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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT  
[2021] EWHC 3528 (Admin)

CO/4080/2021

Royal Courts of Justice  
Thursday, 16 December 2021

Before:

MR JUSTICE CHAMBERLAIN

B E T W E E N :

THE QUEEN ON  
THE APPLICATION OF MICHAEL RICHARD LYNCH Claimant

- and -

WESTMINSTER MAGISTRATES COURT Defendant

- and -

(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT  
(2) THE GOVERNMENT OF THE UNITED STATES OF AMERICA Interested Parties

MR A. BAILIN QC (instructed by Clifford Chance LLP) appeared on behalf of the Claimant.

THE DEFENDANT AND THE FIRST INTERESTED PARTY did not appear and were not represented.

MR M. SUMMERS QC (instructed by CPS) appeared on behalf of the Second Interested Party.

**J U D G M E N T**

MR JUSTICE CHAMBERLAIN:

- 1 The claimant, Michael Lynch, applies for an interim order requiring the Westminster Magistrates' Court to extend time under s.99(4) of the Extradition Act 2003, (the "2003 Act"), for the Secretary of State to decide whether to extradite the claimant.
- 2 The background is as follows. The claimant is sought by the Government of the United States for fraud offences relating to the takeover by Hewlett Packard of Autonomy plc, of which the claimant was the Chief Executive. Following contested extradition proceedings at Westminster Magistrates' Court, District Judge Snow decided to send the case to the Secretary of State on 22 July 2021. Under 99(3) of the 2003 Act, the Secretary of State had two months to make a decision whether to order the claimant's extradition.
- 3 Meanwhile and separately, civil proceedings were brought in the High Court against the claimant. Those proceedings led to a nine month trial before Hildyard J. Originally, he expected to hand down his judgment by 24 September 2021. On 17 August 2021 the claimant made representations to the Secretary of State. He submitted that Hildyard J's judgment was likely to be relevant to the question of whether any further charges may be brought against the claimant in the United States. Only once this was known would it be possible to make informed submissions on the question of speciality.
- 4 On 20 September 2021 the claimant wrote to the Secretary of State to indicate that Hildyard J had advised the parties of a short delay to the release of the draft judgment. On 21 September 2021 the Secretary of State indicated her intention to apply for an extension to make her decision, pursuant to s.99(4). Two extensions were granted by District Judge Snow, to 28 September 2021, and then to 29 November 2021. On 22 November 2021 the claimant informed the Secretary of State that Hildyard J had indicated that he expected to circulate the draft judgment under embargo on 21 December 2021, with the judgment expected to be handed down in January 2022. On 23 November the Secretary of State applied for an extension of time to 14 March 2022:

"To allow her to consider all the matters raised before her as relevant considerations in order to reach her own view as to their relevance to the statutory questions that she must decide."

- 5 District Judge Snow heard that application on 25 November 2021. The claimant supported it. The United States Government did not oppose it and made no observations during the hearing. The application for an extension to 14 March 2022 was refused. District Judge Snow considered it:

"... extremely difficult to see how a judgment given in a civil case is likely to lead to the conclusion that there is a real risk of the American prosecutors laying further charges against Mr Lynch."

He noted that he had not been given any detail as to why it was asserted that such a risk arose. He described the Secretary of State's application as having been made on a "purely speculative basis" and concluded that it was not appropriate to grant the application as sought. He was however prepared to grant a short extension of three weeks until 16 December 2021.

- 6 The claimant issued proceedings for judicial review of District Judge Snow's decision. The grounds included that the decision was perverse, irrational, took into account

irrelevant considerations and failed to take into account relevant ones. Westminster Magistrates' Court and the Secretary of State have taken a neutral position. The Government of the USA resisted the claim on the ground that the claimant lacked standing and also on the merits.

- 7 On 3 December 2021 Thornton J granted permission but refused to order an expedited hearing before Christmas and declined to grant interim relief. She said this:

"The second IP [i.e. interested party] points out District Judge Snow made observations about the contents of the application before him and submits that the judge's decision is to be read as extending time to enable the first interested party to make a more detailed application. In the circumstances the appropriate course of action appears to be for the parties to draw this order to the attention of the District Judge. Accordingly, the case management directions set out below follow the standard timetable, but I have provided for liberty to apply in the event that the parties take a different view of matters."

The standard directions made by Thornton J would lead to a hearing in, at the earliest, early March 2022.

- 8 The claimant then wrote again to the Secretary of State inviting her to make a further application for an extension under s.99(4). The Secretary of State made such an application on 7 December 2021. It was heard by District Judge Snow on 13 December. He refused the application noting that Thornton J had not made a mandatory order and that the application contained no more detail than the one he had refused on 25 November. Thus it is that the claimant renews the application for interim relief, which was originally before Thornton J.
- 9 After discussion in court today the parties, represented by Mr Bailin for the claimant and Mr Summers for the Government of the United States, are substantially in agreement. In my judgment there are three important principles in play. The first, although District Judge Snow's decision of 25 November 2021 has not been quashed the claimant has permission to apply for judicial review of that decision. In other words, this court has decided that the decision is arguably unlawful. Second, if no further extension of time is granted one of two things will happen. Either the Secretary of State will decide to extradite before this court has decided whether the decision, which is said to be arguably unlawful, *is* unlawful in circumstances where the Secretary of State has not had the opportunity to consider the forthcoming judgment, which she considers may be relevant to her decision. Or the claimant will be entitled to be discharged under s.99(2).
- 10 Third, however, if I were to grant interim relief today requiring Westminster Magistrates' Court to extend time until the conclusion of the judicial review proceedings, without varying the directions set by Thornton J, the claimant would have achieved by interim relief everything he seeks to achieve by bringing this judicial review claim.
- 11 In my judgment the balance of convenience favours varying the directions granted by Thornton J so that the judicial review claim can be heard much more quickly, and granting a mandatory injunction, or direction, requiring Westminster Magistrates' Court to give a short extension under s.99(4) until the conclusion of the claim. That solution achieves the dual aims of enabling the judicial review claim to be decided before any decision is taken whether to extradite the claimant, whilst also preserving the right of the

Government of the United States to oppose the final relief sought, i.e. a longer extension for the purposes of considering Hildyard J's judgment.

- 12 The judicial review should not take much time to argue. I had initially thought that a time estimate of half a day would be sufficient. Mr Bailin suggests that it may be necessary to be more cautious and to specify that a time estimate of one day should apply. Certainly, there is no need for elaborate evidence. I have asked that enquiries be made of the Administrative Court Office to see whether the case can be heard in the week commencing 17 January 2022. If it can be, I will direct that the defendant and interested parties are to file and serve detailed grounds and evidence, if they wish to do so, by 7 January 2022. This gives them only slightly less time than Thornton J's order envisaged. The claimant's reply evidence and skeleton argument could then be filed by 12 January 2022. Although that is a short timetable the claimant is well resourced and should be able to manage. Any skeleton argument from the defendant or interested parties would then be filed and served by 4.00 p.m. on 14 January 2022. As I have said there would then be a mandatory direction, or injunction, requiring the Westminster Magistrates' Court to extend time under s.99(4) until the conclusion of the judicial review proceedings.
  - 13 Now that is my judgment on the principle.
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**CERTIFICATE**

Opus 2 International Ltd. 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.