



Neutral Citation Number: [2020] EWHC 3005 (Fam)

Case No: FD13D05340

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Date: 28 October 2020

Before :

The Honourable Mrs Justice Knowles

Between:

Akhmedova
- and -
Akhmedov & Ors

Claimant

Defendant

Mr Tim Penny QC and Mr Mark Belshaw (instructed by PCB Litigation LLP) for the
Claimant

Hearing date: 28th October 2020

Approved Judgment

Judgment by **THE HONOURABLE MRS JUSTICE KNOWLES**

1. Before me is a without notice application by Tatiana Akhmedova [“the wife”] for a search order against the tenth respondent, Temur Akhmedov [“Temur”], in the long running proceedings allocated to me. A final hearing is due to commence before me on 30 November for 15 days.
2. To prepare for this hearing, I have received and read a skeleton argument on behalf of the wife. I have read the application notice, the draft order, the affidavit of Mr Riem without all of the exhibits, (though I have been taken to some of them during the course of submissions) and a judgment by the Court of Appeal, *TBD v Simons* [2020] EWCA Civ 1182. My reading has been focused on paragraphs 127 to 193 of that authority.
3. First of all, I should say that I am grateful to the wife's legal team for their preparation of the application before me and for the comprehensive skeleton argument. I have also heard some oral submissions, and, once I have given this judgment, I will consider in its final form the draft order before me.
4. This is an ex tempore judgment. I apologise if it is not as polished as it would be otherwise, but it is important, if only for the management of these proceedings going forward, that I give a judgment today. Nothing in this judgment should be taken to suggest that I have determined the matters which will be the subject of the trial before me in November 2020.
5. The wife obtained a worldwide freezing order and ancillary disclosure orders against Temur at a without notice hearing on 17 July 2020. That order was continued at the inter partes hearing on 23 July 2020, and, on that date, I made an order requiring Temur to deliver up and provide access to his electronic devices and cloud storage accounts, and for these to be forensically examined by an independent IT expert, Aon [“the forensic examination order”].
6. I regret to say that no devices were delivered up by Temur. All his electronic devices, including the only desktop computer which he admitted to owning, were said by him to have been lost in transit from France to London when he was seeking to comply with the forensic examination order. An investigation has been launched by the courier company, DHL, and a police investigation is ongoing in France. Temur also failed to provide access to his cloud accounts in defiance of the forensic examination order. The only data delivered by Temur or on his behalf to the IT expert, Aon, was a mobile phone image which was held by the third party company that had originally produced the image.
7. I was told that the wife became aware on 20 October 2020 from material provided by Temur's current solicitors, Patron Law, that Temur was likely to have further electronic devices in his flat. These had not been disclosed by him or delivered up in accordance with the forensic examination order. Those circumstances gave rise to serious concerns on behalf of those who represent the wife that these devices contained critical evidence on the key issues in the proceedings, disclosure of which is necessary for their just resolution.
8. Mr Penny on behalf of the wife relies on the following matters: Temur's apparent concealment of these devices, in breach of his obligations to provide disclosure; his own

admission of destroying documents and devices in the past; and his alleged assistance given to Farkhad Akhmedov's ["the husband"] schemes of evasion of this court's orders. All those matters were prayed in aid as a reason to bring the present application before me.

9. The background to the litigation is set out in my judgment dated 2 October 2019 under neutral citation [2019] EWHC 2561 (Fam). I do not repeat it here.
10. I have already noted that the claims against Temur, Counselor and Sobaldo (the 8th and 9th respondents) and Borderedge (the 11th respondent) are fixed for a three-week trial commencing at the end of November 2020.
11. This application has been made without notice. The principal reason for that is because the giving of notice would be likely to frustrate its purpose, for example because Temur may seek to remove, destroy or tamper with the devices which are the subject of the application, or cause someone else to do so.
12. Mr Penny submitted to me that there is good reason for that fear, namely Temur's failure to comply with the forensic examination order and give up his devices; his admitted systematic destruction of documents which go to the critical issues in this case, together with the apparent concealment of electronic devices from his own legal team.
13. In his comprehensive skeleton argument, Mr Penny sets out the law relating to search orders. I am satisfied I have the jurisdiction to make such an order pursuant to FPR 20.2(1)(h). The core requirements for the making of such an order are as follows: firstly, there must be an extremely strong prima facie case; secondly, that the damage, potential or actual, must be very serious for the applicant; thirdly, there must be clear evidence that the respondent has in his possession incriminating documents or things and that there is a real possibility that the respondent might destroy such material before any inter partes application could be made; and, fourthly, the harm likely to be caused by the execution of the order to Temur and his business affairs must not be excessive or out of proportion to the legitimate object of the order.
14. I have had my attention drawn to the case of TBD v Simons (see above), which concerns itself with the jurisdiction of the court to grant search orders, the interaction of that jurisdiction with a jurisdiction to grant imaging orders, and orders for disclosure and inspection. I have read those paragraphs of the Court of Appeal's judgment which are of particular relevance in setting out the legal framework for these orders, and the principles were summarised by Mr Penny in paragraph 15 of his skeleton argument. I do not propose to repeat its contents here, but I accept what is said therein.
15. I consider firstly the requirement for an extremely strong prima facie case against Temur. I accepted at a without notice hearing for the worldwide freezing order on 17 July 2020 that the wife had a good arguable case in respect of her claims against Temur. Those claims were set out in the judgment I delivered on that date in paragraphs 13 to 38 inclusive. I do not repeat them here, but they are incorporated by reference into this judgment.
16. At the hearing for the forensic examination order on 23 July 2020, the wife relied on the same facts to show that her case had reached the threshold of being an extremely strong prima facie

case. I did not need to resolve that issue then, as Temur consented to the grant of the forensic examination order, though he sought to vary its terms.

17. Presently, I note that the wife does not have documentary evidence to show the total amount received by Temur from the husband, the first respondent. That is, in part, because of the secrecy achieved via a web of offshore structures, and because Temur has failed to give disclosure.
18. Mr Penny submitted that there was a real prospect of establishing at trial that Temur received very significant sums from the Liechtenstein trusts and the monetary assets, and that one purpose of the transfer to him of those sums of money was to put those assets beyond the wife's reach.
19. I also note that, in circumstances where Temur has failed to give proper disclosure of his wealth, the court may be invited to draw adverse inferences.
20. With respect to the Moscow property, I said a considerable amount about this in my judgment with respect to the worldwide freezing order. There is now, as there was not then, expert evidence that Temur did in fact become the legal owner of the Moscow property in June 2018. That evidence appears on the face of it to undermine his defence that he never became the beneficial owner of that property.
21. Mr Penny submitted that there is thus an extremely strong prima facie case that the husband's transfer of the Moscow property to Temur engaged section 423 of the Insolvency Act 1986. I accept that submission. Given all these factors, I am satisfied that the first criterion required for the grant of this without notice search order is made out in this particular case.
22. I turn now to the damage, potential or actual, to the applicant, noting that this damage must be serious.
23. I have summarised matters with respect to Temur's disclosure obligations, the forensic examination order and his alleged destruction and concealment of the evidence. The disclosure process has resulted in Temur failing to disclose a single contemporaneous document since 1 March 2016. He has disclosed no document from his own records save for two discrete emails that he believes to be helpful to his case. He has also destroyed critical documents going to key issues in the proceedings, and he makes specific admissions in respect to the following categories of documents.
24. First of all, documents relating to the "investment purpose" (namely the purpose for which his father was said to have given him money), the shares in Solyanka Servis LLC and the relevant issues defined in the disclosure order I made in May 2020; secondly, documents evidencing communications with a number of individuals relating to the transactions concerning the Moscow property; thirdly, documents evidencing communications with Mr Kerman and Mr Devlin in relation to the relevant issues, and finally documents evidencing communications with the Liechtenstein lawyers, Walch & Schurti, in relation to the relevant issues defined in my disclosure order. He has also apparently failed to disclose in compliance with the worldwide freezing order.

25. As far as the forensic examination order is concerned, there is an apparent failure to comply with that order at each and every turn. Those matters are set out by Mr Penny in the skeleton argument. For example, Temur has failed to provide a list of all the electronic platforms used by him since 1 January 2013 and failed to provide the information required to access these. I give but one example of this apparent failure.
26. An attempt was made to recover the information contained in an account relating to STE Capital. The report from the independent experts Aon indicated that when Aon first sought access to this account on 7 August 2020, they were provided with an incorrect password when doing so. However, when performing the account recovery process with Temur on 14 August 2020 they were met with a message stating: *"This account was recently deleted and may be recoverable. Click next to attempt to restore this account"*. Temur appears to have been unable to give them any further information about this at the time. Aon's conclusion was that the account was deleted at some time between 7 August 2020 and 14 August 2020.
27. The explanation given by Temur is that he believed the account had been deleted in 2019 because of non-payment. Mr Penny contended that such an explanation was implausible and failed to explain why Aon was able to at least start the account access process on 7 August, only being informed of the deletion when they tried to do so again seven days later, on 14 August 2020.
28. Additionally, Temur has failed to deliver up his electronic devices as required. His PC, laptop, mobile phone and Apple watch are apparently lost in transit between France and this jurisdiction. There is an ongoing police investigation initiated by DHL, the courier company, rather than by Temur himself.
29. As a result of Temur's repeated failures to provide disclosure, the material produced by the forensic examination order is, if I may say so, severely limited. Recent developments, however, have made the application before me today a matter of some urgency. There appears to have been active concealment by Temur of electronic devices in his flat. The valuation report of that flat prepared for the purpose of a loan facility which Temur aimed to make use of, shows in photographs appended thereto a number of electronic devices in Temur's study. Those pictures were taken during the inspection of the property on 27 August 2020. I have seen the relevant photograph. It shows one or possibly more than one desktop tower computer, three computer screens, three keyboards and a printer. There also appears to be a laptop which is being charged on a shelf behind the desk.
30. Mr Penny submitted that the content and date of the photographs were striking. They plainly show devices falling within the scope of the forensic examination order, yet those devices have never been disclosed by Temur and have not been delivered up to Aon for examination. The photographs were of course taken on 27 August 2020. That was in fact a full month after Temur ought to have delivered up his electronic devices and a full month after his only disclosed personal computer and other electronic devices were allegedly shipped from France but lost in transit.
31. The wife's solicitors have repeatedly asked in correspondence for confirmation that there were no additional electronic devices located in Temur's flat. Temur's solicitors at the time, HFC, repeatedly ignored that specific request but did confirm in more general terms that there

were no further electronic devices. I note that on 31 July 2020 they expressly stated: "Our client repeats that he has no further electronic devices other than those already sent to Aon."

32. It would appear that Temur concealed the existence of the devices shown in the valuation report from his own legal representatives.
33. I have considered if this property might belong to his former partner. I think this is a little unlikely. The devices are in his study, the office setup appears to be the same office setup which appears in a photograph taken of Temur published in the Daily Mail on 23 July 2020. Such an extensive office setup is unlikely to be used by Temur's former partner, who is unemployed, or by their young daughter, who is only 4 years old. It is the wife's evidence that she has seen this office setup on a number of occasions, most recently in March 2020, which is before Temur's former partner started residing at the flat.
34. The office setup seems to me to be entirely in keeping with someone who holds himself out as a trader. It is plain from the photograph published on 23 July 2020 that one of the screens displayed shows some evidence of trading activity.
35. I have also looked carefully at that photograph published on 23 July 2020. The setup appears to be very similar, as I have already mentioned, to the photos taken on 27 August.
36. It will of course not escape the observant that the 23 July 2020 was the day on which I made the forensic examination order.
37. I am satisfied that there is clear evidence that the damage that would be caused to the applicant would be very serious. It arises from Temur's apparent failure to comply with this court's orders. Her case is that she is a victim of a series of dishonest and elaborate schemes which were intended to prevent her obtaining the sums which this court had ordered in December 2016. The claim against Temur is a critical aspect of her attempt to obtain relief, notwithstanding those schemes. His continuing apparent failure to disclose relevant documents which are likely to be of vital importance to key issues in the proceedings; his admitted deliberate destruction of relevant documents; his apparent concealment of electronic devices; and his repeated failure to comply with the terms of this court's orders are all likely to cause serious damage to the wife in prejudicing her ability to pursue the proceedings and obtain the judgment to which she claims to be entitled.
38. I note that the wife has almost no contemporaneous communications dealing with the establishment of the Liechtenstein trusts, because Temur claims to have destroyed all of his documents and the eighth and ninth respondents continue to refuse to give disclosure of any documents she does not already have, despite this court's orders. Thus Temur's actions affect her claims against the other respondents in these proceedings, and it also means that this court is being deprived of important evidence to establish the purpose of the transfers of the monetary assets to the Liechtenstein trusts and to Borderededge.
39. Prejudice arises not only for the wife in relation to her claims against all of the respondents in these proceedings, but also in relation to any further enforcement efforts against further third parties who may be mixed up in these schemes of evasion. This risk can only realistically be avoided by the grant of the search order, which will allow the wife to preserve crucial evidence which would otherwise be destroyed or concealed.

40. I am satisfied that the damage is serious, and the second limb of the test is therefore met.
41. I am also satisfied that there is clear evidence that Temur has in his possession incriminating documents and that there is a real possibility he will destroy the same before an inter partes order could be granted.
42. Temur has already admitted that he has had communications with Walch & Schurti, who are inextricably linked to the Liechtenstein trusts, and it seems, as Mr Penny submitted, that this material will inevitably be incriminating, because it will relate to the improper transfer of the monetary assets into Liechtenstein.
43. Further, Mr Penny submitted it was overwhelmingly likely that Temur was in possession of documents relating to the Moscow property, in particular relating to the steps recently undertaken by his representatives, by which the Moscow property was ultimately returned to the husband and put beyond the wife's reach.
44. It also appears to be likely that Temur has documents relating to the wife's claim against Borderedge, in circumstances where he is the 50 per cent owner of Borderedge.
45. Those documents are likely to be stored on the electronic devices at his flat, which Mr Penny invites me to infer were the electronic devices which he was primarily using throughout this period. That appears to be the only plausible explanation for why he has failed to disclose the existence of these devices, and has failed to deliver them up to Aon as required by the forensic examination order.
46. Temur himself says that he has destroyed the entirety of the relevant electronic documents. If these can be retrieved from the devices in his flat it is appropriate in my view to take steps to ensure that this is done. I am satisfied that there is clear evidence that he has in his possession incriminating material and that there is a real possibility he will destroy the same before an inter partes order could be granted.
47. Finally, I must be satisfied that the harm caused to Temur must not be excessive or disproportionate to the legitimate object of the order. I note, in that context, that Aon are experts in digital forensics who have already been appointed as independent IT experts in these proceedings for the purpose of imaging and reviewing Temur's electronic devices.
48. The order I am invited to make provides a variety of protections. First of all the process of conducting the search will be done in a manner which minimises any threat to health in light of the current Covid pandemic. In recognition of the fact that the premises are believed to be currently occupied by Temur's former partner and his daughter, at least two members of the search party will be female. The search is limited to electronic devices which he should have delivered up to Aon in any event. It is thus a search which is likely to be executed quickly and will be significantly less intrusive than the execution of a more extensive search. He would only be deprived of his devices for a short period of time and these would be returned to him. The data collection processes would be non-destructive, and all information and data obtained by Aon would be kept confidential. User generated material would be sent to his solicitors and to the supervising solicitor to be held pending the court's further order. This material could not be accessed by the wife's legal representatives.

49. Any harm in relation to Temur is thus likely to be very small indeed and that must be weighed against the legitimate object of the order, which is to obtain and preserve documents (1) which are likely to be critical to the key issues in these proceedings and necessary to ensure that the wife can obtain effective relief; and (2) likely to also shed further light on the husband's schemes designed to frustrate the court's orders and (3) necessary to ensure that Temur has complied with his disclosure obligations.
50. I am satisfied that this fourth requirement is made out.
51. However, before I make this order, I must consider those matters set out in the skeleton at paragraphs 83 to 115 in respect of the applicant's duty of full and frank disclosure. I do not set out each and every one herein as none in my opinion shifts the balance decisively against the granting of the without notice relief which is sought, given the circumstances I have already described in this judgment.
52. I did, however, in the course of exchanges with Mr Penny make specific enquiry about the first item in the full and frank disclosure section, namely an assertion that the wife had knowledge of sums provided to Temur by his father and that she should have provided this information by way of full and frank disclosure earlier. Those matters are set out at paragraphs 85.2 and 85.3. I do not propose to rehearse what is set out therein, although I have considered it very carefully indeed. Ultimately that issue will be for me to resolve on the evidence at trial at the end of November 2020. It is not a matter which should outweigh the grant of without notice relief in the circumstances I have already described, but I am alive to it.
53. It thus follows that I am entirely satisfied that I should make the order sought. It is both proportionate and reasonable to do so to give effect to this court's previous orders, and any less intrusive order, such as an imaging order, has already been tried by this court without success. I consider it is likely, if an imaging order were to be remade, that it would be ignored by Temur as he appears to have ignored my previous orders.
54. I emphasise that the forensic imaging of the electronic devices is simply a step to preserve them. It must necessarily be followed by proper review of the preserved material with a view to providing disclosure and inspection where required and where relevant. The wife's solicitors do not seek for document review and disclosure by this order. That will be a matter for consideration at an inter partes hearing, which I intend to hold on 4 November 2020.
55. I have reviewed the content of the draft order with Mr Penny. It is an order with circumscribed limits. I can make it whether or not Temur is present at the premises and whether or not his solicitor can be contacted or is indeed present. Paragraph 33 of the order provides in my view sensible safeguards, as do paragraph 34 and paragraph 35.
56. I am satisfied that the order contains appropriate protections for Temur, including with respect to any assertion that the material held might be subject to legal privilege or should not be disclosable because of the privilege against self-incrimination.
57. I have also drawn counsel's attention to my concern that the order will be effected at the flat where Temur's former partner and their small child reside. To that end I have additionally required the provision of photographic and other identification evidence of the six individuals

who will be in attendance at the search so that they can identify themselves at the premises to staff and most importantly to the occupants of the flat, if indeed the flat is occupied and the occupants are present at the time of the search. I intend that those provisions should minimise confusion and, I hope, any distress. If Temur's former partner and his child are present, I expect those in attendance to conduct themselves in a manner designed to minimise any upset or confusion during the search.

58. That is my decision.