

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

7 Rolls Building
Fetter Lane
London EC4A 1NL

Thursday, 28 October 2021

BEFORE:

MR JUSTICE WAKSMAN

BETWEEN:

EMIRATES NBD BANK PJSC

Claimant

- and -

(1) RASHED ABDULAZIZ ALMAKHAWI
(2) ABSULAZIZ RASHED ABDULAZIZMOHAMMED ALMAKHAWI

Defendants

MR W EDWARDS (instructed by DWF Law LLP) appeared on behalf of the Claimant
The Defendants did not appear and were not represented

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

MR JUSTICE WAKSMAN:

1. Subject to the two points on the order which may require changing, and subject to the question of service, I will make the freezing injunction. As I said at the beginning, the evidence and the skeleton argument make plain that this judgment creditor, in a very substantial amount of money (£68.6 million) as a result of the judgment ultimately of the Cour de Cassation in May 2019 in the UAE, is now seeking to enforce it here by way of an application for summary judgment, and on the face of it there is certainly a good, arguable case. I have been taken to what possible defences might be raised, but they seem unlikely at this stage. Substantively, so far as the English property is concerned, there is clearly a good, arguable case on the basis that the beneficial interest therein purportedly transferred for nil consideration from the father to the son (the first and second defendants), never moved. If so, it is a matter which can be the subject of execution providing that the judgment is recognised here. Alternatively there is a case for setting aside a transfer at an undervalue under section 423. None of the material disclosure points trouble me at this point.
2. I have been concerned about the question of delay. There has been a delay of a year. Analytically the reason why delay might be relevant is because, first, it may show that the claimant actually never really believed there was a real risk of dissipation. That does not seem to be the case here, and it is somewhat unclear as to how that impacts upon whether there is in fact a risk of dissipation. Secondly, the delay might mean that any assets sought to be restrained have already moved. That does not really arise here. Certainly for present purposes, that is not fatal to this application, and I understand the need for a coordinated move in New York and England in relation to what I might refer to as the western assets, which have not previously been the subject of any challenge; there was always the danger of tipping off the defendants to move assets in one jurisdiction when it discovered that there was a move in another jurisdiction, and I follow the logic of that argument. It does not mean the defendants might not take a point on delay, but it is not fatal at this stage.
3. So, that is all I think I need to say. I should perhaps deal with this. There is obviously a real risk of dissipation so far as the first defendant is concerned. It appears he has been dissipating properties in a number of different jurisdictions, on the face of it all clearly

with the aim of avoiding enforcement of the judgment against him. It can be said that the decision to transfer for more consideration to his son the property the day after the Cour de Cassation judgment is nothing more than a remarkable coincidence, and so it may prove to be, but on the face of it there is a strong inference that this was being done to move the assets at least out of his legal ownership.

4. As Mr Edwards has pointed out, the case against the second defendant is inferential. He is simply the recipient of the property and nothing is really made about his willingness or otherwise to move the property if and when he is made aware of these proceedings. However, in this context there is a strong inference that he is doing the bidding of his father and he cannot be unaware of the collapse of his father's business and the resulting claims against him, and that seems to me for present purposes to lead to a real risk of dissipation of the property by him.

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

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge