some English authorities that suggest by omission that there are no such issues – see by way of example the decision of Calver J in *Griffin Underwriting v Varouxakis* [2021] EWHC 226 (Comm). The point which is made on behalf of the claimant is that the Greek court would make freezing orders, but only of domestic effect, which suggests that orders which have exclusive effect outside Greece will not give rise to a problem. It is difficult to see what objection could be taken by a Greek court to an order made by an English court that was limited in its territorial effect to England and Wales. In the end this is an issue that it was for the claimant to consider with its Greek lawyers. I am entitled to proceed on the basis that there is no policy or juridical difficulty posed by this application being made in aid of proceedings to be started in Greece. If that should turn out to be wrong it will be for the claimant to explain why this difficulty could not reasonably have been drawn to my attention at this stage.

19. In those circumstances, subject to two points, I am prepared to grant the injunction sought. The points which I outstanding are, firstly, whether or not I should require fortification of the cross-undertaking in damages which is offered. That is yet to be the subject of argument and I leave it to one side for now. The other point concerns whether I should permit on its defendant in Greece by alternative means to that required by the Haque service convention.

20. Th alternative means application is supported by the statement of the claimant's solicitor, Mr. Tsiattalou, dated 12th August 2024. He identifies three alternative service bases which are dealt with at paragraph 45 of his witness statement and following. In relation to the first, which is to the respondent's e-mail address, his evidence is that:

> "I understand from the Applicant's Greek lawyers that service by email is a relatively new development in Greek civil procedure, and that for Greek proceedings, it operates via an accredited bailiff through a particular procedure. However, in much the same way as the Applicant asks the Court to make an order for alternative service in order to avoid the delays inherent in service through the usual centralised methods of service in Greece, the Applicant also asks that any order for service by email which the Court makes provides for my firm to serve the Section 25 Application on the Respondent directly via email ...".

21. That deals with the question of whether or not exceptionally the court should permit service by an alternative means on a respondent in a Hague Service Convention country. As to that, the English jurisprudence establishes very clearly that where orders enforceable by coercive means are made by the English court service by alternative means is generally speaking appropriate both for the order and for the evidence which was used to obtain the order and the originating process by which the order was sought, in the interests of the respondent knowing as soon as possible that he or she or it has been made the subject of an order capable of being enforced by coercive means.

22. What this does not deal with it is the issue which arises in any alternative service application where service out of the jurisdiction is being required, which is that by CPR rule 6.44, nothing in a court order otherwise permitting service by an alternative means can authorise or require any person to do anything which is contrary to the law of the country where the claim form or other document is to be served. The scope of this rule is limited. It means that no order of an English court can be taken to authorise or direct the doing of something which is positively contrary to the law of the State where service is to be effected but, by the same token, the burden of proof is on the claimant on establish service would not contravene the relevant foreign law on the balance of probabilities. So far as that is concerned, there is no evidence which goes directly to the point other than the evidence which I have referred to already, and which also deals with service on the respondent on its residual address and by service on his Greek lawyer. That, in combination with what Carver J said in the authority I referred to a moment ago, leads me to conclude that it is safe for me to proceed on the basis that while Greek procedural law makes provision for regular methods of service, it does not render positively unlawful the alternative means which have been identified in the circumstances of this case. Again if that is not the position, it was for the claimant to draw that fact to may attention.

23. In those circumstances, pulling together what I have said in the course of this judgment: (1) I give permission for the claimant to adduce expert evidence of Greek law in support of the application; (2) I have directed that this application be heard in private because to do otherwise would risk defeating the very purpose of the making of the application; (3) I am satisfied that if these proceedings were taking place in England and Wales a domestic freezing order would be the appropriate order to make; (4) I am satisfied it is not inexpedient to make an order under section 25 as long as it is limited in the way I have described, that is to say its territorial effect is limited to England and Wales; and (5) I am satisfied it is appropriate to make an order permitting service of the order, the originating Part 8 claim and the evidence in support, each of the alternative means proposed.

24. I am satisfied that there are exceptional circumstances which justify service by the alternative means, namely the need to bring to the attention of the respondent as quickly as possible the making of this order and I am satisfied on the material available that service by the alternative means proposed would not be unlawful, positively unlawful according to the law of Greece.

(For continuation of proceedings: please see separate transcript)

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