Neutral Citation Number: [2020] EWHC 144 (Comm)

Case No: CL-2008-00540

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

The Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29/01/2020

Before:

MR JUSTICE FOXTON

- -

Between:

IVANHOE MINES LIMITED (previously IVANHOE NICKEL AND PLATINUM LIMITED)	**Claimant**
- and –	
TONY RICKY GARDNER	**Defendant**

- -
- -

Adam Kramer (instructed by White & Case LLP) for the Claimant
Jamie Riley QC (instructed by SA Law LLP) for the Respondent

Hearing date: 17th January 2020

- -

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.

.....

MR JUSTICE FOXTON

The Honourable Mr Justice Foxton:

1. This is the return date of a worldwide freezing order granted by His Honour Judge Pelling QC on 7 January 2020 ("the Injunction"). The Claimant ("Ivanhoe") seeks to continue the order, and applies for various forms of ancillary relief. The Defendant ("Mr Gardner") opposes the continuation of the Injunction, but if the Injunction is continued, asks the Court to vary its terms in certain respects.

2. Ivanhoe was represented before me by Adam Kramer, and Mr Gardner by Jamie Riley QC. I am grateful to both of them for their submissions. Notwithstanding the commendable efficiency of both counsel, there was only time at the hearing to address the issue of whether the Injunction should be continued, with the applications for ancillary orders and variation being reserved for determination if and when necessary. The parties provided written submissions on these further matters after they had been provided with the draft judgment, and my rulings have been incorporated into this judgment.

The background

3. This dispute has its origins in a consent arbitration award ("the Award") which Ivanhoe and Mr Gardner entered into on 10 July 2008, and under which Mr Gardner agreed to pay the tax liabilities of a South African company called GBSA. A subsequent dispute as to the scope and effect of the Award was resolved by a Tomlin Order of the Commercial Court of 7 January 2009, under which Mr Gardner would become liable to make a payment to Ivanhoe in certain eventualities.

4. In 2018, Ivanhoe contended that the payment liability had arisen, and applied to enforce the Tomlin Order. On 23 November 2018, Mr Justice Teare entered judgment against Mr Gardner for £558,392.73 following a hearing which Mr Gardner did not attend because he was unaware of the proceedings ("the First Teare Judgment"). When he became aware of the First Teare Judgment (which on his evidence was in July 2019), Mr Gardner applied to set it aside on the basis that he had had no notice of the hearing, and had a defence to the claim.

5. That application was refused by Mr Justice Teare on 22 November 2019 in a judgment reported at [2019] EWHC 3142 (Comm) ("the Second Teare Judgment"). No appeal has been brought against the refusal of that application. Given the issue before me, it is important to set out the reasons why Mr Justice Teare refused the application which are set out at [31]-[33]:

> "31. On behalf of Ivanhoe counsel submitted that Mr. Gardner made a deliberate attempt to avoid his obligations and to avoid receiving communications so as to frustrate the litigation process. In support of this serious allegation reference was made in particular to a number of matters. First, after losing in the Supreme Court and knowing that SARS would then recalculate the tax due and serve a fresh assessment Mr. Gardner left South Africa for Spain in May 2015 without informing Ivanhoe, to whom he owed his obligation to pay the tax assessed on GBSA, of his address in Spain. Second, in July 2017 just 6 days after lawyers instructed to act for him in South Africa in other (related) proceedings had received a demand for payment from Ivanhoe they came off the record and were instructed not to receive any further correspondence for him. Third, the only

forwarding address he gave at that time was a hotel in England where he would be, it seems, for a limited period. He did not give his address in Spain.

32. On behalf of Mr. Gardner counsel referred me to Mr. Gardner's witness statement in which he said that he truly believed that if Ivanhoe "had wanted to locate me it could have done so. There was nothing to stop them contacting Mr. van Zanten or Ms. Fleming [former officers of GBSA]. Also, when they had to affect personal service on me, they were able to locate my father's address. Had they done this in October 2018 when he was alive, my father would have contacted me and informed me that the court papers had been sent to his address." He said that he "was not hiding".

33. What is striking about Mr. Gardner's conduct is that having expended considerable effort to challenge the assessment of tax (which he had promised to pay) by appealing to the Supreme Court he then, having lost his appeal, expended no effort in contacting Ivanhoe with a view to paying the tax he had agreed to pay. On the contrary, his letter of 25 November 2015 suggested that there was a way in which the tax need not be paid. Then, when his South African lawyers had received a demand for payment of the tax from Ivanhoe, he disinstructed them. It is reasonable to infer from these events that Mr. Gardner was unwilling to pay that which he had promised to pay. It is also reasonable to infer that he wished to make it difficult for Ivanhoe to communicate with him. That is consistent with the fact that the forwarding address that he gave to his South African lawyers was not his permanent address in Spain but a hotel in England at which he would stay for a limited period. He did not suggest at that time that either former officers of GBSA (Mr. Van Zanten or Ms. Flemming) could receive communications on his behalf or that his father could. In those circumstances his evidence that Ivanhoe should have contacted him through those persons rings hollow, notwithstanding that Ivanhoe were aware of Mr. Van Zanten (when they copied an email to him in July 2015) and of the address at which his father resided (when they sent the 23 November 2018 Order to that address on 26 November 2018, albeit that they were not then aware that this was the address at which his father resided).

34. On the material available to the court on this application I am not persuaded that there was a good reason for Mr. Gardner not attending the hearing in November 2018. On the contrary there is good reason to believe that, having lost the Supreme Court appeal, he did not wish to be contacted about the tax he had promised to pay and hoped that Ivanhoe would be unable to contact him about it. He certainly did not leave in place a mechanism by which, if Ivanhoe wished to enforce the Consent Award or the Tomlin Order, they could notify him of their wish and of any relevant court proceedings (save of course for the fact that Ewart Price remained on the record in England).”

6. In the conclusion of his judgment, Mr Justice Teare summarised the position as follows:

“51. The circumstances in which Mr. Gardner asks the court to re-list (and so to re-hear) Ivanhoe's application of November 2018 are therefore these. Mr. Gardner has failed to show that there was a good reason for his not attending the hearing, though he did proceed promptly to set aside the court's order on learning of it.

> He has identified one ground of defence which, although it cannot be said to lack any real prospect of success, is rather weak. In circumstances where there is good reason to believe that Mr. Gardner did not wish to pay the tax he had agreed to pay and hoped (as proved to be the case) that Ivanhoe would have great difficulty in informing him of any steps they proposed to take to enforce his obligation to pay the tax in question his request that the court should re-list and re-hear the Tomlin Application is certainly unattractive and unappealing. Having regard to the court's limited resources a party who hopes to avoid a court order against him by making it difficult for his creditor to track him down cannot reasonably expect the court, after the court has allocated one hearing to the matter, to allocate another hearing to the matter at the behest of the party who finds that his attempt at avoiding a court order against him has failed. For these reasons I have decided that it is not fair and just or in accordance with the overriding objective to relist (and to re-hear) this matter."

7. After the Second Teare Judgment had been handed down, Mr Gardner did not seek permission to appeal, nor take any steps to satisfy the judgment or the costs order. Instead, Mr Gardner wrote what he described as a "personal letter" to Mr Justice Teare and to Ivanhoe's solicitors on 12 December 2019 in which he made his dissatisfaction with the judgment clear, and threatened to initiate further litigation in Spain.

8. The without notice application for the Injunction was brought by Ivanhoe on 7 January 2020, and, as I have indicated, granted by His Honour Judge Pelling QC with a return date of 17 January 2020.

The test for post-judgment freezing order relief

9. There was no dispute as to the test for post-judgment freezing order relief. It is sufficient, for present purposes, to note that the only two matters in issue before me were:

   i) whether a real risk of dissipation had been made out; and

   ii) whether it is just and convenient to continue the Injunction.

10. On the issue of risk of dissipation, both parties referred me to the summary of the principles given by Mr Justice Males in National Bank Trust v Yurov & ors [2016] EWHC 1913 at [70]:

> "Based on these authorities, the defendants advance seven propositions which the bank does not dispute and which I accept. They were as follows:
>
> a. The claimant must demonstrate a real risk that a judgment against the defendant may not be satisfied as a result of unjustified dealing with the defendant's assets.
>
> b. That risk can only be demonstrated with solid evidence; mere inference or generalised assertion is not sufficient.

c. It is not enough to rely solely on allegations that a defendant has been dishonest; rather it is necessary to scrutinise the evidence to see whether the dishonesty in question does justify a conclusion that assets are likely to be dissipated.

d. The relevant inquiry is whether there is a current risk of dissipation; past events may be evidentially relevant, but only if they serve to demonstrate a current risk of dissipation of the assets now held.

e. The nature, location and liquidity of the defendant's assets are important considerations.

f. Whether or to what extent the assets are already secured or incapable of being dealt with is also relevant.

g. So too is the defendant's behaviour in response to the claim or anticipated claim."

11. It was common ground that an applicant for post-judgment freezing order relief must still establish a real risk of an unjustified dissipation of assets against which the judgment might be enforced, such that the judgment might go unsatisfied. There are statements in the authorities which suggest that this requirement may be easier to meet in an application for a post-judgment freezing order than for a pre-judgment order, for example Mr Justice Farquharson in Orwell Steel (Erection and Fabrication) Ltd v Asphalt and Tarmac (UK) Ltd [1984] 1 WLR 1097, 1100 and Mr Justice Teare in Great Station Properties SA v UMS Holdings Ltd [2017] EWHC 3330 (Comm) at [63]. However, it is ultimately necessary to consider the facts of each case.

Has a real risk of dissipation been established?

12. I am satisfied on the material before me that a real risk of dissipation has been established because of the cumulative effect of the following factors.

13. First, the conduct of Mr Gardner, as found by Mr Justice Teare, in attempting to "mak[e] it difficult for his creditor to track him down" and to "avoi[d] a court order" (Second Teare Judgment [51]). A debtor who wishes to take steps to make it difficult for his creditor to recover from him, and in particular to make it difficult for the creditor to take legal proceedings against him, may well be inclined to continue those efforts to avoid a financial reckoning at the post-judgment stage.

14. To his credit, Mr Riley QC did not seek to downplay the significance of those findings in themselves, but suggested that they were, in effect, ancient history, and that matters had moved on with Mr Gardner having instructed solicitors for the purposes of the application which led to the Second Teare Judgment, served a schedule and affidavit of assets in response to the Injunction, and instructed solicitors for the purposes of bringing the present challenge. It is certainly the case that Mr Gardner has engaged with the proceedings when seeking to obtain rulings for his own benefit, or in the face of coercive orders of this Court. However, I do not accept that Mr Gardner's behaviour in the immediate past makes it appropriate to ignore the prior conduct which was the subject of Mr Justice Teare's findings.

15. In particular, the evidence suggests that Mr Gardner remains strongly resistant to meeting the liabilities established by the First and Second Teare Judgments. The terms of Mr Gardner's letter of 12 December 2019 are significant in this respect. Far from suggesting that Mr Gardner is now reconciled to the liabilities it has authoritatively been determined he owes, the letter suggests that Mr Gardner does not recognise the legitimacy of the judgments (saying he "felt let down by the UK system" and that he had "lost faith in British Justice") and that he intends to renew the battle on a further front by taking "Ivanhoe to court in Spain where the whole truth can come out". Mr Gardner's failure to make any attempt to pay any part of the judgment debts, which I address below, also suggests that his attitude to Ivanhoe's claim has not changed since the time when Mr Justice Teare found that he had taken steps to obstruct Ivanhoe's efforts to recover its debt.

16. Second, Mr Gardner has made no efforts to meet the First or Second Teare Judgments, nor has he voluntarily taken any steps (for example proposing a schedule for payment) which suggest he has any intention of discharging those judgments. I accept Mr Riley QC's submission that as a free-standing factor, this has little weight. The Civil Procedure Rules provide for enforcement mechanisms for undischarged judgments precisely because there are many judgment debtors who are in a position to meet their liabilities but who refuse to do so. The mere fact that a judgment creditor has to invoke those mechanisms because the judgment debtor will not pay voluntarily cannot itself be a sufficient ground for freezing order relief. Rather such relief is only appropriate where there is a risk of unjustified dissipation of assets which would impede such enforcement efforts.

17. However, in this case, the refusal to engage with the First and Second Teare Judgments does not stand alone. The outstanding total of the Judgments stands at some £674,000. The schedule of assets served by Mr Gardner suggests that he has net assets which substantially exceed that amount. Mr Gardner has been willing to expend considerable sums in applying to set aside the Injunction which might have gone towards the payment of the judgments. Mr Gardner is apparently willing to force Ivanhoe to undertake the expense of an execution process against his assets in Spain (which would generate additional costs liabilities for Mr Gardner), and allow interest to accumulate on the judgments at the rate of 8% per annum while that process is underway, rather than use his assets to discharge the judgments. Against the background of Mr Gardner's prior attempts to make it difficult for Ivanhoe to pursue him, and the evidence of his strong dissatisfaction with the judgments, there must be a real risk that the true explanation for such economically irrational behaviour is that Mr Gardner hopes that the time and expense of enforcement will enable him to avoid his liabilities, either because Ivanhoe will decide it is uneconomic to expend further funds on a relatively small debt, or because the process of execution can be drawn out, allowing assets to be dissipated in the interim.

18. Third, while Mr Gardner's schedule of assets does record substantial assets, a significant number of those assets could readily be transferred or dissipated. The schedule records Mr Gardner as having a 50% share in collectable watches valued at €180,000 and gold coins valued at €36,000, and a third share in artwork valued at €750,000 and in cash held in bank accounts of €1,700,000. These are all assets which can readily be alienated or dissipated. While Mr Riley QC understandably laid emphasis on Mr Gardner's one third share in the family home in Spain, valued at

€3,500,000-4,500,000, I accept Mr Kramer's submission that this represents a much less attractive enforcement target, because of the time it may take to realise such an asset, the potential fluctuation in the property's value during that period, and because of the potential complications and delays inherent in the property's status as a family home. I would note that I do not have independent evidence of the property's value in any event.

19. Further, particularly when considering a claim or judgment with a relatively low value, the Court is entitled to find a risk of dissipation is made out where there are assets which there is a real risk of the respondent dissipating, even if there are other assets which it would be more difficult to dissipate, but which would involve the claimant in a more onerous enforcement effort: see for example Stronghold Insurance Company Limited v. Overseas Union Insurance Ltd (1995) CLC 1268 where Mr Justice Potter held a risk of dissipation to have been established by the risk of removal of reinsurance receipts from this jurisdiction even though there was no doubt that any award could ultimately be enforced against the respondent's substantial assets in Singapore. The judge noted that the effect of forcing the claimant to enforce against assets in Singapore was to create "a substantial risk that the plaintiff will be obliged to chase [the respondent] for the purposes of enforcement in respect of a relatively small claim" and create a "risk that the plaintiff's claim and associated costs will not be met in full". In deciding whether the test for freezing order relief has been made out, the Court is entitled to have regard to the practicalities of enforcement against assets of different kinds, a consideration which may be particularly pertinent when, as here, the costs of enforcement may soon reach a point where they are out of proportion to the size of the judgment debt.

20. Mr Riley QC advanced a number of reasons why he said that no real risk had been made out which I should address.

21. First, he pointed to the fact that Mr Gardner had not (at least so far as apparent from the evidence) taken any steps to dissipate assets in the period since he became aware that Ivanhoe was likely to pursue him for the tax liability, including in the period from July 2019 after he became aware of the First Teare Judgment. That point was well made, but its effect is diminished somewhat by the fact that during the period up to July 2019 when, as Mr Justice Teare found, Mr Gardner was effectively "hiding" from Ivanhoe, he may well have believed that Ivanhoe would not be able to locate him for the purpose of establishing its claim. So far as the period after July 2019 is concerned, Mr Gardner may have believed that any dissipation of assets at that stage might prejudice his application to set aside the First Teare Judgment. In any event, there was a significant change in context with the Second Teare Judgment, and Mr Gardner's apparent inability to reconcile himself to that judgment, which give rise to a real risk of dissipation now, notwithstanding the absence of any dissipation prior to those events.

22. Second, Mr Riley QC relies on the substantial assets which Mr Gardner has disclosed in response to the Injunction, and suggested that the First and Second Teare Judgments can readily be enforced against those assets, and that the home, watches and artwork are assets which are not readily susceptible to dissipation. I have addressed the position of Mr Gardner's half share in the family home above. I do not accept that Mr Gardner would face any difficulty in alienating the other assets mentioned. In any event, clearly the most attractive asset from an enforcement

perspective is Mr Gardner's share of the cash in the bank accounts, which could easily be transferred.

23. Further, the evidence as to the time it would take to enforce the First and Second Teare Judgments in Spain would suggest that this will not prove to be a straightforward process. I was provided by Mr Gardner with a legal opinion dated 15 January 2020 from Galvez Pascual, Spanish lawyers based in Barcelona. That opinion states that under the system applicable to the enforcement of English judgments in Spain, the party against whom the enforcement order is addressed is entitled to be heard before an enforcement order is made, and there are (limited) grounds on the basis of which a respondent may challenge enforcement. The opinion states that "the process of enforcement is relatively straightforward, although it can take some time depending on the specific court's workload and the firm opposition by the debtor's lawyer through the filing of appeals and other strategic tactics". The opinion cites 2019 data for the enforcement of judgments generally in Andalucia indicating an average enforcement time of up to 31.6 months. The opinion continues that "despite being a relatively straightforward procedure if no opposition is raised, based on the protection of the creditor's rights, the enforcement of a foreign judgment allows some possibilities of resistance which could either uphold the objection based on the lack of service or significantly delay the proceedings against the debtor".

24. Given the ease with which Mr Gardner's assets (with the exception of the family home) could be alienated, the uncertainties and complications involved in realising value of the family home through a forced sale, his history of opposition to this liability and the apparent ability of a determined judgment debtor significantly to delay the enforcement process in Spain, I do not believe that Ivanhoe's ability to enforce the First and Second Teare Judgments against Mr Gardner's assets is sufficient to answer the real risk of dissipation which I have found.

Is it just and convenient to make the order?

25. There were two elements to Mr Riley QC's submission under this head. The first was essentially the alleged lack of a real risk of dissipation which I have already addressed. The second was the contention that Ivanhoe had not obtained the Injunction for the purpose of enforcing the First and Second Teare Judgments, because it had not taken any steps to enforce those judgments, but as a means of putting pressure on Mr Gardner.

26. I accept that the purpose of a post-judgment freezing order is to prevent the dissipation of assets against which enforcement might be levied, rather than (for example) to pressurise the judgment debtor into paying the judgment debt. However, I see no basis for inferring that Ivanhoe obtained the Injunction for anything other than a legitimate purpose in this case. Until the production of the schedule of assets in response to the Injunction, the only asset of which Ivanhoe was aware was the family home, which came to its attention in July 2019 when Mr Gardner successfully opposed the statutory demand Ivanhoe had issued. Further, given the relatively low value of the judgment, and the disproportionate costs of the enforcement process, Ivanhoe cannot be criticised for waiting to see if Mr Gardner would pay voluntarily if his attempts to set aside the First Teare Judgment failed before it incurred the expense of enforcement in Spain. In circumstances in which Mr Gardner has disclosed

sufficient assets to pay the judgments, but is refusing to do so, I accept Ivanhoe's evidence through its solicitor that it intends to enforce the judgments.

A notification order?

27. In the alternative, Mr Riley QC submitted that the Court should not make a freezing order, but a notification injunction of the type recognised in Holyoake v Candy [2018] Ch 297, ordering Mr Gardner not to dispose of or deal with his interest in the Spanish property without giving 7 days' notice to Ivanhoe.

28. I do not believe such an order would prove satisfactory in the circumstances of this case. I have already explained why I believe that the Spanish property does not represent a particularly satisfactory enforcement target. In any event, a notification injunction would require a further application to the Court in the event notification was given, with the attendant additional costs (increasing the likely amount of the unsatisfied judgment debt in the process) and use of court time for a claim which, by the standards of this Court, is modest, and has already entailed a wholly disproportionate expenditure of legal costs. In circumstances in which Mr Gardner's liability has already been established, and in which he has identified no prejudice in the Injunction continuing up to the maximum amount of that established liability, I am satisfied that it is appropriate to continue the freezing order substantially in the form granted by His Honour Judge Pelling QC. However, as I explain below, I have concluded that a notification provision of a different kind provides an appropriate means of addressing a further issue raised by Ivanhoe for the first time after the hearing.

The further orders sought by Ivanhoe

29. A number of the further orders sought by Ivanhoe are not in dispute, and those non-controversial matters should be reflected in the final order. However, the parties were unable to agree on the following matters.

The calculation of the maximum value of the assets

30. Before His Honour Judge Pelling QC, and at the hearing before me, Ivanhoe sought relief which included a conventional "maximum sum" order which did not distinguish between assets of different kinds. However, in its post-judgment submissions, Ivanhoe seeks an order that the maximum sum must be maintained out of assets which exclude the family home or, alternatively, that the family home be excluded from the scope of the freezing order altogether.

31. It is unfortunate that this issue was not raised prior to or at the return date, so that it could be the subject of submissions at that stage. However, I accept that there is a risk of Mr Gardner seeking to alienate or dissipate other assets on the basis that his share in the family home exceeds the maximum sum, in circumstances in which I have found that the difficulty of enforcing against Mr Gardner's share in that asset is one of the reasons why freezing order relief is appropriate.

32. In circumstances in which the matter was not raised at the hearing, I am not persuaded that it would be appropriate for me now to exclude the family home from the calculation of the maximum sum amount or from the freezing order altogether.

However, I am satisfied that it would be appropriate to require Mr Gardner to give 14 days' notice to Ivanhoe of any payment out of amounts held in accounts and financial investments with Banco Sabadell which would involve Mr Gardner's share of those amounts falling further below £673,500. This provision should significantly reduce any risk of any attempt by Mr Gardner to prevent his cash assets being available for execution.

33. Finally, I note that Ivanhoe has relied in its submissions on this issue on the time it will take to obtain permission from this Court to enforce the freezing injunction, and to secure recognition of that order in Spain. In the event that there are any further applications by Ivanhoe, I anticipate that the Court would wish to know what steps Ivanhoe has taken to obtain such permission and recognition, and, indeed, to enforce the judgments.

The provision of information by Mr Gardner

34. First, in relation to assets held in English financial institutions, Ivanhoe seeks to lower the notification threshold to encompass assets of whatever value (rather than simply assets with a value of £2,500). It submits that assets in England are of particular value from an enforcement perspective, and that identifying such assets may enable Ivanhoe to seek a Bankers Trust type order to identify further assets which Mr Gardner has not disclosed.

35. I accept that the ability to enforce against assets in England is of particular value, but I do not accept Ivanhoe's submission that this justifies removing the value floor altogether. Nor do I accept, on the information before me, that there is a sufficient prospect of useful Bankers Trust applications being appropriate to justify this course. Accordingly, for assets held in financial institutions in England and Wales, I will adjust the value floor to £1,000.

36. Second, Ivanhoe seeks "evidence and details of all financial arrangements put in place in 2012 or at any other time by which assets are said … to be jointly owned with the Respondent's wife or wife and daughter". In circumstances in which the reported shares of Mr Gardner in the disclosed assets significantly exceed the amount of the judgment debt, and given the additional notification order set out above, I am not satisfied that the provision of this information is necessary and proportionate in order to render the Injunction effective. I therefore refuse this application.

37. Finally, there is an issue as to the timing of the provision of Mr Gardner's affidavit, with Ivanhoe asking for a deadline of 4pm on 24th January 2020, and Mr Gardner a deadline of 4pm on 31st January 2020. In circumstances in which Ivanhoe has sought further information after the hearing, and given that Mr Gardner has experienced difficulties in finding someone in Spain before whom an affidavit can be sworn, I accept Mr Gardner's submission that the deadline should be 4pm on 31st January 2020. With the benefit of that additional time, Mr Gardner will have every opportunity to ensure that the affidavit is accurate and complete.

The cross-undertaking in damages and the issue of fortification

38. Ivanhoe asks to be released from the cross-undertaking in damages in favour of Mr Gardner (but not third parties). There are different views in the authorities as to

whether a cross-undertaking in damages is appropriate in a post-judgment freezing order. On the facts of this case, I am satisfied that the interests of both parties are fairly protected by continuing the cross-undertaking, but releasing Ivanhoe from the fortification requirement.

The variation sought by Mr Gardner

39. The without notice order provides for ordinary living expenses of £1,500 a week. Mr Gardner seeks to increase that figure to €2,500 per week. Mr Gardner has given evidence of various heads of expense he incurs in maintaining the family home, albeit it is fair to say that there is no documentary evidence of these matters. Given the level of assets disclosed by Mr Gardner, I am satisfied on the evidence before me that some increase in the figure is justified. However, there is force in Mr Kramer's submission that in a post-judgment context, it may well be fair to require a defendant to reduce the level of his outgoings. In these circumstances, I propose to fix the living expenses figure at €2,000 per week.

Costs

40. It is agreed that Ivanhoe should have the costs of both hearings on a standard basis. Ivanhoe seeks costs of £55,068.95 and £64,447.37 respectively. The amount of these costs is challenged by Mr Riley QC for Mr Gardner.

41. I do not intend to go through every criticism made by Mr Riley QC, but to address the principal issues raised.

    i) To my mind, Mr Riley QC's best point is that the rates charged by White & Case are high, and comfortably in excess of the guideline rates in the White Book. While that is relatively common, the differential is particularly stark here when considering the low value of the claim.

    ii) Mr Riley QC points to the involvement of five White & Case fee earners. Given the low value of the claim, there was every reason for Ivanhoe to use a "lean team". However, I believe Mr Riley QC has overstated the criticism, which merits only a small discount.

    iii) Mr Riley QC points to the figure for internal attendance, of which a substantial amount would appear to relate to internal White & Case discussions. I accept Mr Kramer's explanation for the level of time taken which, in the circumstances, is not unreasonable.

    iv) Mr Riley QC submits that the figures for work on documents are high, pointing in particular to the 27 hours claimed in preparing the first affidavit of Amanda Cowell. While I do not agree with Mr Riley QC's submission of this as "eye-watering", I accept that it is on the high side.

    v) Similarly, the figure for work on documents for the return date is high, given the short period which elapsed between the without notice application and the return date, and the limited number of developments which Ms Cowell needed to address. There were, however, other matters after the service of Ms

Cowell's witness statement which would have required further work, which I have allowed for.

vi) I reject Mr Riley QC's criticism of the fact that Ivanhoe instructed separate counsel for the without notice application and the return date hearings.

42. Taking all of these matters into account, I summarily assess Ivanhoe's costs as follows:

i) £40,000 for the "without notice" application.

ii) £43,000 for the return date.

43. Taking into account the period for which Mr Gardner has already been aware that he will face an adverse costs order, Mr Gardner is required to pay these sums within 21 days of the date of handing down of this judgment.

44. The parties are asked to prepare a final form of order reflecting the terms of this judgment.

ANNEX 1

(WAVE FABRIC TOP)

ANNEX 2

(WAVE FABRIC)

RESPONSE BACK STRETCH.jpg

RESPONSE FRONT STRETCHED.jpg

ANNEX 3

(VISAGE FABRIC)

VIS BACK STRETCH.jpg

VIS FR .STRETCH JPG.JPG

ANNEX 4

(CINGO FABRIC)

CINGO BACKSTRETCHED.jpg

CINGO FR STRETCHED.jpg

ANNEX 5

(BENGAL KNITTEX FABRIC)

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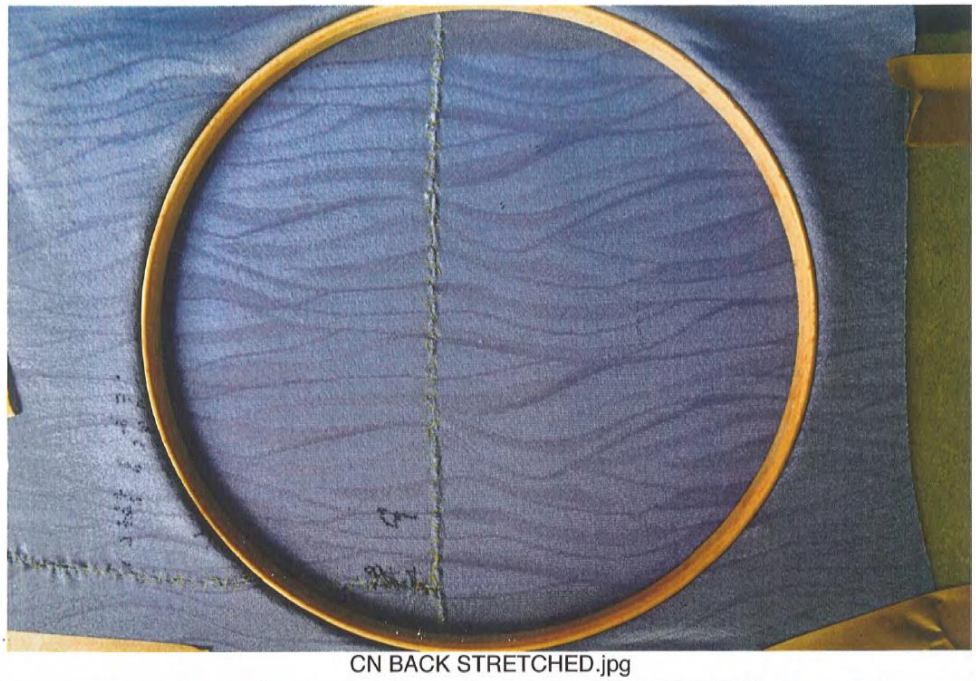
ANNEX 6

((SO-CALLED) CHINA NINGBO FABRIC)



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