IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)
**[2024] EWHC 1551 (Ch)**

No. BL-2018-000544

Rolls Building
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Fetter Lane
London EC4A 1NL

Tuesday, 14 May 2024

Before:

MR JUSTICE ADAM JOHNSON

B E T W E E N :

(1) TONSTATE GROUP LIMITED
(in liquidation)
(2) TONSTATE EDINBURGH LIMITED
(in liquidation)
(3) DAN-TON INVESTMENTS LIMITED
(in liquidation)
(4) ARTHUR MATYAS — Claimants/Applicants

- and -

EDWARD WOJAKOVSKI & 11 OTHERS — Defendants/Respondents

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MR S GOODMAN (instructed by Rechtschaffen Law) appeared on behalf of the Claimants.

THE FIRST DEFENDANT appeared In Person.

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

MR JUSTICE ADAM JOHNSON:

1 I need to make a determination as to whether Mr Michael Marx should be permitted to exercise rights of audience at this hearing to speak on behalf of the Defendant, Mr Edward Wojakovski. There is no objection taken by the Claimants to Mr Marx performing the usual function of a McKenzie Friend – that is to say, providing moral support, taking notes, helping with case papers and quietly giving advice on any aspect of the conduct of the case; but objection is taken to him speaking on behalf of Mr Edward Wojakovski.

2 Helpfully in submissions Mr Goodman has referred me to a decision of Steyn J in a case called *Ameyaw v McGoldrick* [2020] EWHC 1741 QB, in which Steyn J dealt with this question. At paragraph [64] she referenced guidance given in a Practice Note from 2010: *Practice Note (McKenzie Friends: Civil and Family Courts)* [2010] 1 WLR 1881. The text of the Practice Note was set out by Steyn J, and I do not propose to read out the full text of the Practice Note in this Judgment. The end point really is as follows. The exercise of rights of audience is ordinarily reserved to persons who are properly trained and under appropriate professional discipline and regulation. The consequence is that an application to exercise rights of audience made by a person who is not legally qualified and appropriately supervised and regulated needs to be considered very carefully. According to the Practice Note at paragraph 20, the court should only be prepared to grant such rights "*where there is good reason to do so taking account of all the circumstances of the case which are likely to vary greatly.*" The Practice Note goes on to say that "*such grants should not be extended to lay persons automatically without due consideration. They should not be granted for mere convenience*." Paragraph 23 of the Practice Note says that the grant of a right of audience to a lay person "*will however only be granted in exceptional circumstances*."

3 In the present case, having considered carefully the submissions I have heard this morning, I am satisfied that such exceptional circumstances exist. In reaching that conclusion, I ignore the material as to Mr Wojakovski's medical condition contained in a report or note from a Dr Adler, dated 28 March 2024. Although provided to the Court, that was not exhibited to any Witness Statement, and so technically is not in evidence.

4 Even leaving that aside, however, I still come to the conclusion that exceptional circumstances in this case exist. That is essentially for two reasons. The first reason is the importance of the present application and its outcome to Mr Wojakovski personally. To explain that a little further, the present application concerns an intended Order for disclosure against Mr Wojakovski designed to elicit further information and documents concerning the whereabouts of funds taken without authority from the Claimants, and referred to in the proceedings generally as "*the Extractions*".

5 It is said that Mr Wojakovski is in a position to provide further information and/or provide access to further documents which will allow the whereabouts of the Extractions to be identified. The particular vulnerability as far as Mr Wojakovski is concerned arises from the fact that in a Judgment handed down in December 2023, Edwin Johnson J found Mr Wojakovski in contempt of court and subsequently made a suspended prison sentence against him, the relevant conditions of which require ongoing compliance by him with any further Orders made by the Court, at least until some point towards the end of this year.

6 It follows that it is particularly important from Mr Wojakovski's point of view that proper and detailed and fair consideration is given, both as to whether any further Orders of any kind should be made against him, and as to the precise terms of any Order. That may take us into technical areas of detail, and I need to be satisfied that the Court has been provided with all relevant information that will enable it to consider Mr Wojakovski's position with

due care and treat him fairly, given the potential consequences for him of non-compliance. So that is my first reason which is about the nature of the application made against him and the potential consequences for him of non-compliance.

7 The second reason concerns his state of health. Here, even leaving aside the letter of Dr Adler I have referred to, I am sufficiently concerned to think that an Order should be made permitting Mr Marx on this occasion at any rate to speak on Mr Wojakovski's behalf.

8 The question of Mr Wojakovski's capacity has been the subject of earlier and detailed investigation. That was in the context of the ongoing contempt proceedings which resulted ultimately in the judgment of Edwin Johnson J that I have referred to. Falk J in a Judgment dated 15 July 2022, now almost two years ago, having heard evidence from appropriately qualified experts, ultimately came to the view in the context of the application before her, that Mr Wojakovski did have sufficient capacity to conduct the contempt proceedings he was then a party to. I note in passing though that at the time Mr Wojakovski had the benefit of a legal team representing him, and the issue I am presented with is, it seems to me, a materially different one, because he presently has no legal team and the issue is rather about the fair conduct of an application in which he would otherwise appear as a litigant in person.

9 At any rate, although Falk J made the determination as to capacity I have identified, she also had a number of observations to make about the state of Mr Wojakovski's health. I drew attention in argument to paragraphs [60] and [62] of her Judgment, and will quote from them as follows. At paragraph [60], Falk J said the following:

> *"However, Mr Wojakovski has had periods of severe mental ill-health and, overall, there has clearly been some decline in cognitive function as compared to the position before 2016, particularly in memory and ability to concentrate. The diagnosis of Parkinson's disease is also unchallenged, although the evidence indicates that it is currently well controlled."*

At paragraph [62], Falk J had the following to say:

> *"I would be prepared to accept that, even if Mr Wojakovski does not meet the strict criteria for MCD or anxiety disorder, his reduced cognitive function could amount to an impairment or disturbance within s 2(1) MCA. The evidence of Mr Marx and Ms Todner about Mr Wojakovski's difficulty in following complex matters, concentration lapses and confusion, supports this. However, that does not determine that Mr Wojakovski is unable to make relevant decisions for himself, an issue to which I now turn."*

10 It seems to me that, notwithstanding the overall conclusion reached by Falk J, there are matters here of sufficient concern to persuade me that, at least for the purposes of the present application and given the context I have described, including especially its importance to Mr Wojakovski, both he and the Court would, exceptionally, be assisted by support from Mr Marx not only as a traditional McKenzie Friend, but also as someone who is able to speak on Mr Wojakovski's behalf and interpret what he has to say for the benefit of the Court. I also note that Mr Marx, as I understand it, has long been involved in providing support and assistance to Mr Wojakovski, and his experience and background it seems to me may be of some utility.

11 The Claimants have expressed reservations about the reliability of Mr Marx. I am not able to express any conclusions about such matters. I think it is sufficient to say that, in light of the reservations expressed, I will of course approach submissions made by Mr Marx with all appropriate and due care. That seems to me a sufficient safeguard for the purposes of the present application. That concludes my ruling on this preliminary issue.

**L A T E R**

12 On 10 April of this year, I adjourned the present disclosure application against Mr Edward Wojakovski to a further hearing. That is the hearing now scheduled for today.

13 Edward (where appropriate I will refer to him in that in order to distinguish him from his brother Gil Wojakovski) seeks a further adjournment. This was originally said to be for a period of 21 days, but as the hearing developed it became clear that a longer and possibly indeterminate period might be needed.

14 Having considered the points made by Mr Marx on behalf of Edward and by Mr Goodman on behalf of the Claimants, I have decided I am not minded to agree to any further adjournment for the following reasons.

15 To start with, it seems to me that the matter does have some urgency about it. It is an application for disclosure of documents and information on the basis that they may reveal the whereabouts of the Claimants' assets said to have been extracted without authority, and in fact found to have been extracted without authority following an earlier Judgment of Zacaroli J.

16 Information is sought more specifically as to assets held in an Israeli trust. An Order was made against Edward's brother, Gil, on 10 April this year, but so far has not been complied with. In the meantime, Gil has dis-instructed his former solicitors and taken steps to transfer ownership of his shareholding interest in an English company to a third party. Such matters, I am afraid, only raise the level of concern and give rise to an increased sense of urgency, because they are consistent with the idea that steps have been taken to disguise the whereabouts of the Claimants' assets. As I said in my Judgment dated 26 April dealing with the application as against Gil (see at paragraph [41]), it is important to ensure there is no further avoidable delay, whatever may have happened in the proceedings historically.

17 The next matter is that I am not satisfied that Edward has provided a sufficiently good reason for a further adjournment beyond the one he has had already, which has now been for over a month. The main reason for an adjournment last time was because of a concern to allow Edward to secure legal representation for himself, given the importance of the matter to him, which arises in part because he is presently subject to a suspended sentence of imprisonment contingent upon ongoing compliance with Orders of the Court. As matters stand today, Edward has not managed to secure alternative legal representation. Granted, his circumstances are complicated because, before doing so, he has to comply with certain provisions in an Order of Zacaroli J dated 21 May 2021, which require him to provide proof of the source of any funds paid on account to his advisers. All the same, and even allowing such complications, I am simply not satisfied that enough has been done in a timely manner to warrant pushing this matter off yet again.

18 A brief chronology of recent events will illustrate the point. The funds whose source is relevant have been referred to as the NDP funds, because they were originally paid to Edward's previous legal advisers, Neil Davies & Partners. At the previous hearing in this

matter on 10 April, it was known that information would need to be provided about the precise source of the NDP funds in accordance with Zacaroli J's Order, in order to instruct Edward's proposed new advisers, Astraea Group. In fact, the matter should have been clear long before that, from the point in time when the present Application was first issued and served, which I understand was in December 2023. In any event, the fact is that documents were only supplied by means of a letter dated 3 May 2024. These documents show two payments to NDP on 15 and 19 March 2024 respectively, of roughly £60,000 Sterling each, from bank accounts in the name of an Israeli company, Lewkovicz Holdings Limited, which I understand is owned by a Mr Tuvia Lewkowicz. However, the covering letter from Astraea Group went on to say that the funds sent by Lewkovicz Holdings Limited themselves derived from two other individuals, that paid on 15 March from a certain Mattan Horowitz, and that paid on 19 March from a Mr Philip Goodman. That letter from Astraea Group prompted a letter on the same date, 3 May 2024, from the Claimants' solicitors, Rechtschaffen Law. They wanted to know more about the payments from Mr Horowitz and from Mr Goodman. I agree that the routing of the payments seems, on the face of it, rather odd and gives rise to a number of questions, in particular why it was thought necessary for them to be paid via Lewkovicz Holdings Limited, rather than directly by Mr Horowitz and Mr Goodman. In the hearing before me, Mr Marx has provided a partial explanation, at least as far as the payment from Mr Goodman is concerned, which it is said was made because Mr Goodman is involved in business with Mr Lewkovicz. However, that is not a matter evidenced in a Witness Statement, and the more fundamental and important matter of concern is that, on any view, the Order Zacaroli J itself has not been complied with, because that requires, and I quote from the schedule at paragraph 2, production of "*Bank statements evidencing the ultimate source of relevant legal expenditure*".

19 Mr Marx has made some points to me about the appropriateness of that and other provisions in the Order made by Zacaroli J, but the fact is that the Order was made some time ago now and has not been appealed, nor as yet has any application been made to vary its terms. It therefore remains to be complied with. Here it seems that for now, and subject to any further information which may be provided, the "*ultimate source*" of the relevant payments was Mr Horowitz and Mr Goodman, but no bank account statements have been provided by them which would confirm them as the "*ultimate source*". The only statements provided are from Lewkovicz Holdings Limited, but that seems to me to be insufficient when we already know that that company received the relevant sums from two other sources. The whole point of the structure is to enable the Claimants to be satisfied that funds made available to discharge legal fees, either historic legal fees or prospective legal fees, are not, themselves, derived from the Claimants' own funds, i.e. from what the parties have referred to as "*Extractions*". That explains the purpose of paragraph 2 of the schedule to Zacaroli J's Order.

20 The importance of compliance with that Order was emphasised at the hearing on 10 April. As I have said already, it should have been apparent then, if not before, that what was needed was provision of a reliable and complete documentary record which would show not only the immediate source of payments made to NDP but also their ultimate provenance, and sadly that has not happened. Mr Marx has explained that the process is ongoing, and has been complicated by the fact that Mr Horowitz is active in the Israeli Defence Force and is not easily contactable, or perhaps not contactable at all. I take what is said about that at face value, but the fact remains that there has been plenty of time for the terms of Zacaroli J's Order to be complied with, and as matters stand today it is clear that has not happened. Moreover, whatever the position vis-à-vis Mr Horowitz, there is no clear or sufficient explanation as to why there has also been a failure to comply as regards the funds derived ultimately, at least on the basis of present understanding, from Mr Goodman.

21 Mr Marx had another set of points which were about the desirability of Edward having the benefit of legal representation. Mr Marx also had points concerning the question of the extent of Edward's control over the trust assets intended to be the subject of the present disclosure application. There is perhaps a related question about the precise scope of the proprietary judgment of Zacaroli J I have referred to, and the precise meaning and effect of paragraph 4 of the Order made by Zacaroli J dated 24 January 2020. The point made by Mr Marx is that if there is an adjournment and Mr Wojakovski is able to secure legal representation, that will enable such legal arguments to be developed at some future point with someone possessed of the relevant legal expertise to enable the points to be put with appropriate force and vigour. To my mind, however, this is not a sufficient reason in and of itself to grant an adjournment. It is not at all unusual for the Court to be presented with cases involving litigants in person, where difficult and sometimes critical issues of law arise. The present case may be such a case, but the Court is well equipped to deal with such matters. It can rely on its own expertise and, where appropriate, can draw upon submissions and expertise from the advisers representing the opposing party, who will owe their own obligation to ensure that the Court is properly informed and to lend such assistance as is appropriate to ensure that the matter is dealt with fairly. Were there any real weight in the submission made by Mr Marx it would lead to the conclusion that in almost every case in which a litigant was unrepresented, and a point arose involving some degree of legal complexity, the Court would need to adjourn the matter to allow the unrepresented litigant the opportunity of securing representation. That would lead to an entirely unworkable situation. The fact is that the Court is used to dealing with such situations and is well equipped to do so, and I am sure on this occasion will receive appropriate assistance from Mr Goodman and others on his side of the Courtroom.

22 I make the following additional points, namely, that as I explained at the beginning of this Judgment, the application for an adjournment was originally put on the basis that a further 21 days would be required. Having heard submissions from Mr Marx, however, the true position as regards the ability of Astraea Group to act seems to be quite obscure. I have no real level of confidence that they will be in a position to act within 21 days, or indeed any other reasonably short period. Part of the reason for saying that is the point made by Mr Marx himself, namely that Mr Horowitz is presently uncontactable, or contactable only in a limited way. That being so, the only practicable Order to make would be an adjournment for an indefinite period in order to allow further research to be undertaken and efforts made to contact Mr Horowitz. The idea of an open ended adjournment at this stage, given the history I have described, is deeply unattractive.

23 In short, and drawing the threads together, I am sympathetic to Edward's position, given the importance of the application to him and the potential consequences for him if an Order is made and if he is not able to comply with it. But, that said, I have to strike a balance between Edward's interests and those of the Claimants. On the last occasion when the matter was before the Court I was persuaded that the balance of interests lay in favour of an adjournment, but on this occasion I have reached the opposite conclusion for the reasons I have given, and so I refuse Edward's application to adjourn, and the matter will now proceed to full argument.

**L A T E R**

24 I have to deal with an application for permission to serve out as against Mr Gil Wojakovski and Mr Tuvia Lewkovicz. The proposed claim is a claim under section 423 of the Insolvency Act 1986. The essential allegation is that Gil entered into a transaction with a

view to defrauding creditors on or about 10 April 2024 – the precise timing is uncertain – by transferring his shareholding interest or a part thereof in an English company, Keystone MHD (Entrepreneurs) Limited. The principal source of suspicion is the timing of the transfer, which occurred at or around the time of the recent hearing on 10 April at which the court made disclosure and costs Orders against Gil.

25 Since then Gil has dis-instructed his former solicitors, thus giving rise to an issue about service on him of the Order arising from the hearing. The concern is that the transfer of his interests in Keystone MHD (Entrepreneurs) may be part of a broader pattern of activity by him designed to try and insulate himself from the effects of the English proceedings, meaning in particular the effect of the disclosure Order made by the court on 10 April. In my view that is a justified concern.

26 As to the precise requirements for service out, four points need to be addressed. I take them in turn.

27 The first is whether there is a good arguable case that the claim falls within an appropriate gateway for service out. In my view, that requirement is satisfied. In *Orexim Trading Limited v Mahavir Port & Terminal Private Limited* [2019] 1 All ER (Comm) 15, Lewison LJ at [47] accepted that a claim to set aside a transaction at an undervalue under section 423 falls within Gateway 20. Accordingly, it seems to me clear that that requirement is satisfied.

28 The second point is that there must be a serious issue to be tried on the merits. I am satisfied on that point for the reasons already given. The timing of the transaction is inherently suspicious, and suspicion is only heightened when viewed in the context of the other efforts made by Gil apparently to insulate himself from the ongoing effects of the English proceedings. It is possible that there are alternative and entirely innocent explanations. Mr Goodman has explained in his helpful oral submissions on this topic that nonetheless, as presently advised, the position is unclear and no explanation from Gil has been forthcoming, and so the availability of possible alternative explanations does not derogate from the conclusion that there is a serious issue to be tried, given the inference that arises from the suspicious timing of the transaction.

29 The third point I need to be satisfied about is that England is the *forum conveniens* and, as a matter of discretion, the case is an appropriate one for service out. I am satisfied on those points, essentially because the proposed claim involves a challenge to a purported transfer of English assets to the detriment of English creditors of Gil, said to have been motivated by his possible desire to avoid the effects of ongoing English litigation, specifically the operation of the costs and disclosure Orders made by the Court on 10 April. The claim thus has an obvious centre of gravity in this jurisdiction, and that is sufficient at this stage for me to be satisfied that England is the *forum conveniens* and that, as a matter of discretion, the case is an appropriate one for service out.

30 The fourth requirement is that there must be a sufficient connection to the jurisdiction. In my opinion, if that is a discrete requirement then it is satisfied on the facts of this case, given the points I have referenced already, in particular the fact that the object of the action is a challenge to a transfer or purported transfer of assets located in England, namely shares in an English company, possibly with the intention of avoiding the ongoing effects of Orders made by the English Court.

31 In light of all those matters, it seems to me the case is an appropriate one for permission to be granted, and therefore I will grant permission for service out on the terms sought in the Claimants' draft Order.

**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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