Neutral Citation Number: [2024] EWHC 2170 (Comm)

Case No: LM-2023-000109

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

The Rolls Building
7 Rolls Buildings
London, EC4A 1NL

Date: Friday, 26th July 2024

Before:

MR PAUL STANLEY, KC
(Sitting as a Deputy High Court Judge)

- -

Between:

CANADA INC	**Applicant**
- and -	
SOVEREIGN FINANCE HOLDINGS LIMITED & Others	**Respondents**

- -

MR LUKA KRSLJANIN (Counsel) appeared for the **Applicant**
THE RESPONDENTS were not present or represented

- -

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

JUDGE STANLEY:

Introduction

1. This is the return date of a worldwide freezing order granted by His Honour Judge Bird on 4th July 2024 and continued by me to this adjourned return date on 18th July 2024. The application has been resolved by consent so far as the third to fifth respondents to the order are concerned, and I am not therefore concerned directly with their position. The application is, however, effective against the first respondent, Mr Makanjuola, who is the second defendant in the action, and the second respondent, Mrs Makanjuola, who is the third defendant in the action. Neither of the Makanjuolas has appeared today, but I am satisfied that both of them were aware that this hearing was taking place and of how they could participate if they wished to do so. In the past, Mr Makanjuola has corresponded with the court about this hearing which was adjourned to this date, in part, at his request.

2. For reasons that will become apparent, the main issue that has concerned me and on which I have heard submissions from Mr Krsljanin on behalf of the claimant (whom I shall call "Canada") is the strength of the evidence concerning a risk of dissipation. I have ultimately concluded that the evidence is sufficient to enable me to continue the injunction and that it would be just and convenient for me to do so, and I will now explain the reasons for reaching that conclusion.

Procedural History

3. The claim in this case was issued by Canada on 31st March 2023. It sought judgment on a debt claim in respect of a facility agreement against the first defendant, with whom I am not concerned, and, so far as the Makanjuolas were concerned, under an associated guarantee.

4. On the same day that the claim was issued, the claimant applied *ex parte* on notice to Foxton J for a worldwide freezing order. Foxton J refused to make that order because he was not satisfied that there was sufficient evidence of a risk of dissipation. No transcript of that hearing has been obtained, but Canada's solicitors, Seladore Legal, made an attendance note which records that the judge considered the submissions of risk of dissipation under four headings.

5. First, he considered the evidence of failure to pay. He noted that this was a feature of many applications and did not consider it even a building block in a contested debt claim when it came to risk of dissipation.

6. Secondly, he considered the suggestion that the defendants had a poor track record on business. He considered that could not be sustained on the evidence before him and noted that it did not include any specific evidence of activity which could be regarded as any form of dissipation.

7. Thirdly, he considered some specific evidence about a particular project, “Project Blade”. He rejected the contention that the evidence about that project disclosed a risk of dissipation.

8. Fourthly, he considered evidence that the Makanjuolas managed their assets in a complex and opaque way involving offshore companies and trusts. Foxton J noted that, while such evidence was relevant as demonstrating what he called "ease of dissipation", it was of limited if any relevance in demonstrating risk of dissipation.

9. His overall conclusion is recorded as follows:

> "This is a speculative case that relies on the absence of explanation from the respondents having found anything positive sufficient to establish a real risk objectively identifiable on the basis of the evidence that I must be satisfied of before I grant an order of such a far-reaching kind. For such reasons, the application is refused."

10. The substantive case then proceeded. The defendants advanced what were, it can fairly be assumed in the light of subsequent events since, bad defences, including at one point a denial that the guarantee had been signed by the claimant, which was not maintained after the signed document was produced.

11. In September 2023 a settlement agreement was reached which was incorporated into a Tomlin order on 2nd October 2023. The settlement agreement was not performed and, shortly before it was due for performance, Mr Makanjuola apparently proposed a new settlement agreement which would have extended payment by a year and subjected the agreement to Nigerian law. This was rejected and the claimant sought to enforce the settlement agreement.

12. On 14th March 2023, the Makanjuolas' legal representatives ceased to act. That led to applications for an adjournment, which partly succeeded; and a costs order for the costs thrown away was made against the Makanjuolas without opposition.

13. On 22nd April 2024 HHJ Pelling KC entered judgment, having concluded that there was no defence to the claim, with costs on an indemnity basis pursuant to the settlement agreement. Judgment is for the principal sum of £3.46 million and £140,000 with interest, in addition to costs. There are also outstanding unpaid costs orders.

14. One feature of that hearing to which Mr Krsljanin referred me was that HHJ Pelling KC challenged Mr Makanjuola on why the rather small sum that he had ordered should be paid as costs for the adjournment in March, and which Mr Makanjuola had accepted would be paid, had not been paid. The judge was told this was an oversight and that it would be promptly remedied. It was not. Mr Krsljanin says the bank can infer that the sum had not been paid because the Makanjuolas decided not to pay it. I consider that, in the absence of any explanation from them, that is a fair inference, especially as it has still not been paid.

15. In late June 2024 the claimants learned of what looked to be a listing for sale of a London property in which the Makanjuolas appeared likely to have an indirect interest. This, because it looked like a specific instance of dissipation, is what led to the application for a worldwide freezing order which came before HHJ Bird on 4th July and which he granted without notice. It is now apparent, though no blame at all attaches to the claimants for this, that this was a false alarm. The property had in fact

been sold on the instructions of a mortgagee bank some considerable time earlier. Although Mr Krsljanin seeks to draw some support from some peripheral aspects of these events, it cannot be regarded as an instance of dissipation. The issues with the companies that sold the property and with the buyer have now been resolved, or largely resolved, by agreement.

16. HHJ Bird's order contained the usual requirement for disclosure of assets. The Makanjuolas did not comply. When the matter came before me on 18th July 2024, they wrote to the court asking for a seven-day adjournment to enable settlement discussions to, as it was put, "complete", which I understand to mean "take place". That was consistent with what they had said around the same time to the claimant.

17. For case management reasons, in order to facilitate the consideration of all the issues with all the respondents which were then still live, I granted an adjournment to today. I continued HHJ Bird's order in the meantime with immaterial variations, and included the orders in relation to the disclosure of assets. I suggested that the Makanjuolas should be reminded in clear terms of their obligations to disclose assets, of which they were apparently in breach.

18. Seladore Legal did this by a comprehensive letter that they sent on 19th July 2024. That letter stated:

> "You were required to provide us with information about your assets by 4.30 pm on 11th July 2024. As we have made clear to you in previous correspondence, you are in continuing breach of paragraph 13 of the WFO. This is an extremely serious matter and you are each *prima facie* in contempt of court as a result of having failed to provide us with the affidavits by 11th July 2024 as the court ordered. If the court concludes that you are indeed in contempt of the court, this could have very serious consequences for you, including potentially a prison sentence. That is a matter that the court could address at a later court hearing.
>
> In addition to the matter of contempt of court, you should be aware that our client will rely at next week's hearing upon your breach of the WFO by failing to provide information about your assets and the ongoing nature of that breach as a further basis to show that there is a risk of dissipation of assets by each of you so as to justify continuing freezing in relation to your assets.
>
> We therefore encourage you to comply with paragraph 13 in the WFO, subject to the removal of 13(b), and reiterate that we would encourage you to seek legal advice in relation to the matters addressed in this section, and indeed in relation to the WFO generally."

No response to that latter has been received; no disclosure has been given; and no evidence has been served.

The Test

19. In order to justify the grant of a worldwide freezing order, the court must be satisfied that there is a good arguable case on the merits; that there is a real risk of dissipation; that there are assets which need to be caught by the order; and that it is just and convenient to make the order sought. In this case I am fully satisfied both as to the existence of a sufficient case on the merits and as to the existence of property that will be caught by the order.

20. As to the merits, there is not merely a good arguable case: there is an irrefutable case, given the terms of the judgment.

21. As to property, the evidence is that the Makanjuolas have a lifestyle and history of transactions which is at least indicative of the likelihood that there are some underlying assets somewhere. It will not, therefore, be a case of an order which is merely harassing and achieves nothing. I would also be willing to draw an inference against them in that respect from their non-compliance with the existing order's asset disclosure obligations.

22. On the other hand—and this is a point that I regard as more relevant to the overall just and convenient discretion than to the binary question whether there are likely to be assets—the claimant has not been able to identify any specific asset which is the focus of the relief sought or which is in particular subject to a risk of dissipation.

23. The core question, to my mind, concerns that risk. Even after judgment, a freezing order is not designed to be a means of putting pressure on a recalcitrant debtor to settle a debt. It is only legitimate as a way of meeting an objectively established risk that the debtor will not merely fail or refuse to settle a debt voluntarily, but will take steps to engage in conduct of the sort which is described as dissipation. As it was put in *Lakatamia Shipping Company Limited v. Morimoto* [2019] EWCA Civ 2203; [2020] CLC 562 at 34 (Haddon-Cave LJ), "putting the assets out of reach of a judgment whether by concealment or transfer", which also needs to be unjustified dissipation, not, for example, in the ordinary course of business, as the Court of Appeal made clear in *Lakatamia* and as the authorities consistently hold.

24. The cases, therefore, and a long run of them, establish the following propositions. Firstly, the burden lies on the applicant for a worldwide freezing order to establish that there is a real risk of dissipation. Dissipation means what I have just said. Real risk means a risk, not a probability, as again the Court of Appeal made clear in *Lakatamia*. It need not be shown than dissipation is more probable than not, but the risk must be established, as the Court of Appeal there held, on what is called solid evidence; i.e. not merely as a matter of suspicion, fear, or speculation.

25. Secondly, the assessment of a risk of dissipation will always involve consideration of a number of factors and the cumulative effect of all of them. In many cases a factor may be relevant but not in itself decisive, because its weight depends on its assessment in conjunction with all the other factors. It also follows that very little assistance is to be gained from analogies from one case to another, since much of the assessment is necessarily highly fact specific.

26. Thirdly, one such point is the existence of sophisticated structures such as trusts and offshore companies. As Foxton J said, those may be relevant because they can point to ease of dissipation, but such structures are adopted for a variety of reasons, including legitimate reasons of tax planning and privacy, and legitimate asset or insolvency protection. They are not, therefore, to be regarded as inherently suspicious or indicative of an intention to dissipate. They do, however, show that dissipation may be easier than it otherwise would be. (See *Lakatamia* at paragraph 34.)

27. Fourthly, another such point is a history of proven dishonesty or acts which there is a good arguable case are dishonest. But again the courts have sometimes needed to remind themselves that dishonesty, as such, does not necessarily point to a risk of dissipation, and in particular that unfocused allegations of dishonesty (the "bad chap" submission) are of limited value. The cases are fully summarised by the Court of Appeal in *Lakatamia* at paragraph 52. If the dishonesty relates to previous dissipation or to conduct akin to it, that is likely to be more telling.

28. Fifthly, another such point is a proven history of avoiding payment of a judgment debt. See, for example, the decision of Carr J (as she then was) in *The World LLC v. Dalal* [2019] EWHC 2993 (Comm) at paragraph 117. But, in and of itself, one should be careful about this particular consideration. In *The World LLC* it was the last of a number of far more specific factors that led Carr J to the conclusion that she reached, including specific evidence in that case relating to dissipatory acts. The mere fact that a judgment debt has not been paid would be an almost inevitable feature of many post-judgment cases. Plainly, it would not be sufficient in and of itself, and in my judgment not sufficient in and of itself even without explanation from the defendants, to justify an inference of risk of dissipation.

29. Sixthly, to summarise such points, Gee on Commercial Injunctions (at 449) contains the following synopsis of various decisions identifying various relevant matters:

> "The defendant's behaviour in respect of the claimants, including that in response to the claimant's claims; a pattern of evasiveness or unwillingness to participate in litigation or arbitration; or raising thin defences after admitting liability; or total silence; or promises to pay and persistent defaults with implausible excuses; or running up liabilities and not paying them; or incurring liabilities beyond his means; or transferring assets; or engaging in other conduct which may prevent enforcement. An offer of an undertaking may indicate an absence of risk. Failure to give proper disclosure of assets under a court order is indicative of risk."

In general, that passage summarises the fact that the court is concerned with all factors which give it objective indications as to the risk in the particular case.

30. Seventhly, I accept that, as Mr Gee points out, failure to provide information about assets in response to a court order may itself be directly relevant. It does, at the very least, if it is voluntary, demonstrate that the defendant is unwilling to comply with court orders; and that may strengthen the inference that the reason is that he or she is in fact intending to take steps that the order seeks to prevent, and which asset disclosure obligations seek to police. But it seems to me that, as with general

allegations of dishonesty, care would be required before inferring a risk of dissipation merely from that factor. It is, however, a relevant factor.

31. Eighthly, I accept, as Mr Krsljanin submitted, that the respondents' failure to provide answers to legitimate questions may, in appropriate cases, give rise to inferences. But much depends, I think, on the question that is said to call for an answer, and the commonsense assumptions that should be made about what the true position (if no answer is given) actually is or probably is. It is not the case that a respondent, by not engaging with or failing to serve evidence in response to an application such as this, must be taken to admit that there is a risk of dissipation or to show that there is. But the burden remains throughout on the applicant, as Gloster LJ made clear in *Holyoake v. Candy* [2017] EWCA Civ 92, at paragraphs 50 and 51. On the other hand, once a *prima facie* case is established or some particular matter calls for explanation, adverse inferences may, in appropriate cases, be drawn.

32. One possible way of thinking about these various factors, many as they are, not as watertight legal categories, but as a way of organising analysis, is in terms of means and opportunity, motive and propensity. Matters such as the existence of sophisticated structures go as such mostly to means and opportunity. That is undoubtedly relevant, but plainly in itself insufficient to establish a risk of dissipation. It becomes relevant only in conjunction with other factors.

33. As to motive, most litigants have, in the abstract, the motive to dissipate, and the significance to be attached to that may vary depending on the particular litigant's proven track record in relation to commercial obligations and its dealings with the court. Motive is the more telling, and begins to cross over into the next category I describe, where a litigation has shown that he or she is in fact intent on avoiding established or undoubted obligations.

34. What is likely to be most telling is any evidence which points to some actual plan or propensity to dissipate. The clearest case would be a known plan to do something that would amount to dissipation: an asset placed on the market, or instructions given to a bank or trustee. Other quite common cases are those in which there is an established track record either of attempting to dissipate in a particular case or of doing so in other similar cases. The least telling evidence is that which really amounts to little more than a suggestion in general terms that the respondent is the kind of person who might be inclined to dissipate. That can sometimes be an invitation to draw unacceptable stereotypes about particular types of defendant, and sometimes a way of giving unfocused allegations of dishonesty a force that they do not rationally deserve. It is important, in my judgment, to focus on the particular case and on the concrete facts of that case.

This Case

35. I turn therefore to this case. As to means or opportunity, Canada can, I think, legitimately refer to the Makanjuolas' ability to manage sophisticated international financial structures. But, as Foxton J pointed out (and in this respect matters have not really changed), that does not take one very far, and it certainly does not take one all the way.

36. I do not consider that the fact that the Makanjuolas hold their assets in jurisdictions where enforcement is likely to be difficult is of any relevance at all. The question is not whether enforcement will be difficult, for the purpose of the injunction is not to ease the path to enforcement but simply to prevent dissipation. The question, therefore, is whether there is a risk that it will be made more difficult by transfers which amount to dissipation. The fact that assets are already held in jurisdictions where enforcement is likely to be troublesome does little, if anything, to increase that risk. It may indeed reduce it. Nor do I attach any weight at all, I should make clear, to Mr Makanjuola's Saint Kitts and Nevis citizenship.

37. As to motive in the abstract, I do not think I would accept as a general proposition that the motive is stronger in a post-judgment case than a pre-judgment one. It may or may not be so. I doubt that that makes much difference. I do, however, for reasons that I shall explain shortly, accept the proposition that the Makanjuolas' actual conduct in this case shows that they do not have merely the motive to make enforcement difficult, but apparently an intention to do so. I turn therefore to that conduct and to the critical question of what it shows about the risk of dissipation.

38. I give no weight at all to the suggestion that any significance attaches either to the fact that the Makanjuolas have left the jurisdiction or to anything that they have said about that. They are entitled to live where they choose to live. There is no evidence that it has anything to do with this case. It seems to have happened some time in 2023 and it seems doubtful to me that it could have been designed to make enforcement difficult. Nor do I think, given the uncertainty of the evidence that the claimants can show, that the Makanjuolas dishonestly gave a false address in September 2023. They have certainly been quite open with the court and the claimant about their whereabouts during the proceedings which took place this year. I therefore disregard those points entirely.

39. There is, however, no doubt the Makanjuolas have a pattern of seeking to put off payment, even after it is obvious and even after it is accepted that payment is due. I agree with Canada that there is a material difference between a refusal to pay a contested debt (which, as Foxton J said, is not even a building block to a building block so far as risk of dissipation is concerned) and attempts to evade clear liabilities. The pattern in this case does indeed suggest that. That pattern includes the agreement of a settlement followed by an attempt to adjourn the proceedings before HHJ Pelling KC in circumstances where His Honour subsequently concluded that there was in fact no conceivable defence.

40. On the other hand — with the possible exception of the non-payment of the small sum which was ordered to be paid by cost, and the possibility that Mr Mkanjuola overstated his preparedness to instruct new lawyers in order to obtain an adjournment, or indeed the circumstances and reasons why he sought an adjournment of the return date last week — it has been a campaign of resistance which has largely been conducted in the open and largely conducted without much guile.

41. I do not accept, I should make it clear, the point made in the claimant's skeleton argument: that suggesting in submissions that some point will be taken about the fact that the claimant had not originally signed a guarantee would suggest sharp practice or dishonesty. The Makanjuolas accepted that they had signed the guarantee, and I was told that the document that had been produced at that stage did not bear the

claimant's signature. The non-compliance with the settlement agreement, although obviously not something which the court would approve, was not done clandestinely. It was effectively pre-announced by Mr Makanjuola attempting to reach alternative terms. The non-payment of the costs and the judgment debt are, in the last analysis, simply that: non-payment.

42. Nevertheless, I do think that, in considering the risk of dissipation, the conduct taken as a whole, and in particular the conduct in relation to the court where the adjournments were sought and when the costs were not paid, provides objective evidence of risk. Taken as a whole, it provides evidence of a willingness to be at least cavalier in dealings with the court and with Canada and one which goes, in my judgment, arguably beyond a range of legitimate resistance by a debtor to paying their debts. Many of the features identified by Mr Gee in the passage that I quoted earlier have been present in this case.

43. The second aspect of bad conduct is the failure to give disclosure in accordance with His Honour Judge Bird's order. I agree with Canada that it is amply apparent, in the light in particular of the letter that I have quoted above, that that is a deliberate decision on the Makanjuolas' part. I also agree that it may give rise, unexplained as it is, to significant adverse inferences. I debated this with Mr Krsljanin and in particular with whether it might be said that the true inference will be that the Makanjuolas prefer not to assist enforcement by disclosing their assets rather than that they wish to facilitate dissipation by not doing so.

44. I accept his submission, however, that this poses a false dichotomy. Either inference is plausible. Both are possible. But I do not have to decide between them. I am concerned with risk. If I ask myself a question whether a defendant's failure to comply with a court order for disclosure of assets gives rise to an inference that there is a risk that that defendant may dissipate assets, I have no hesitation in concluding that it does. That is sufficient.

45. I should add that I see little inherent evidence in the point canvassed, apparently, in the Singapore courts in a case referred to in Gee, called *Bouvier v. Accent Delight International Ltd* [2015] SGCA 45. In that case the Singapore Court of Appeal suggested that it would be unfair, in general, to use allegations about asset disclosure to shore up a weak case on risk of dissipation. For my own part, I would require more argument before concluding that it was unfair. It is a basic principle that orders, once made, are to be complied with, and, if there is unfairness in a particular order, a litigant can make an application to discharge or vary it.

46. Moreover, the Court of Appeal in that case itself said (and I quote from paragraph 104):

> "In our judgment, ancillary disclosure orders may only be relevant to the risk of dissipation in two narrow situations. The first is where the defendant refuses to provide any disclosure of his assets at all. This might, in appropriate circumstances, found the inference that there is a real risk that the defendant may dissipate his assets".

47. It seems to me, therefore, even on that authority and on the rather narrow view that the Singapore Court of Appeal apparently took of the matter, that the position here is precisely that. There has been no disclosure at all. Although I would agree with the Singapore Court of Appeal that the claimant is likely to get precious little mileage from a quibbling critique of asset disclosure which has been prepared under pressure of time, that is not the position here at all.

48. This is not an easy case, as it no doubt appeared when the defendants thought, wrongly as it turns out, that they had identified a specific example of dissipation. The fact that specific evidence of dissipatory acts, or a past history of dissipation such as was present in *The World LLC*, is lacking cannot be a positive point where the burden lies on the claimants. On the other hand, when the court is assessing that risk, it cannot be regarded as an indispensable element of proof that the claimant can already point to some act of dissipation. Risk is inherently a forward-looking concept.

49. In the event, I am satisfied by a combination of factors that there is a risk that amounts here to a real risk of dissipation. The key factors, in my judgment are, firstly, the existence, through reasonably sophisticated financial structures held internationally and long established on relatively easy means of dissipation, which does not itself indicate a risk but which exacerbates any risk which is otherwise present. Secondly, a pattern of evasiveness, raising thin defences after admitting liability, total silence, promises to pay and persistent defaults with implausible excuses, does, in my judgment, give rise to an objectively verifiable, evidence-based, lack of trustworthiness and integrity in relation to the Makanjuolas' dealings with this particular liability and, moreover, a positive intention on their part to resist paying it. They go beyond, in other words, general mud throwing. Thirdly, the unexplained refusal to provide even the most basic asset disclosure in response to His Honour Judge Bird's order despite being informed of that and despite being reminded of it, from which I consider that inferences of risk at least can be drawn.

50. For that combination of reasons taken together, I am satisfied that there is a real risk of dissipation and that it is just and convenient that the order of His Honour Judge Bird should be continued notwithstanding the change of circumstances that has taken place in the light of the evidence as it has emerged.

- - - - - - - - - - - - -

(This Judgment has been approved by the Judge.)

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com