

TRANSCRIPT OF PROCEEDINGS

Claim Numbers: BL-2018-002541

Neutral Citation Number: [2020] EWHC 325 (Ch)

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

7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Before

THE HONOURABLE MR JUSTICE ZACAROLI

Between

TONSTATE GROUP LTD & OTHERS

Claimants/Respondents

and

EDWARD WOJAKOVSKI & OTHERS

Defendants/Petitioner

Mr Andrew Fulton & Mr Sam Goodman (instructed by **Rechtschaffen Law**) for the **Claimants/Respondents**

Mr Muhammed Haque QC (instructed by **Candey Solicitors**) for the **Defendants**

Mrs Rachel Robertson appeared **in person** and for the **Seventh Respondent**

APPROVED TRANSCRIPT

16th JANUARY 2020, 14.03-14.06, 15.13-15.19 & 15.29-15.32

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MR JUSTICE ZACAROLI:

1. The next question is whether I should extend the stay on the judgment requiring Mr Wojakovski to pay approximately £12.9 million beyond the date already agreed between the parties (31 March 2020). For the reasons which follow, I do not think that sufficient grounds have been put forward to justify a further stay beyond that date.

2. Mr Haque's main point on behalf of Mr Wojakovski was the concern that his client would be left facing battles on an additional front if the judgment becomes enforceable at the end of March this year, at a time when he will already be having to deal with the account and preparations for trial.

3. I think that this concern is outweighed by the fact that the companies have an established entitlement to the judgment sum so that, to the extent that they are entitled to, they should be able to take enforcement steps sooner rather than later. In reaching this conclusion, however, I do not intend to pre-judge any arguments that might be available to Mr Wojakovski in relation to such enforcement steps as the companies might seek to take. I am thinking in particular of possible arguments as to the discretion of the court in deciding to make a bankruptcy order or to make orders by way of enforcement over real property. Accordingly, the refusal to extend the stay on the judgment beyond the end of March does not cause prejudice to Mr Wojakovski to the extent that any arguments which he wishes to advance in respect of such enforcement action will still be available to him.

4. As to the agreed date, 31 March, I did wonder before the short adjournment whether that should be extended to ensure that the account had been provided by that date. In fact, under the current timetable in the draft order I have just seen, there is no doubt that the account and, indeed, objections to the account will have been received long before 31 March and so I see no reason to depart from the 31 March date.

5. I should also make clear that this is all on the condition that Mr Matyas has himself consented to and continues to consent to (a) paying the sums he admits owing of £3.2 million, and (b) consenting to a direction and order in relation to the account as we have been discussing this morning.

(There followed further proceedings)

MR JUSTICE ZACAROLI:

6. I deal next with the question whether the claimants in the main action are entitled to an injunction against Mr Wojakovski to restrain him from using the money directly extracted from the claimants or its traceable proceeds for any purpose whatsoever. As Mr Fulton for the claimants points out, in this case that injunction is sought in circumstances where there is a judgment against Mr Wojakovski requiring him to pay a substantial sum, and such further sums as are found due on the taking of the account.

7. Mr Haque wishes to develop an argument that Mr Wojakovski should be allowed, in the special circumstances of this case, to use claimants' property for the payment of certain of his expenses, in particular payment of maintenance sums in favour of his wife (pursuant to an order of the family court) and school fees and other payments in respect of his children.

8. He says that the special circumstances of this case include the fact that, within a relatively short timescale, maybe within the next six months or a year at most, it will be determined whether Mr Wojakovski is entitled to receive substantial sums as a result of the distribution of surplus funds from one or more of the companies in the group.

9. Mr Haque does not wish, however, to run those arguments today. He is not in a position to develop and run those arguments properly today but seeks an adjournment in order to be able to do so. The application was issued on 11 December 2019. That was, indeed, very shortly before the date this hearing was first due to come on for hearing on 16 December. As matters have transpired, the hearing has not taken place until today and so Mr Wojakovski has had some five weeks to respond to the application.

10. The first intimation of a need for an adjournment to be able to run such an argument was in the course of Mr Haque's submissions today, I think. I do not believe there has been any prior warning of such an application. In the course of his submissions, his client has offered an undertaking in the terms sought for the period between now and a date on which the application could be properly heard.

11. The necessary implication from that offer of an undertaking is that Mr Wojakovski does have funds other than the funds belonging to the company which he can use for certain payments.

12. I am not persuaded I should adjourn this matter, principally because it has been outstanding for about five weeks, and the application for an adjournment, being made in the course of the hearing today, was simply too late.

13. I do not, however, shut out Mr Wojakovski from seeking to pursue such arguments as he might wish to pursue on an application to vary the injunction I propose to grant today. Such an application would have, it seems to me, to include consideration of Mr Wojakovski's assets more generally. In order to run the argument Mr Haque wishes to run, he would need to establish at the very least some considerable unfairness due to the absence of any other funds from which to pay the amounts Mr Wojakovski wishes to pay to his wife and for the benefit of his children. At the moment, as I have noted, he has implicitly accepted (through the offer of an undertaking) that at least in the short term he does have some other funds with which to do that.

14. I am not shutting out Mr Haque from coming to court to seek a variation, but I consider that the balance of convenience today requires the injunction to be granted, and the onus put on Mr Wojakovski to seek a variation based on the type of evidence I have indicated.

15. Returning to the grounds for the injunction, as I say this is a post-judgment injunction. It is in support of an established right to property. In those circumstances, it is not necessary to establish that there is any risk of dissipation. I do note, however, that Mr Haque's very argument is that Mr Wojakovski should be able to use proprietary funds for other purposes. That itself demonstrates the risk of dissipation.

16. Secondly, in correspondence since December, Mr Wojakovski and his solicitors have indicated an understanding of the legal nature of the judgment against him which itself demonstrates a likely dissipation of the funds. These factors provide sufficient risk that the balance of convenience comes down in favour of granting the injunction. For those reasons, I will grant the injunction sought.

(There followed further proceedings)

JUDGE ZACAROLI:

17. I am not persuaded that an injunction is justified in this case the other way around, that is in favour of Mr Wojakovski against Mr Matyas. Mr Haque is unable to point to any evidence which suggests a risk of dissipation. I accept that is not a strict requirement, but note that it is what has prompted the injunction the other way around. Mr Haque cannot point to any indication that Mr Matyas has ever done anything, at least from when he has accepted the obligation to repay sums extracted by him, other than to accept that the money he extracted, and its proceeds, are the property of the company and, as such, he cannot deal with them for any purpose other than to hand them back to the company. I also take into account the difficulties Mr Wojakovski would have as a matter of standing. He does not

have a claim to recover any money from Mr Matyas. The companies would have such a claim (but no such claim was advanced prior to Mr Matyas consenting to repayment and to submit to an account).

18. In so far as he might have been able to assert a claim via the unfair prejudice petition, there was an application for an amendment which was not pursued but which would have, it seems to me, have been subject to the following fatal flaws. First, the alleged unfairly prejudicial conduct consisting of extractions over the many years they took place could not be sustained given that those were extractions which, on Mr Wojakovski's case, he fully agreed to.

19. It is true that there might have been a prospect of unfairly prejudicial conduct continuing after such time as it was established that those payments needed to be returned (that is, following my decision on the *Duomatic* point last autumn), if Mr Matyas had thereafter continued to refuse to repay or accept that the companies themselves should take steps to recover those payments from him, then that would have given rise to a claim for unfair prejudice.

20. That is impossible, however, because from that moment, indeed prior to the attempt to amend the petition to include such a claim, Mr Matyas's position was that he accepted those payments should be returned and he has taken steps to do so. For those reasons, I do not accept this is an appropriate case to grant an injunction in favour of Mr Wojakovski.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the Judge