[2025] EWHC 50 (Ch)

Case No: BL-2017-000665

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

The Rolls Building
Fetter Lane
London EC4A 1NL

Wednesday 15 January 2025

MR. JUSTICE TROWER

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Between:

JSC COMMERCIAL BANK PRIVATBANK	**Claimant**
- and -	
(1) IGOR VALERYEVICH KOLOMOISKY	**Defendants**
(2) GENNADIY BORISOVICH BOGOLYUBOV	
(3) TEAMTREND LIMITED	
(4) TRADE POINT AGRO LIMITED	
(5) COLLYER LIMITED	
(6) ROSSYN INVESTING CORP	
(7) MILBERT VENTURES INC	
(8) ZAO UKRTRANSITSERVICE LTD	

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Approved Judgment

After determination on the papers

THIS JUDGMENT HAS BEEN CIRCULATED TO THE PARTIES VIA EMAIL

MR. JUSTICE TROWER:

1. This is my ruling on the outstanding matters arising in an application issued on 14 October 2024, by which the Bank seeks an order that Mr Bogolyubov must use all reasonable endeavours to restore 21 companies to the BVI register of companies and provide the Bank with updates as to his progress. Most of the matters which were in issue until very recently have now been agreed and the parties are agreed that I should decide the remaining points on the papers without a hearing.

2. As the basis of any order for costs remains in issue, I should explain the background, albeit very shortly.

3. Mr Bogolyubov has been subject to a worldwide freezing injunction since the commencement of these proceedings in December 2017. The freezing injunction prevents him from disposing of, dealing with or diminishing the value of any of his assets worldwide and from procuring or permitting non trading companies in which he has an interest from doing the same.

4. In August 2023, the Bank became aware from its own enquiries that a significant number of BVI companies disclosed by the Defendants during the course of their asset disclosure had been dissolved. It subsequently became apparent that, of the 36 companies concerned, 35 had been dissolved between May and November 2023. Of these, 30 are said to hold or have held assets for Mr Bogolyubov.

5. The consequence of their dissolution is that the assets they hold are *bona vacantia* and as a matter of BVI law are now vested in the government of the BVI.

6. The reasons for their dissolution included striking off as a result of the resignation of their registered agent and the non-payment of registry fees. As is the case in England, BVI law makes provision for applications to restore a dissolved BVI company to the register and when that happens the assets which had vested in the government on dissolution, revest in the company. The Defendants' asset disclosure indicates that the assets originally held by the dissolved companies may be worth as much as US$ 1 billion.

7. Since it discovered the circumstances of the dissolutions, the Bank has been attempting to persuade the Individual Defendants to apply for the dissolved companies' restoration to the register. It contends that it has been given a number of representations that steps were being taken by the Defendants or their corporate service providers to seek to do so. Initially the Defendants contended that they were unable to restore the dissolved companies because they had been unable to find a registered agent in the BVI willing to act for them. The Bank's evidence explains in some detail the progress that had been made to obtain registered agents willing to act. By September 2024 limited progress had been made.

8. The immediate catalyst for the current application was a letter from Mr Bogolyubov's solicitors to the Bank's solicitors on 3rd October 2024 disagreeing that he had any obligation to take the steps necessary to seek the restoration of the dissolved companies to the register. It was also said that, because the registered agents were third parties in

which Mr Bogolyubov had no interest and over which he had no control, he was not responsible for the dissolution of the dissolved companies.

9. The Bank says that this came as a surprise to it and I can understand why. The correspondence discloses that Mr Bogolyubov had been conducting himself for at least a year in a manner that appeared to accept that he was under an obligation to take reasonable steps both to procure the restoration of the dissolved companies and to provide the Bank with appropriate information in relation to his progress in doing so. The debate was about the detail of taking that course, rather than the principle of whether he should take that course at all.

10. It is not said by Mr Bogolyubov that the court has no jurisdiction to grant the relief sought by the Bank. In an earlier judgment in these proceeding ([2022] EWHC 1445 (Ch)) I considered the applicable principles by reference to *JSC Mezprom v Pugachev* [2016] 1 WLR 160 and *Broad Idea Ltd v Convoy Collateral Limited* [2021] UKPC 25. I can summarise by saying that the question for the court is whether the grant of the relief sought is just and equitable for the purpose of safeguarding the assets which are the subject of the freezing injunction. Is it an ancillary order which it is just and convenient to make in order to render the freezing order itself effective?

11. In my view that test is satisfied in the present case. There can be no doubt that the dissolution of the relevant companies will have the effect of rendering their assets (or strictly speaking the assets which have now vested in the BVI government as *bona vacantia*) unavailable for enforcement unless the relevant company is restored to the register.

12. Furthermore, I think that the Bank has established a good arguable case that Mr Bogolyubov would have been able to prevent their dissolution had he chosen to do so, either by making a relatively small payment of the fees payable to the relevant agent or registry or by taking appropriate steps for the appointment of alternative registered agents. On the evidence before me on this application, those are still steps that are available to him and which he has not chosen to pursue or has certainly not explained why he has not done so.

13. In its written skeleton argument for this application the Bank asserted that its attempts to elicit updates from Mr Bogolyubov on his efforts to restore the dissolved companies to the register have been met with stonewalling, delay and indifference culminating with an apparent change of heart. In my view this description of what occurred is justified and provides some foundation for the Bank's belief that Mr Bogolyubov is behaving in a manner which is directed at making it more difficult for the Bank to enforce any judgment it may obtain.

14. In my view, as a matter of principle, it is and always has been just and convenient for Mr Bogolyubov to be ordered to take what steps he reasonably can to have the dissolved companies restored to the register. It is no longer the case that Mr Bogolyubov contends that as a matter of principle he should not do so. However there remains at least one significant dispute on the detail of the order to be made, other issues having been agreed by Mr Bogolyubov over the course of the past few days.

15. Amongst the agreed issues is that a company called Myerson United Limited should be included in Schedule 1 to the order as a dissolved company. Mr Bogolyubov has very

recently asserted that Myerson has already been restored, but the Bank has not been able to verify that is the case. In the event that the Bank is able to verify the position before an agreed order is submitted for my approval, Myerson can be deleted from the Schedule. In the event that it has not, Myerson should remain in the Schedule

16. Subject to costs, the continuing dispute relates to the payment of fees. The Bank seeks an order that:

> "For the avoidance of any doubt, the obligation set out in paragraph 1 above includes a requirement that the Second Defendant pay all fees charged by corporate service providers or otherwise necessary to secure restoration of the Dissolved Companies, regardless of the extent of any interest the Second Defendant holds or is said to hold in the Dissolved Companies."

17. Mr Bogolyubov says that he should only be required to pay the agency and registry fees commensurate with the extent of his interest in the relevant company. In practice this means that, where he owns 50% of a company and Mr Kolomoisky owns the other 50%, the taking by him of reasonable steps to restore that company to the register should not include making payment of any more than 50% of the fees. This obviously means that non-payment by Mr Kolomoisky will result in the relevant company not then being restored to the register, even if Mr Bogolyubov tenders his share.

18. The Bank makes two separate but inter-related points in answer to this. First it says that the principle advanced by Mr Bogolyubov is wrong. Secondly, it accepts that Mr Bogolyubov should only be required to pay 50% if he can demonstrate in advance of the hearing that Mr Kolomoisky has agreed to pay his 50%, as to which there is no evidence that he has.

19. There is some evidence that on previous occasions Mr Bogolyubov has accepted that he must pay 100% of the registry fees for companies in which he has only a 50% interest. But in my view the Bank is right on the point of principle in any event.

20. The starting point is that, as between the Bank and Mr Bogolyubov, the underlying obligation, which is reflected in Mr Bogolyubov's agreement that he should use all reasonable endeavours to restore the dissolved companies to the register, derives from the freezing order. By that order both he and Mr Kolomoisky are separately restrained from dealing with the interests they have in particular assets including their respective interests in the companies they hold in common, and the assets which are held by nominee companies on their behalf. It is inherent in the ownership structures that, if the asset as a whole is lost, each of the separate interests will be lost as well.

21. It follows that Mr Bogolyubov's separate responsibility for taking reasonable steps to ensure that his interest in an asset is not extinguished inevitably extends to taking reasonable steps to ensure that the asset as a whole (including therefore interests in the asset to which others such as Mr Kolomoisky may be entitled) is not lost. As against the Bank, it is not of central relevance that the steps required to ensure that result is achieved will also achieve the same result for the holders of other interests in the same asset. Certainly, in the current case, the reasonableness of being required to take that course does not depend on whether or not Mr Kolomoisky has also fulfilled (or agreed to fulfil) his obligation to do so.

22. I should add that, if the relevant company is held 50/50 between Mr Bogolyubov and Mr Kolomoisky, or indeed in any other proportions, the one who incurs expense in preserving their interest (by also preserving the asset as a whole) may have an equitable right of contribution against the other proportionate to the extent of their interest. But none of this detracts from the fact that as against the Bank reasonable endeavours requires a discharge of the costs in full. It therefore seems to me that, in the circumstances of this case, reasonable endeavours includes payment in full of the agency and registry related costs of taking the steps necessary to procure restoration of the scheduled companies to the BVI register.

23. As to the costs of the application, the Bank seeks an order against Mr Bogolyubov on the indemnity basis. It says that it has had to bring the matter before the court and is plainly the successful party. The indemnity basis is said to be justified because he has blown hot and cold about whether or not a hearing was required and, having stated that eight weeks were required to put in evidence, has not in the event served any evidence.

24. Mr Bogolyubov says that it should be costs in the case because Mr Bogolyubov made clear in November that he was willing to take reasonable steps to procure the restoration of all but Brimmilton and that everything which has happened thereafter is unnecessary.

25. As to which party should bear the costs generally, it is my view that the Bank has been the successful party on an application which it was required to bring, and which has only been resolved in a manner largely favourable to the Bank at the very last minute. I do not consider that there is any magic in the 26 November date identified by Enyo Law in its latest correspondence because further concessions on points which mattered to the Bank continued to be made thereafter and would not have been achieved if the application had not been maintained.

26. As to indemnity costs, the question is whether the application is "out of the norm" in a way which justifies such an order (*Excelsior Commercial and Industrial Holdings Ltd* [2002] EWCA Civ 879 at [31] – [32] and [39]). The phrase "out of the norm" means "something outside the ordinary and reasonable conduct of proceedings" (*Esure Service Ltd v Quarco* [2009] EWCA Civ 595 at [25]).

27. The drawn-out process I have already referred to is not in and of itself a justification for indemnity costs, even though I think that Mr Bogolyubov has made it much more difficult for the Bank to obtain the relief to which it is entitled than should have been the case.

28. Nonetheless, it does provide the background for an assessment of two aspects of Mr Bogolyubov's conduct which are out of the norm in the sense established by the authorities and which justify an order for indemnity costs. Both of them demonstrate unreasonable and potentially prejudicial delaying tactics. In concluding that this is what they were, I also have regard to the fact that the issues with which the Bank was concerned had been the subject of correspondence for a period of a year before the application was made and that the Bank's application was only necessitated when Mr Bogolyubov had a change of heart as to the principle of his obligation to ensure that dissolved companies were restored to the register.

29. The first is the manner in which Mr Bogolyubov has blown hot and cold on whether the matter should be determined on the papers or necessitated a hearing. He first insisted on

a hearing, which caused a delay in the resolution of the issues (with the result that at least one more company was dissolved in the interim) and then changed his mind a few days ago seeking a paper determination on the outstanding issues. The second was his initial position that he would need eight weeks to put in evidence in response to the application, which was a further cause of what can now be seen to have been unnecessary delay because, when it came to it, no evidence was served.

30. It seems to me that a summary assessment on the indemnity basis is also appropriate.

31. The Bank's statement of costs seeks £81,513, of which £53,548 is solicitors' costs and £27,965 relates to counsel's fees. No challenge is made to counsel's fees, which were incurred prior to the hearing. Two issues arses in relation to solicitors' costs.

32. The first, which is accepted by the Bank, is that their statement includes £7,692 for attendance at the hearing which was vacated at the last moment. These costs must therefore be deducted, leaving a claim for solicitors' costs of £45,856.

33. The second is that Mr Bogolyubov points out that the hourly rates claimed are far in excess of the guideline hourly rates for heavy commercial and corporate work by centrally based London firms. The charge out rates exceed the 2025 guideline hourly rates by the following percentages: Two Grade A fees earners by c.182% and c.165% respectively, a Grade B fee earner by c.156% and a Grade D fee earner by c.139%. The percentages will be even higher to the extent that work was carried out in 2024, a factor which is not broken down in the Bank's statement of costs.

34. In assessing whether a rate in excess of the guideline hourly rate is appropriate, and if so to what extent, I bear in mind the decision of the CA in *Samsung Electronics v LG Display* [2022] Costs LR 627 where Males LJ said at [6] that:

> "If a rate in excess of the guideline rate is to be charged to the paying party, a clear and compelling justification must be provided. It is not enough to say that the case is a commercial case, or a competition case, or that it has an international element, unless there is something about these factors in the case in question which justifies exceeding the guideline rate."

35. I also bear in mind what I know about the complexity of this litigation and what is said in paragraph 29 of the Guide to the Summary Assessment of Costs:

> "In substantial and complex litigation an hourly rate in excess of the guideline figures may be appropriate for grade A, B and C fee earners where other factors, for example the value of the litigation, the level of the complexity, the urgency or importance of the matter, as well as any international element, would justify a significantly higher rate. It is important to note (a) that these are only examples and (b) they are not restricted to high level commercial work, but may apply, for example, to large and complex personal injury work. Further, London 1 is defined in Appendix 2 as 'very heavy commercial and corporate work by centrally based London firms. Within that pool of work there will be degrees of complexity, and this paragraph will still be relevant."

36. Taking all of these considerations into account and having regard to the fact that I am conducting a summary assessment on the indemnity basis, I think that some reduction in solicitors' fees is required. It is inevitable that this is a relatively broad-brush exercise,

but I think that a reduction of £5,000 is required to reflect the fact that the hourly rates are well in excess of the guideline rates, but that para 29 also applies.

37. Mr Bogolyubov must therefore pay the Bank's costs of the application summarily assessed in the amount of £68,821. The parties are to agree and submit for my approval an order which reflects both the terms of this ruling, and the points already agreed.