IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. IHQ19/0157

[2019] EWHC 1146 (QB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 2 April 2019

Before:

MR ANTHONY METZER QC

B E T W E E N :

WORLD PROTEINS KFT — Applicant

- and -

PERSONS UNKNOWN — Respondent

MR J. ENGLAND (instructed by Peachey & Co LLP) appeared on behalf of the Applicant.

THE RESPONDENTS did not attend and were not represented.

J U D G M E N T

(Please note this transcript has been prepared without the aid of documentation)

MR ANTHONY METZER QC:

1 This is an application by the claimant to continue the injunction which is presently in place on an interim basis. I am assisted by counsel for the claimant, Mr England, his helpful skeleton argument and oral submissions before me.

THE BACKGROUND

2 The applicant applies to continue the *ex parte* order with related relief originally made against persons unknown which also required at that stage disclosure of accounts held at Barclays Bank PLC. Persons unknown were disclosed in the course of the disclosure of those accounts to be a Mr Muhammad Mateen ("MM").

3 The application arises out of an email fraud where fake emails interposed within a legitimate chain of emails relating to outstanding invoices between the applicant and its established Dutch supplier, FrieslandCampina Nederland BC ("FC"). Emails were sent impersonating individuals at FC and the applicant causing the applicant to make transfers to the figure of around €1.5 million and, separately, €500,000 owed to FC to an account at Barclays which the applicant later discovered did not belong to FC. The applicant was able to recall and recoup the approximately €1.5 million payment, however, was unsuccessful in relation to the €500,000 payment. Approximately €360,000 of that €500,000 was in an account at Barclays and is currently frozen. The remaining approximately €140,000 was sent in tranches to various other accounts in the names of companies in Dubai. I am grateful to the three affidavits of Mr Ashton which summarise the position historically in relation to the case generally and the full evidence is set out in those affidavits.

4 In summary, FC was a longstanding supplier of butter to the applicant and sent two legitimate invoices. Legitimate emails then passed over the outstanding payment of the first invoice in February 2019. Approximately €1,650,000 was paid by the applicant towards the first invoice to a genuine bank account of FC's. However, on 26 February 2019, at 12.24, an employee of the applicant, Agnes Bata, received an email purportedly from a represented of FC, Leopold Messan. The email, later known to be false, included a chain of legitimate emails that had existed between Ms Bata and Mr Messan referred to above in relation to that first invoice and required payment of the remaining amount and attached new bank details at Barclays for FC, described hereafter as "the Barclays account", which was later known to be false. The €500,000 was then paid for the first invoice to a Barclays account from a bank branch in Hungary.

5 There was then an email purportedly from the representative of the applicant on 28 February stating the outstanding €500,000 transfer would be delayed due to what is described as an upgrade ongoing with the applicant's bank. This was as false email. Included underneath that email was a further email dated 28 February, timed at 16.13 hours, purportedly from Veronique Pierre, of a company described as Finance Shared Services Accounts, receivable within FC, which was sent requesting the outstanding payment of €500,000 from that invoice. That email, just as the one I have described sent at 16.28, was also later discovered to be fake.

6 The affidavit of Mr Ashton then sets out the history in relation to the recovery of the sums which were able to be recovered and also the situation with the sums which remained

outstanding. In relation to those sums, the evidence from Mr Ashton describes how those different sums totalling around €141,000 were taken and I am assisted by the evidence to support that. The first payment, which is to be found at tab 6, is detailed at page 199 of tab 6 and the exhibits to Mr Ashton's affidavit. The evidence to support what happened in relation to the transfer of those funds are found at pages 211 and 212 of Mr Ashton's exhibits to his affidavit. In relation to the second payment, that is to be found at tab 11 of the bundle, at pages 1 and 2, and the third payment is to be found at tab 5, paragraphs 25 to 26, in relation to that third payment. As I have indicated, the total amount concerned was a figure of just over €140,000 which has not been recovered.

7 As far as the position about the then believed to be persons known is concerned, when the *ex parte* order was made, the identity of that person was unknown, hence the application in relation to the Barclays account for disclosure. Following that disclosure, it is now clear, as I have indicated, that the identity of the account holder is now known to be MM and an address was given for him in Essex. No other parties were shown to have control of the assets disclosed, which are now frozen, and the applicant has not been able to found out much about MM or his trading names at present. I am informed that he has been indeed served with the present application and has not responded in any form whatsoever.

8 As far as disclosure is concerned, I need say little more other than that there has been a somewhat disappointing response from Barclays who appear to have informed MM of matters immediately after the *ex parte* order and before disclosure of the accounts had been made. There is some criticism of that approach in the submissions of Mr England and I have some sympathy with that although it plays no direct part in terms of the decision that needs to be made today.

9 As far as the law is concerned, that was helpfully summarised by Swift J when granting the present *ex parte* application on 19 March of this year and is summarised in a helpful note taken by instructing solicitors for the claimant. I go to that, in particular, noting paragraph 36 onwards at page 100 of tab 6. Swift J indicated that the questions that arose in respect of the injunctive relief were: first, does the claimant have a good arguable case; secondly, is there reason to believe the respondents have assets that should be frozen; thirdly, is there any real risk of dissipation; and, fourthly, the balance of convenience test.

10 As Mr England rightly observes at paragraph 14 of his skeleton argument, it settled that it is not necessary to establish that a claim is bound to succeed or has more than a 50 percent chance of success to be satisfied that the case is arguable. In my judgment, as Swift J found, there is at least a good arguable case against MM on the basis of a number of different types of claim.

11 As far as those claims are concerned, the principle authority in this regard is the recent decisions of HHJ Waksman QC sitting as a judge in the High Court in the decisions of *CMOC v Persons Unknown* [2017] EWHC 3599 (Comm), the interim application and the following application at [2018] EWHC 2230. In the first application, he noted at [4] that:

> "The novel aspect of this case is that the injunction concerned is a freezing injunction. At this stage I can see no reason in principle against, and indeed a good arguable case for, saying that this should extend to a freezing injunction. If there are potential problems down the line concerning contempt, or there is a need to ensure that there has been proper notification of any relevant defendant of the injunction, that potential difficulty applies as much to the cases where other forms of injunctions against third parties have already been granted. So that is not a good reason not to extend the

> principle. Conversely, there is a strong reason for extending the principle which is that the freezing injunction can often be a springboard for the grant of ancillary relief in respect of third parties, which arguably could not get off the ground unless there has been a primary freezing injunction. That is very much the case in fraud litigation and is very much the case here where the first object is of course to notify the banks of the freezing injunction so that they can freeze the relevant bank accounts - irrespective of if and when it comes to the attention of the underlying defendants. And then secondly, on the basis of that, to obtain vital information from the various banks which may assist in positively identifying some or all of the defendants."

12 Swift J found that some form of fraud had taken place and noted also that the claimant had contended claims in restitution and accepted there was an arguable case, not simply in fraud but also in restitution. He then dealt with the issue in relation to persons unknown, made reference to the CMOC cases, and dealt with the tests summarised in relation to whether there is reason to believe the respondents have assets that should be frozen and whether there is any real risk of dissipation.

13 It is clear, as Swift J found, that the defendants have assets that could be frozen, including the account at Barclays. In relation to dissipation, he said they were fraud-based claims and, in addition, found other tortious claims, and accepted that there was as real risk of dissipation on the evidence provided before him, which I also find. Indeed, there is, in my judgment, stronger grounds to support the position as far as the claimant and, indeed, that before Swift J which I shall turn to in a moment.

14 In relation to the balance of convenience, Swift J noted there was a risk of injustice to the respondents if an order was granted and it turned out that fraud had not been perpetrated, but there was a real risk of prejudice to the claimants if the funds were in the account and a fraud had been perpetrated. The conclusion was that it was better to run the risk of prejudice to the respondents in the circumstances of the case and that the relief sought should be ordered.

15 In relation to the present position, as is clear from the fuller judgment in the CMOC case, HHJ Waksman, sitting as a Sitting as Judge of the High Court, noted proprietary claims at [76] to [77] of his second judgment, in dishonest assistance at [89] to [90], in knowing receipt at [130], and unjust enrichment at [153] of that judgment. In the present case, Mr England submits there are arguable claims in relation to some or all of those causes of action as was the position in the CMOC case.

16 I agree with those submissions. Given the nature of the obviously fraudulent emails, there are genuine concerns in relation to these potential causes of action in, for example, fraudulent diversion of funds or receipt of funds, dishonest assistance, knowing receipt, and/or unjust enrichment claims.

17 I am satisfied, as Swift J was, that there are plainly assets in England not least in the Barclays account but not limited to that account necessarily. There is an obvious and real risk of dissipation that MM will unjustifiably dissipate assets either at Barclays or elsewhere: that risk of dissipation is strengthened now by MM's apparent lack of response, and the ability to easily withdraw cash and move funds from the Barclays account or other accounts, which has been seen and evidenced by the rapid number of transfers in and out of that account which MM controls; the transfer of the applicant's monies; the non-coincidental timing, as I find, so soon after the receipt of the €500,000; and that the majority of the euros, €350,000 or so, remains in the Barclays account.

18 In all the circumstances, I am satisfied that the application made by the claimant to continue the injunction and related relief should be granted. The terms of that order have been discussed and initially a draft was provided to me by Mr England, which I am grateful that he has now amended. I consider the appropriate amendments to the orders are that, given MM's identity is now known, he is now added to the injunction and substituted under 19.2(4) of the CPR, and that the claimant be granted an extension of time to the previous 14 day period from service of the claim form to file and serve particulars of claim to 30 April 2019 given that disclosure only took place on 27 March 2019. I have noted the sum sought makes an allowance for costs and interest, the figure now at around £640,000, which I consider to be reasonable as, indeed, Swift J did when making the *ex parte* order.

19 As far as service is concerned, I consider that service may be effected by post upon MM and also that Barclays Bank be involved and served by email. Legal expenses of £500 a week and reasonable legal costs have been provided previously and should be continued provided, of course, it not come from the Barclays account. It is appropriate to continue the undertaking in damages.

20 As far as disclosure is concerned, that is sought in relation to assets over £5,000 for reasons of proportionality and, again, seem sensible.

21 As far as other applications are concerned, I do consider the defendant should meet the costs of this and the previous application, to be assessed, if not agreed, on the standard basis.

22 In all the circumstances, therefore, I allow this application and I believe that an order has now been provided to me which I have looked at and signed, and in the terms sought as agreed and amended.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge