



Neutral Citation Number: [2020] EWHC 3084 (Ch)

Claim No: [BL-2020-001491]

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

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

Date: 14/09/2020

Before:

MR. JUSTICE MEADE

Between:

ANASTASIA VLADIMIROVNA KOLDYREVA

Intended
Claimant

- and -

(1) ANATOLY LEONIDOVICH MOTYLEV

Intended
Defendant

(2) COUTTS & CO

(3) ALTUS INVESTMENT MANAGEMENT LTD

(4) CENTTR1P LIMITED

(5) STUART PIERSON

(Norwich
Pharmaceutical)
Defendants

MR. PAUL MCGRATH QC and MR. ANDREW SHAW (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Intended Claimant**.
The Defendants were not present and were not represented.

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MEADE

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MR. JUSTICE MEADE:

1. I now have to deal with an application by the intended claimant for two closely related search orders. I am now dealing with these applications on Monday afternoon, following further argument this morning and after the short adjournment. Much of what is relevant to these applications has already been covered in my earlier judgment on the worldwide freezing orders.
2. Search orders are sought against two sets of premises. The first is Mr. Motylev's residence at St Mary's Place, London W8, and the other is in relation to the office of a company called Megatrend, in a building called Niddry Lodge.
3. By way of introduction to the facts, I will just say briefly that the intended claimant and her advisers have been aware of Mr. Motylev's house for quite some time, but became aware of the office at Niddry Lodge more recently, when they placed Mr. Motylev under surveillance for the purpose of ensuring that they would know that he was around and where he was for the service of those orders which could be obtained.
4. Before dealing with the facts in any more detail, I should identify the principles that I am to apply. So far as search orders generally are concerned, Mr. McGrath identifies five requirements, and there are a number of places that these can be seen in the authorities. I was helpfully referred to a judgment of Fordham J in July this year, [2020] EWHC 2426 (QB), where, at paragraph 8, by reference to the judgment of the late Henry Carr J in *BMW* [2018] EWHC 1713 (Ch), five criteria were identified. First, there must be a strong *prima facie* case in a civil cause of action; second, the danger to the applicant to be avoided by the grant of the order must be serious, and if the order is to forestall the destruction of evidence, the evidence must be of major importance; third, there must be clear evidence that the respondent has incriminating documents or articles in its possession; fourth, there must be a real possibility of the destruction or removal of evidence; fifth, the harm likely to be caused by the execution of the order on the respondent and his business affairs must not be out of proportion to the legitimate object of the order. Those are the headings under which I will consider this application in due course after I have set out the facts.
5. The second significant point of principle, it seems to me, is to identify the jurisdiction for granting the order. In relation to the office at Niddry Lodge, it is important to note that the occupant of the office or, so far as one can tell, the tenant of the office is a company called Megatrend Capital Partners Limited, which is not an intended defendant to the substantive proceedings. I therefore have to consider whether I have jurisdiction to make a search order against a non-party and potentially one against whom there is no cause of action. Indeed, this application has not been put on the footing that there is a cause of action against Megatrend.
6. To address this, Mr. McGrath referred me to the case of *Abela v Baadarani No. 2* [2017] EWHC, 269 (Ch), a decision of Nugee J. Nugee J there considered the jurisdiction conferred by section 7 of the Civil Procedure Act 1997, which is the Act by which the *Anton Piller* jurisdiction was put on a statutory footing. In that case, Nugee J concluded that the jurisdiction was available whether or not a third party disclosure order had been made against the respondent (or if it had whether its terms were more limited than the search order sought), and that there was no requirement

that the respondent to a search order be a defendant or that there be a cause of action against them. It is that second proposition that is important for my purposes. He held that it was a requirement, unsurprisingly, that the respondent hold evidence which was or might be relevant to the proceedings and that an order was necessary for the purposes of securing the evidence.

7. In reviewing the law for the purposes of his judgment, Nugee J considered in particular respondents to search orders who are not parties but who might be amenable to an application under the *Norwich Pharmacal* jurisdiction as being caught up in another's wrongdoing, or under CPR Part 34 as being potential witnesses with evidence that might be given at trial. It may be a question for another day just precisely how far the jurisdiction goes and whether it extends to an entirely innocent and uninvolved onlooker, but that is not the basis on which Mr. McGrath puts his submissions for the purpose of this application. I therefore conclude that I do have jurisdiction under section 7, at the very least in relation to a party in a position analogous to that of a respondent to a *Norwich Pharmacal* Order. Of course, there is still the important question to consider of the discretion to exercise that power, which consideration I think will follow naturally from my assessment of the five requirements for a search orders.
8. I ought also to say, briefly, that before the hearing last week began I drew the parties' attention to the recent decision of the Court of Appeal in *TBD (Owen Holland) Limited v Andrew Simons & others* [2020] EWCA (Civ) 1182, which considers and examines the inter-relationship between search orders and disclosure orders, and provides a very clear steer that those orders serve different functions. Having regard to that, what I am considering today is a search order with the objective of preserving any evidence that might be found in the two sets of premises and not a disclosure order. Although I accept that it will in due course be desirable for the intended claimant to want to start to use appropriate parts of the materials recovered for the purposes of tracing disputed assets, that is for another day, and would be considered separately as necessary on a return date which I will direct to be held quite soon.
9. Those are the principles that I intend to apply. I could have stated them at considerably greater length, but I think it is desirable, if possible, for me to give judgment today so that it may even be possible to provide Mr. Motylev and his advisers with all of my judgments at the same time as the service of the order tomorrow or, if not, very quickly thereafter.
10. That deals with the question of jurisdiction. I will turn to consider the substantive question of whether a search order ought to be granted and in what terms.
11. I have said already that quite a lot of the factual background is to be found in my main judgment on the worldwide freezing order, but matters have moved on since the hearing before me last Friday, both in terms of facts that have been established and the greater focus by the intended claimant on Megatrend in the materials that were already before me.
12. The overall picture is this. Mr. Motylev was placed under surveillance last week, as I have said already, for the purpose of the intended claimant knowing where he might be when her advisers came to serve the order. It turned out that he attended the building at Niddry Lodge on four successive days and although the time of his arrival

and departure for each of the days is not known, for at least of two of the days he was there for an extended, if not somewhat late, working day and for the other two days he was seen to leave at a similar sort of time, about eight o'clock in the evening, but his time of arrival is not known. Overall, it appears he is attending Niddry Lodge for periods and with a frequency consistent with him using it as an office.

13. Mr. McGrath has informed me that he has not been seen to leave his house today, so is unlikely to have gone for a working day at Niddry Lodge, but this only undermines very slightly, if at all, the overall impression that he is using the office of Megatrend to work.
14. I will say a little bit more about Megatrend now. The following points (which I remind myself are allegations to be assessed and not facts that have been proven or responded to) are taken essentially from paragraph 8 of Mr. McGrath's supplementary skeleton for today's hearing. I note that this includes evidence from the DIA and from the intended claimant's inquiry agent, Raedas, and is therefore subject to some of the same reservations as I expressed in my main judgment. Nonetheless, quite a bit of it is not and comes from public sources such as company accounts and statutory filings, and I will try to make the general pattern of that clear as I go along.
 - i) Megatrend was incorporated in 2015, shortly after Mr. Motylev left Russia for London, in circumstances that I described in my main judgment.
 - ii) He was then a director of Megatrend between 2015 and 2017, with his appointment coming just a few days after Megatrend's incorporation, which I accept is proper grounds for an inference that he is likely to have been behind or closely involved with its incorporation.
 - iii) In 2016 he had use of a Megatrend credit card used by Centtrip. This is referred to in my judgment in relation to the *Norwich Pharmacal* Orders.
 - iv) The DIA report suggests that as part of the confidential settlement of litigation in London where a freezing injunction had previously been obtained against Mr. Motylev in December 2015, the claimant in that action agreed to lend Megatrend \$5 million at interest and pay Mrs. Motylev €1.5 million. If correct, and Mr. McGrath agrees there is a good chance it will not be entirely correct or complete, that is an unusual arrangement, and further suggests that Megatrend is a creature or conduit used by Mr. Motylev.
 - v) Returning to matters which are established from reliable and public sources, Mr. Motylev resigned as a director of Megatrend in July 2017, which, in the light of the events I have indicated in my main judgment, would fall between the initiation of the bankruptcy proceedings against him and the declaration that he was indeed bankrupt in early 2018. It was also just before he was indicted in criminal proceedings in Russia.
 - vi) The current director of Megatrend is Mr. Pierson, to whom I have referred already in my judgment on the *Norwich Pharmacal* orders, and he has the links described there, in particular in relation to the yacht *Waverunner*.

- vii) Next, it is pointed out, again from public sources, that Mr. Mithat Turkel is the sole shareholder of Megatrend and he is recorded at Companies House as being the person with significant control of it.
 - viii) The DIA report and correspondence from Raedas suggest that he is a mere nominee for Mr. Motylev. This is not particularly well-founded, in my view, but quite apart from the source of that information, I have been given evidence which does have some basis, coming from Raedas, that Mr. Turkel operates from a modest office in, it is said, a shabby and certainly very unassuming in Turkey, and whilst it could still be that he is the sole shareholder of an English company trading in the financial markets, as it is alleged Megatrend does, this seems relatively unlikely and the nature of his office and role as a lawyer is certainly consistent with his being a mere nominee for Mr Motylev.
 - ix) Megatrend is overdue in filing its statutory accounts, which of course in itself would not really be much evidence of anything, although it might form part of the overall picture. But according to the last set of filed accounts to the year ended 31st December 2017:
 - a) Mr. Motylev owed Megatrend £140,000 which he paid off by the end of September 2018;
 - b) Mrs. Motylev lent Megatrend £950,000, notwithstanding that according to the evidence I have seen, she is not thought to have any substantial source of wealth independent of Mr. Motylev; and
 - c) Mr. Pierson lent Megatrend £550,000.
15. All of these form, in my view, a convincing overall case that Megatrend is used by Mr. Motylev to move money and conduct his business and although one cannot be sure at this stage, I think there are grounds to have a high degree of confidence that Mr. Motylev is the controller and influencer over the conduct of Megatrend, rather than, for example, being a mere employee, which seems extremely unlikely. It is also obvious, I think, that Mr. Motylev, in carrying out these transactions, is very arguably acting quite inconsistently with the fact that he is currently a bankrupt as a result of the Russian proceedings.
16. I also accept the argument, inference only at this stage as it is, that the fact that Mr. Motylev is a bankrupt and that the source of much of his wealth appears to or may well derive from matters that are the subject of criminal charges, mean that it would be attractive to him to have on tap or under his control a business like Megatrend so as to provide him with bank accounts and credit card facilities which he could not obtain himself because of money laundering checks which are commonplace in the United Kingdom.
17. I therefore conclude that there is a strong case that Mr. Motylev is operating through or conducting business through Megatrend, is moving money through it, and has control of its business.
18. Although there is no application against Megatrend for *Norwich Pharmacal* relief as such, I consider that if an application of that kind had been made, it would most

probably, in fact very probably, have succeeded, and that is the reason why, when I was dealing with the decision of Nugee J, I said that it was not necessary to examine the exact limits of the court's jurisdiction under section 7, if indeed there are any.

19. With that, I think I can finally turn to the requirements to grant a search order.
20. First, there must be a strong *prima facie* case, suspicion is not enough, nor that it is a serious question to be tried. In my view, there is a strong *prima facie* case for the reasons I gave in my judgment on the worldwide freezing order in relation to the recognition of the Russian bankruptcy under common law. In my main judgment I did not have to consider whether that rose to the level of a strong *prima facie* case. I do now, and I consider that it does. The possible objections to the recognition of the bankruptcy are no more than speculation at the moment and as matters stand it seems to me that recognition is extremely likely to succeed.
21. The second is the danger to the applicant to be avoided by the grant of the order having to be serious, and if to forestall the destruction of evidence the evidence must be of major importance.
22. Now, it is inherent in many kinds of search orders that the applicant does not know what they will find inside the premises once they go there. And it is extremely difficult in some circumstances for claimants to know precisely what documents or electronic devices they are likely to find once they do. This should not be allowed to water down the second requirement, but at the same time I think the court must be pragmatic in considering the amount of detail that it can expect from the applicant.
23. In my view, it is clear that if the allegations against Mr. Motylev on the substantive issues are true, there must be documentary evidence, and extensive documentary evidence in hard copy or electronic copy form that exists. That evidence will be critical to the intended claimant's case when brought and to the tracing exercise which must now begin. If that evidence is destroyed, then there will be the very gravest risk of damaging the intended claimant's case very badly, and the documents which it may be inferred exist will be of major importance. In my view, even just getting to the bottom of the few transactions with Megatrend that I have covered, which are clearly in financial terms only a tiny amount compared to the overall sums at stake, would give the claimant a strong starting point for tracing the disputed assets.
24. Third, there must be clear evidence that the respondent has incriminating documents or articles in its possession. Again, this is inherently difficult to know in advance of the search order being made. But in my submission, Mr. McGrath's primary submission on this point is well made, which is that if, as I have found strongly arguable, Mr. Motylev is in control of large amounts of money flowing from the Russian banks, there must be documents which would entitle him to assert his ownership over them in due course. There must also be documents specifically about Megatrend as indicated above.
25. Fourth, there must be real possibility of the destruction or removal of evidence. I need say no more about this because, in my view, it follows from my conclusions and my reasons about the risk of dissipation of assets, *mutatis mutandis*, that Mr. Motylev would be willing and able to destroy or remove evidence.

26. Fifth, the harm likely to be caused by the execution of the order on the respondent and his business affairs must not be out of proportion to the legitimate object of the order. This I need to drill down into in more detail, because I have to identify the harm likely to be caused and weigh that against the benefit of the orders.
27. In relation to the premises sought to be searched, there is a very substantial difference between the office at Niddry Lodge and the house at St. Mary's Place. As I have said already, the intended claimant's awareness of the Niddry Lodge office came about later in the proceedings, as it happens. But had it been known to the claimant earlier on, I expect that it, rather than his house, would have formed the main basis for applying for a search order. It is of modest size, it is clearly business and not residential premises, and because it is urged on me that that is where Mr. Motylev carries on business, it is much the most likely place for documents of the kind identified to be found. In that context, it seems to me that it is appreciably less likely that a fruitful search will be conducted at Mr. Motylev's house.
28. In addition, Mr. Motylev's house is where he lives with his wife and his younger child. I will not put into this judgment the name or age of the younger child or where he goes to school, but he is a young child, and I think that is an extremely important consideration. I also bear in mind, of course, that in the context of the current pandemic, stringent precautions have to be made and put in place before a search can be considered.
29. Against this background, I was very concerned about granting a general search order over St. Mary's Place. It seemed to me it was relatively unlikely to provide much additional benefit for reasons which I have touched on already, and I considered that it was likely to be very frightening for and intrusive upon the people who live and possibly work there, such as the younger child, or child carers or cleaners, in a way which could not be justified and in a sense, the COVID precautions, like the wearing of masks and even, I think it is suggested, body suits, would increase that sense of fear and intrusion.
30. Over the weekend, the intended claimant's advisers have considered this and have proposed a considerably cut-down search order against St. Mary's Place. In particular, it is intended that a much smaller party of people will enter and that the order will be executed when the younger child is not there (since he goes to school on week days).
31. I enquired about the physical characteristics of the building and I was helpfully given a floor plan, which I should say has come from some estate agents' particulars, which reveal that the house is of just over 3,000 square feet and is arranged over four floors, with five bedrooms on the upper floors.
32. Having considered all of these matters, I think it is right to permit a search order at St. Mary's Place, but cut down still further compared to that which the intended claimant put forward. I will permit a search for one hour of the ground and raised ground floors, which contain the reception rooms. I will permit the supervising solicitor to go to the first floor and second floors where the bedrooms are for the strictly limited purpose, in the first instance, of looking from the doorways to the bedrooms to establish whether or not they are being used as a home office. It seems to me inherently quite possible that one or more of them is, and if it is identified that a

bedroom is being used as a home office, then I will make an order which permits a search of that for a further and separate one hour to the search permitted of the lower floors and from that room I will permit, in contrast to elsewhere, the removal of hardcopy documents which appear to be relevant and which pass the standard and appropriate protections accorded to privileged or arguably privileged documents. I will also permit the safe, if there is one, to be searched and I will include in the order a requirement that Mr. Motylev identifies the whereabouts of any safe and provides the key or combination.

33. There is to be an explicit exclusion from the order for electronic devices of the child. Mr. McGrath submitted to me that there should be no such exclusion for the electronic devices of Mr. Motylev's wife and I agree with that. The degree of intrusion and fright that might arise has to be acknowledged, but I was particularly struck by the transaction in which she provided £950,000 to Megatrend and in any event, being an adult, there is obviously a lesser concern than there is with a child.
34. That still leaves the fact that there is to be a search of residential premises where a small child could be present. The order provides that the search may not be carried out during school hours, and as I have said, I will not identify the school, but the child is at school during the day and so he will not be present during the search which I think is extremely important. He will, no doubt, be aware of the fact that something has happened at home, which is regrettable but, I am satisfied, necessary and proportionate, but because I am sure his bedroom will look like a bedroom, it will not be included in the search, and the consequence will therefore be that at least his parents are able to tell him (if they want to discuss what has happened with them, which is for them to decide, of course) that his bedroom was not entered and nor will any of his electronic devices have been taken away. So I hope that the intrusion into his own life will be minimised. Indeed, if there is not anything that looks like a home office, it may be possible to tell him that parts or whole floors of the premises were not entered at all.
35. I therefore consider that the fifth requirement, and the requirement of overall proportionality, is satisfied.
36. That concludes my reasons for permitting the search order in the broad terms I have indicated and I will now go through the orders with counsel.
37. Postscript: In going through the draft Orders with Counsel I made various changes, some of which impinge on what I have said above. For example, I permitted the claimant's representatives to use their look into the bedrooms not only to assess whether there was a home office, but also whether any electronic devices could be seen. I was satisfied that these changes did not affect my assessment of the five requirements or of overall proportionality.
