Neutral Citation Number: [2024] EWHC 2927 (Comm)

Claim No: CL-2023-000152

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
WITHOUT NOTICE
IN PRIVATE

Released in public without reporting restrictions on 28 February 2025
Following expiry of the Seal and Gag Order

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 15/11/2024

Before :

The Hon. Mr Justice Bryan

- -

Between :

CANCRIE INVESTMENTS LIMITED SARL **Claimant**

- and -

MR ZULFIQUR AL TANVEER HAIDER **Defendant**

- and –

EFG PRIVATE BANK LIMITED

Respondent

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George Hayman KC and **Duncan McCombe** (instructed by **Lewis Silkin LLP**) for the **Claimant**

Hearing date: 15 November 2024

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APPROVED JUDGMENT

MR JUSTICE BRYAN

A. INTRODUCTION

1. There is before me today, the hearing of what the Claimant categorises as Stage 1 of a two-stage application process. Stage 1 is the Claimant's without notice application for an order sealing the court file in respect of, and preventing the Respondent 3rd party bank ("EFG Bank") from informing the Defendant or anyone else of, the Claimant's Stage 2 application for third party disclosure against EFG Bank. In the language commonly used in respect of such orders, inelegant though it is, I will refer to Stage 1 as the "Seal and Gag Application" and Stage 2 as the "Disclosure Application".

2. A Seal and Gag Order (Stage 1) is sought because the Claimant fears that, if the Defendant were to know of the Disclosure Application (Stage 2), the Defendant may take steps to dissipate his assets. This is in the context where the Disclosure Application is sought in circumstances where the Claimant says that the Defendant has provided insufficient disclosure of his assets in breach of the requirements of a worldwide freezing order, that there is an extant real risk of dissipation, and that the worldwide freezing order is being breached.

3. If the Seal and Gag Order is made (Stage 1), then the Claimant intends to serve the Disclosure Application (Stage 2) on EFG Bank which will then proceed on notice to EFG Bank but without notice to the Defendant. I am told that such a two-stage process is a standard approach to such third-party disclosure applications in the BVI and in Hong Kong (see *CIF v DLG* (BVIHCM2023/0050) and *Asiya Asset Management (Cayman) Ltd v Dipper Trading Co Ltd* [2019] HKCFI 1090 respectively).

4. This application is being brought back before the Court pursuant to a liberty to restore provision in an order of Butcher J, which adjourned the application following a short hearing on 22 July 2024 (the "July Hearing"). At that hearing, the Claimant had sought determination of "wrapped up applications", namely for both the Seal and Gag Application and the Disclosure Application at the same time, both without notice to the Defendant or EFG Bank, and had sought for those applications to be heard in private. Butcher J decided that the application in that form should not be heard in private and, although expressly not deciding the point, expressed scepticism as to whether the application should be heard without notice, at least to EFG Bank. In the light of that decision, the Claimant sought and obtained the adjournment of the wrapped-up application in order to consider how best to proceed.

5. I have to say that I very much agree with the view of Butcher J that the Disclosure Application should have been on notice to EFG Bank, but in the light of the bifurcated approach to the applications now advanced, and the written submissions in the Skeleton Argument for today's hearing, and notwithstanding the open justice principle and the terms of CPR 39.2(1), I was satisfied that the Seal and Gag Application must be heard in private, as to hear it in public would be to defeat the very object of the hearing (see CPR 39.2(3)(a)) and the purpose of the Order sought and potentially prejudice the Disclosure Application contemplated to follow, set against a backdrop of existing evidence (and findings) as to the risk of dissipation of assets on the part of the Defendant, and in that context I was also satisfied that it was necessary to sit in private so as to secure the proper admission of justice (CPR 39.2(3) and CPR 39.2(3)(g)).

6. I accordingly ruled, at the start of today's hearing, that the hearing must proceed in private, with a judgment to follow that would also be in private, but which could be made public following compliance by EFG Bank with any order on the Disclosure Application (if a Disclosure Order was made hereafter). Whilst I have differed from Butcher J as to the hearing being in private, this bifurcated application is not the same as the "wrapped-up" application that was before Butcher J as it strips out the Disclosure Application which clearly should be on notice to EFG Bank, and it will be for another day for it to be decided whether that hearing should be in private.

B. FACTUAL BACKGROUND

7. The Claimant is the assignee of the benefit of a judgment debt arising from a judgment in the United Arab Emirates (the "UAE Judgment"). The Defendant is an individual formerly resident in the UAE, but now resident in London. The Defendant states that he was forced to leave the UAE illegally after having become the victim of a fraud which led to his wrongful imprisonment (see the First Witness statement of Richard Slade ("Slade 1") at paragraphs 14-28).

8. By its claim, the Claimant seeks to enforce the UAE Judgment in this jurisdiction. The background to the UAE Judgment was set out by Mr Nigel Cooper KC (sitting as a Deputy High Court Judge) at [5]-[18] of his judgment in these proceedings dated 22 July 2024 following a hearing on 8-9 May 2024 (the "May Hearing Judgment"). The UAE Judgment found the Defendant to be liable to Abu Dhabi Commercial Bank ("ADCB") in the sum of United Arab Emirates Dirham ("AED") 362,000,000 (roughly the equivalent of £81,671,000). The benefit of the UAE Judgment was assigned by ADCB to the Claimant by an assignment agreement dated 19 August 2022 (the "Assignment").

9. The Claimant issued this claim on 16 March 2023. At a without notice hearing on 18 July 2023, HHJ Pelling KC (sitting as a Judge of the High Court) granted a worldwide freezing order against the Defendant in the sum of £88 million, together with ancillary asset disclosure orders (the

"WFO"). This was continued in the form of undertakings given by the Defendant to the Court at the return date before Dias J on 25 July 2023 (the "Continuation Order"). Between the granting of the WFO and the hearing before Dias J, the Defendant served his Defence, and applied to strike out the claim (the "Strike Out Application").

10. The Claimant's application to continue the freezing relief (the "Continuation Application"), the Strike Out Application and a (very late) application for summary judgment issued by the Defendant (the "Summary Judgment Application") were all heard at the hearing on 8-9 May 2024 (the "May Hearing"). In the May Hearing Judgment, which was handed down on 22 July 2024, the Judge allowed the Continuation Application and dismissed both the Strike Out Application and the Summary Judgment Application. The Court accordingly made an order continuing the freezing relief against the Defendant (the "Second Continuation Order"). It also ordered the Defendant to pay the Claimant's costs of all the applications heard at the May Hearing, and that the Defendant should pay the Claimant an interim payment on account of those costs of £209,000. That amount remains unpaid. I will refer to the WFO, the Continuation Order and the Second Continuation Order collectively as the "Freezing Orders".

11. Meanwhile, on 2 February 2024, Foxton J heard an application by the Defendant to vary the freezing relief in the Continuation Order (the "Variation Application") to allow him to sell the only substantial asset in which he had admitted to having an interest in his affidavit of assets, a residential property in London ("16 Price's Court"). The application was dismissed.

C. EFG BANK

12. EFG Bank is not a party to these proceedings. It is a respondent to the Disclosure Application (and therefore the Seal and Gag Application) purely for the purposes of disclosure in support of the Freezing Orders. It appears from the evidence currently available to the Claimant that the Defendant and the Defendant's family have an extensive banking relationship with EFG Bank. This includes:

    (1) At least two accounts held by the Defendant (believed to be joint accounts held with the Defendant's wife – Ms Hussain) (see the Sixth Witness Statement of Fraser Mitchell ("Mitchell 6") at paragraphs 86 and 108-110).

    (2) Lending secured on 16 Price's Court, as well as on other family assets in which the Claimant infers (but the Defendant denies) that the Defendant also has an interest (see Mitchell 6 at paragraph 78).

    (3) Various investment portfolios and deposits in which the Claimant infers (but the Defendant denies) that the Defendant has an interest (see Mitchell 6 at paragraph 100).

13. EFG Bank has been on notice of the WFO since it was granted. The Claimant's case is that there are a number of assets which appear to be held with EFG Bank in the sole name of Ms Hussain even though the Defendant appears to have an interest in them. The Claimant has written to EFG Bank concerning those assets, and has asked for confirmation that EFG Bank regards those assets as subject to the Freezing Orders. Perhaps unsurprisingly (given its obligations to those with whom it is in a banking relationship) EFG Bank has not provided such confirmation, stating that: "We are unable to comment on any account without the client's consent or unless compelled to by a court order.".

14. EFG Bank has not been given any notice of this application, in circumstances where the purpose of seeking the Seal and Gag Order is to ensure that EFG Bank does not inform the Defendant or his family of the Disclosure Application (which it may otherwise be legally bound or feel obligated to do). Making the Seal and Gag Application on notice to EFG Bank would therefore risk EFG Bank informing the Defendant or his family of the Disclosure Application rendering the Seal and Gag Order pointless. If the Seal and Gag Order is granted, the Claimant intends to proceed with the Disclosure Application on notice to EFG Bank (but without notice to the Defendant).

D. THE DISCLOSURE APPLICATION IN OUTLINE

15. On this application it is not necessary to address the Disclosure Application in detail. It suffices to say that it is made under section 37 Senior Courts Act and/or the Court's inherent jurisdiction and under the *Norwich Pharmacal* jurisdiction. The disclosure sought relates:-

    (1) To documentation and information relating to two specific accounts held by EFG Bank, which the Claimant understands are accounts jointly held by the Defendant and his wife.

    (2) To documentation and information relating to specific investment portfolios and deposits of which the Claimant is currently aware.

    (3) An order requiring EFG to identify any other accounts or deposits held at EFG Bank by the Defendant or Ms Hussain or financing arrangements entered into between EFG Bank and the Defendant and Ms Hussain of which the Claimant is not aware.

E. THE SEAL AND GAG ORDER SOUGHT

E.1 The Legal Framework

16. As is said in *Grant & Mumford – Civil Fraud* (7th Edn, Sweet & Maxwell 2022 at 31-003): "The court can grant such an order under its inherent jurisdiction to ensure that its orders are not rendered futile and ineffective to achieve their purpose". The *Practice Guidance (Interim Non-disclosure Orders)* [2012] 1 WLR 1003 issued by Lord Neuberger MR expressly states at

paragraph 1 that such orders may be granted in support of *Norwich Pharmacal* relief. The *Norwich Pharmacal* jurisdiction is one of the bases for the Disclosure Application.

17. The *Practice Guidance* makes clear that such orders restrict the exercise of Article 10 rights to freedom of expression. Section 12 of the Human Rights Act 1998 is therefore engaged, which provides:

> "**12. Freedom of expression**
>
> (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> (2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—
>
> (a) that the applicant has taken all practicable steps to notify the respondent; or
>
> (b) that there are compelling reasons why the respondent should not be notified."

18. The *Practice Guidance* also makes clear (at paragraphs 9-15) that Seal and Gag Orders are derogations from the principle of open justice:

    (1) Thus, such derogations "can only be justified in exceptional circumstances, when they are strictly necessary measures to secure the proper administration of justice. They are wholly exceptional… Derogations should, where justified, be no more than strictly necessary to achieve their purpose." (at paragraph 10).

    (2) Whether to grant such derogations "is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test…" (at paragraph 11).

    (3) "The burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence..." (at paragraph 13).

E.2 Whether a Seal and Gag Order should be made

19. The Claimant submits that the Seal and Gag Order sought is strictly necessary to secure the proper administration of justice for the following reasons:

    (1) First, it is said that there is a real risk of dissipation in this case.

    (2) Second, it is said that the Defendant has not complied with his asset disclosure obligations

under the Freezing Orders, it is to be inferred because he wishes to frustrate the Claimant's attempts to police those Freezing Orders.

(3) Thirdly, nor has the Defendant complied with his obligations to disclose the source of the payment of his living expenses and legal fees under the Freezing Orders.

(4) Fourthly, as a result, the Claimant has limited knowledge of the Defendant's assets and is not able properly to police the Freezing Orders and seeks, via the Disclosure Application, further information to allow it to do so.

(5) Fifthly, it is submitted that if the Defendant were to come to know of these steps, it is likely, or at the very least there is a real risk, that he will seek further to dissipate his assets, frustrating the purpose of the Disclosure Order sought.

(6) Sixthly, it is submitted that the Seal and Gag Order is the minimum necessary to secure the proper administration of justice.

20. I will address each of these issues in turn.

Real Risk of Dissipation

21. In granting the Freezing Orders, the Court has been satisfied that there is a real risk of dissipation. HHJ Pelling KC found that there was a real risk of dissipation on the basis of the evidence in the First Affidavit of Prashan Patel ("Patel 1") at paragraphs 113-143 when he granted the WFO. In fact the Defendant conceded for the purposes of the Continuation Application that there was a real risk of dissipation. The Claimant submits that the evidence of risk of dissipation is, as it puts it, "literally overwhelming" based on the following points:-

(1) First it is submitted that the Defendant is not a party that takes Court orders, even extremely serious ones like WFOs, seriously. I consider that there is force in this submission. In this regard the Claimant points out that the Defendant's asset disclosure was late on two occasions, and no apology has ever been offered (see the Third Affidavit of Prashan Patel ("Patel 3") at paragraphs 11-16 and paragraphs 23-27).

(2) Secondly, it appears that the Defendant's asset disclosure has been unsatisfactory in failing to disclose seemingly valuable assets in this jurisdiction and overseas and in some cases in the face of public records filed on his behalf which show the Defendant to be the owner (as to which see Patel 3 at paragraphs 39 to 99).

(3) Thirdly, the evidence before me is that the Defendant's son, Masroor Haider, has lied in order to seek to cover up his father's asset position, specifically in relation to an offshore company which owns valuable real estate in this jurisdiction (see Patel 3 at paragraphs 42-58 and

Mitchell 6 at paragraphs 25-28). When this point was made in the Claimant's evidence and Skeleton Argument for the May Hearing (§80(c), it was not contradicted by any evidence or submissions on the part of the Defendant.

(4) Fourthly, the Claimant submits that it is likely that the Defendant is in breach of the Freezing Orders in failing adequately to disclose the source of payment of his legal fees and living expenses (see Patel 3 at paragraph 19, 25 and 100-108), as addressed further below.

(5) Fifthly, the Claimant's position is that the Defendant is also in breach of the Freezing Orders in making payments of adverse costs orders in other proceedings he is pursuing in this jurisdiction without first obtaining the consent of the Claimant (see Patel 3 at paragraphs 32-34)

(6) Sixthly, the evidence before me is that the Defendant attempted to sell the only substantial asset which he admits to owning without informing the Claimant (see Patel 3 at paragraphs 21-24, 28 and 35-38). When the Claimant discovered this and objected to the Defendant's lack of transparency, the Defendant applied to vary the freezing relief to enable a sale, but this application did not succeed with Foxton J stating that there were "legitimate queries", "legitimate questions" and "pertinent questions" posed by the Claimant as to the Defendant's asset position which he had not answered (see Foxton Judgment at [9]-[15]). Notwithstanding being invited to answer any such questions subsequently, the Defendant has not done so.

(7) Seventhly, the Defendant has stated that his interest in a valuable London property is in fact held on trust for his son, and he has produced a signed declaration of a bare trust to that effect dated 15 September 2014 (see Slade 1 at paragraph 71). The Claimant submits that if this is correct, then the Defendant and his wife must have lied about this to EFG Bank in order to obtain a loan secured on that property, by misrepresenting that they were the joint beneficial owners (referring to Clause 5.16(a) of the Loan Conditions). This point was raised by the Claimant at the hearing of the Variation Application and the May Hearing, but no explanation has been forthcoming from the Defendant.

22. I am satisfied, on the basis of the evidence before me, like other judges before me, that there is a real risk of dissipation of assets on the part of the Defendant on the basis of the matters relied upon by the Claimant, and this is a reason as to why the Seal and Gag Order is necessary.

Adequacy of Disclosure of Assets

23. I turn to the second reason relied upon by the Claimant as to why it is said that the Seal and Gag Order is necessary, namely it is said that the Defendant has not complied with his asset disclosure

obligations under the Freezing Orders.

24. In this regard, Mr Slade has said in a Witness Statement served on behalf of the Defendant that: "Mr and Mrs Haider enjoyed very substantial wealth in the UAE… They led an extremely opulent lifestyle..." (see Slade 1 at paragraph 59). Yet the only asset in which the Defendant has declared an interest is a half share in 16 Price's Court, said to be worth approximately £200,000 (see the Defendant's Affidavit of Assets at paragraph 2). Mr Slade has said on behalf of the Defendant that the Defendant's substantial wealth "was lost when Mr Haider was ejected from the Delma companies in 2016… Accordingly, Mr and Mrs Haider have been left with such assets as they had outside the UAE" (see Slade 1 at paragraph 60). It would follow, if the Defendant is to be believed, that those assets are either of very limited value or he retains no interest in them.

25. However the Claimant submits that that position is not credible:

    (1) First, it relies upon the fact that, at the hearing of the Variation Application, Foxton J stated that there were "legitimate questions" posed by the Claimant as to the Defendant's asset position which he had not answered. The Claimant has subsequently sought to obtain answers to those questions, but has not received the same.

    (2) Secondly, as addressed in paragraphs 102(b) and 122-138 of Patel 1 and paragraphs 42-58 of Patel 3 and paragraphs 25-28 of Mitchell 6, the Defendant was until June 2024 registered at Companies House as holding more than 25% of the shares and voting rights in a Guernsey Company called Infinity International Realty Limited ("Infinity"). Infinity in turn is the registered owner of two valuable properties in London which are mortgaged to EFG Bank (see Mitchell 6 at paragraph 23(b)). No mention of this interest is made in the Defendant's Affidavit of Assets, with the Defendant simply stating that, "I own no shares in any of the three companies identified at Schedule D" to the WFO, which included Infinity. The Defendant has asserted that (contrary to the position at Companies House until very recently) he has not had any interest in Infinity since 25 April 2021, all of which has allegedly been owned by his wife since then (see Slade 1 at paragraph 83-85). The Claimant points out that notwithstanding the Defendant's beneficial ownership being raised with Infinity in February 2023, the register was not amended until at least 18 June 2024. No explanation has been provided for the delay. The Claimant also asserts that the Defendant's son has lied about attempts to correct the position.

    (3) Thirdly, and similarly, as explained at paragraph 102(a) of Patel 1, paragraphs 70-75 of Patel 3 and paragraph 23(a) of Mitchell 6, the Defendant was until June 2024 registered at

Companies House as holding more than 25% of the shares and voting rights in a BVI Company called Intelcore Consultants Limited ("Intelcore"). The evidence before me is that Intelcore is the registered owner of a valuable commercial property in Leicester (Patel 1 at paragraph 102(a)). No mention of this interest is made in the Defendant's Affidavit of Assets (again, the Defendant simply stated: "I own no shares in any of the three companies identified at Schedule D" to the WFO, which included Intelcore). The Defendant has asserted (contrary to the position at Companies House until very recently) that he has no interest in Intelcore which he says has been owned by his wife since 2018. The Claimant questions the veracity of this statement (as addressed at paragraphs 70-75 of Patel 3) and also points out that no amendment was made to the public record at Companies House until June 2024.

(4) Fourthly, the Defendant is the registered owner (along with his wife) of a further valuable London property, Flat 60, Wolfe House, in Kensington. It is the Defendant's position that they hold this property on trust for their son (Affidavit of Assets at paragraph 4). However, if this is right, then the Claimant's submission is that the Defendant and Ms Hussain appear to have lied to EFG Bank when obtaining lending secured on that property by misrepresenting that they were joint beneficial owners of it (see Mitchell 6 at paragraph 78(c)).

(5) Fifthly, as for 16 Price's Court, the Defendant states that Ms Hussain has a 50% interest in this property (see the Affidavit of Assets at paragraph 2). The Claimant's point is that neither the Defendant, nor Ms Hussain, have been able to explain how Ms Hussain's interest arises where she has no identified independent sources of wealth and 16 Price's Court is not the family home. In this regard the evidence before me is that the Defendant and Ms Hussain currently live in expensive rented accommodation elsewhere (see Mitchell 6 at paragraph 95(b)).

(6) Sixthly, it is the Claimant's case that documentation provided by the Defendant also suggests the existence of considerable non real property assets in the UK (as addressed at paragraphs 98-101 of Mitchell 6). In this regard Mr Slade, the solicitor for the Defendant and his wife, stated on behalf of the Defendant at the hearing of the Variation Application that there were no such assets except "a fund of cash which the bank, in common with many private banks, required Mrs Haider to lodge with the bank, but that, of course, is a cause of action.". No response has been provided by the Defendant to requests for further information and evidence concerning this fund (see Mitchell 6 at paragraph 101).

(7) Seventhly, documentation that the Defendant has himself provided suggests the existence of a further London property as well as another Guernsey company and a Guernsey Trust in which the Defendant may have an interest. None of these were mentioned in his Affidavit of Assets

(see Patel 3 at paragraph 69).

(8) Eighthly, the Claimant says that, on the basis of documentation that the Defendant has himself provided, he has considerably undervalued his interest in various Canadian properties (see Patel 3 at paragraphs 81-90).

(9) Ninthly, according to SEC Filings, the Defendant is the owner of shares in Tingo Inc (a US listed entity). This interest was not mentioned in the Defendant's Affidavit of Assets (again, the Defendant simply stated: "I own no shares in any of the three companies identified at Schedule D" to the WFO, which included Tingo Inc). The Claimant has asked questions about this (to determine whether the value of this asset exceeds the threshold of £50,000 to be disclosed under the WFO), but has only received a bare denial suggesting that the public record must be wrong (see Patel 3 at paragraph 94).

(10) Tenthly, it is the Claimant's case that since leaving the UAE, and as is addressed in Patel 1 at paragraphs 113-143, the Defendant has engaged in a process of divesting himself of his assets for no consideration to family members. The Claimant's position is that the Defendant appears to accept that this was the case with him arguing that such divestment was not inappropriate because he did not know about the UAE proceedings at the time (see Slade 1 at paragraphs 59-116). However, I note that at [119] of the May Hearing Judgment, the Judge concluded that there was a plausible inference that the Defendant did have knowledge of the UAE proceedings.

26. I do not consider that it would be appropriate, in circumstances where the Claimant may potentially bring proceedings against the Defendant hereafter, for alleged failures in the Defendant's asset disclosure in breach of the terms of the WFO, for me to make findings on such matters. I am satisfied, however, as previous judges have found before me, that there is, and remains, a real risk of dissipation of assets on the part of the Defendant on the evidence before me, and also that it is properly arguable that the Defendant has not complied with his assets obligations under the Freezing Order, which supports the Claimant's submission that the Defendant has not complied as he is seeking to frustrate the Claimant's attempts to police the Freezing Orders.

Compliance with disclosure obligations as to the source of payment of legal fees

27. I understand that the Defendant initially made no disclosure as to the source of the payment of his legal fees (notwithstanding the terms of the Freezing Orders). The evidence before me is that during the Defendant's request for security for costs it emerged that his wife was allegedly

loaning him the money to pay for his legal fees (see Mitchell 6 at paragraphs 57-72 and 102-106). The source of her ability to do so has not been disclosed. The Claimant's case is that even that would appear to be untrue on the basis that the Defendant's expert's fees are being paid by his son, Mr Masroor Haider (see Mitchell 6 at paragraph 71).

28. There is a potential conflict of authorities on whether, if a respondent to a freezing injunction's legal fees are being paid by a third party, the respondent needs to disclose the source of that third party's means of doing so, and if he does not do so he is in breach of the injunction - see *Dadourian v Simms* [2008] EWHC 1784 per Patten J at paragraphs [153]-[163], contrast *JSC BTA Bank v Kythreotis* [2011] EWHC 4042 (Ch) per Peter Smith J at [21]-[23] cited with approval by Christopher Clark J in *JSC BTA Bank v Ablyazov* [2011] EWHC 2664 (Comm) at [43]. The potential conflict in the authorities was discussed by Birss J (as he then was) in *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2017] EWHC 1847 (Ch) at [65]-[73]. Birss J concluded at [82] that he did not need to resolve any conflict because he could make the disclosure order sought as he was "*s*atisfied that there is a properly arguable case that the funding for this application is likely to come from funds which are frozen by the worldwide order."

29. The Claimant submits that there is similarly a properly arguable case that the Defendant's legal fees are being discharged from frozen funds:-

    (1) The Defendant's asset disclosure is unsatisfactory.

    (2) A number of assets which are said to be owned by the Defendant's wife appear to have been transferred to her for no consideration and the Defendant may well therefore have retained an interest in those assets.

    (3) The explanation for how the Defendant was funding his legal expenses has only emerged piecemeal and unsatisfactorily in the context of asserting an (abandoned) demand for the provision of security for costs (as to which see Mitchell 6 at paragraphs 57-72).

    (4) The Defendant's assertion that his costs are being paid entirely by his wife would not appear to be correct as his son has also seemingly been paying some of those costs (as to which see Mitchell 6 at paragraph 71).

    (5) The Defendant's legal costs are very substantial, yet Ms Hussain has not identified independent source of wealth. Whilst the Defendant's solicitors (who also represent Ms Hussain), have been asked for an explanation and evidence of this, none has been forthcoming (see Mitchell 6 at paragraphs 63-72).

    (6) The Defendant's position is that his wife is discharging his legal fees out of unfrozen funds. However, at the May Hearing the Defendant's Counsel explained that a delay in paying an

adverse costs order "has been occasioned by the fact of the freezing order raising bank compliance queries and that is what has given rise to this short delay." The Claimant points out, with some force, that it is difficult to see why this should be the case if the Defendant's legal bills were being discharged by a third party from non-frozen funds.

30. I am satisfied that there is a properly arguable case that the Defendant's legal fees are being discharged from frozen funds and that the defendant has not complied with his obligation to disclose the source of the payment of his legal fees, for the reasons given by the Claimant.

Compliance with disclosure obligations as to the source of payment of living expenses

31. There has been no disclosure about the source of payment of the Defendant's living expenses except a reference to a single bank account (as to which see Patel 3 at paragraph 19 and Mitchell 6 at paragraph 39). This bank account was not included in the Defendant's affidavit of assets, and it is to be assumed, therefore, that the balance in it (or the Defendant's share in that balance) was below £50,000 at that time, and is likely to have been exhausted in the 15 months since the grant of the WFO. Yet no other source of the payment of the Defendant's living expenses has been identified and nor has he said that his living expenses are being paid by a third party.

32. Yet further, at the hearing of the Variation Application, Mr Slade (the Defendant's solicitor, who appeared as advocate for the Defendant) said that the Defendant "does nevertheless have a number of investment properties" and that this was "how he makes money on which to live". This would appear to be inconsistent with the fact that the Defendant had only disclosed an interest of any value in one such property in his affidavit of assets (namely a half-share in 16 Price's Court). The Claimant has written to the Defendant in this regard but has not received any response.

33. I am satisfied that there is a properly arguable case that the Defendant has not complied with his obligation to disclose the source of payment of his living expenses.

34. I am also satisfied that as a result of it being properly arguable that the Defendant has not complied with his asset disclosure obligations under the Freezing Order (both generally and in relation to the source of the payment of his legal fees and living expenses) the Claimant has limited knowledge of the Defendant's assets and is not in a position to police the Freezing Orders, without further information (which is the basis for the Disclosure Application).

Is the Disclosure Application necessary to police the Freezing Orders?

35. As Popplewell J said in *Angola v Perfectbit Ltd* [2018] 3 WLUK 76 at [8]:

> "Unless proper disclosure is given, it is impossible to police the freezing order, and if it cannot be policed, then fraudulent defendants are able to ignore the order and to breach it with impunity. Disclosure is, in almost all cases, essential in order to render effective a worldwide freezing order."

36. It will be a matter for consideration on the Disclosure Application as to what order to make against EFG Bank, and whether each specific category of disclosure sought from EFG Bank is necessary. The Claimant anticipates that disclosure from EFG Bank will reveal the extent of the assets held by the Defendant with EFG Bank, further information as to the ownership of assets held with EFG Bank in Ms Hussain's sole name (and which the Claimant infers are at least jointly owned by the Defendant), whether assets have been transferred away from EFG Bank, and if they have where they have gone and, also, the existence or whereabouts of other assets.

37. I am satisfied that in such circumstances a Court is likely to conclude that at least some of the disclosure sought from EFG Bank is likely to be necessary to police the Freezing Orders.

Risk that knowledge of the Disclosure Application will frustrate any order the Court may make

38. The Claimant submits that if the Defendant were to come to know of the order sought today and of the Disclosure Application, there is a real risk that he will seek to further dissipate his assets thereby frustrating the purpose of the disclosure order sought. I am satisfied that there is, indeed, a real risk of that, set against the backdrop of the risk of dissipation that exists, and in the context of it being properly arguable that the Defendant has not complied with his asset disclosure obligations under the Freezing Order to date (both generally and in relation to the source of the payment of his legal fees and living expenses).

39. In circumstances in which it is not clear what the legal or equitable relationship between EFG Bank and the Defendant and his family is, nor what the relationship is between individual members of staff at EFG Bank and the Defendant, I consider that there is also a real risk that EFG Bank, or its employees, will feel obliged to inform the Defendant or his family of the Disclosure Application if they are not prevented by Court order from doing so.

40. I am satisfied that if the Defendant were to find out about the Disclosure Application there is, indeed, a real risk that he would take steps to dissipate assets, in particular those associated with, or revealed via, EFG Bank. Whilst I acknowledge that the WFO has been in place for over a year and EFG Bank are aware of it, it does not follow that a defendant will take active steps to

dissipate assets that he does not believe a claimant knows anything about. As the Claimant rightly points out a significant purpose of the Disclosure Application is to obtain information as to the Defendant's assets about which the Claimant is not aware. I consider that the risk of dissipation is likely to be greatest once the Defendant knows that the Claimant is on a train of enquiry as to assets, and the danger is that if the Defendant is aware of the Disclosure Application he will take steps to prevent such information being obtained or dissipate assets such that the information obtained is rendered useless.

41. Nor can I be certain that EFG Bank is in a position to police the Freezing Orders, most obviously in the context of assets held in another's name (here, most obviously in Ms Hussain's name) in circumstances where it is the Claimant's case that the Defendant is likely to have an interest in those assets.

42. For all these reasons I consider that if the Defendant were to come to know of the order sought today and of the Disclosure Application, there is a real risk that he will seek to further dissipate his assets thereby frustrating the purpose of the disclosure order sought.

Is a Seal and Gag Order the minimum necessary?

43. The next question is whether the Seal and Gag Order sought is the minimum necessary to achieve the legitimate aim of ensuring that any disclosure order the Court may make, and ultimately the Freezing Orders, achieve their purpose.

44. I consider it is. First the legitimate interest of the Court in ensuring that its orders are effective is strong when weighed against the particular free-speech rights in the present case protected under the ECHR. This is not a case concerning the right of newspapers to publish in the public interest, but rather what a bank may tell its customer about applications made against the bank concerning the customer. The need to ensure that Court orders are respected, and not rendered futile and ineffective out weighs the interference with freedom of expression and the open justice principle. Secondly, the Seal and Gag Order will only be in place for a limited time, initially only until the conclusion of the hearing of the Disclosure Application. If the Claimant wishes to maintain such protection, it will need to seek a further order at that hearing, and EFG Bank will be able to argue that the relief should not be extended (or indeed should never have been granted, if it wishes to do so). Thirdly, the Seal and Gag Order will in fact assist EFG Bank, and protect its position. Without such an order, EFG Bank would need to consider whether it was under any obligation to disclose the existence of the current application, and any order made, to the Defendant (and/or other customers including Ms Hussain). The Seal and Gag Order will make clear that not only is

it under no obligation to do so, it must not do so.

F. RELIEF

45. I have had regard to all the matters raised by the Claimant by way of full and frank disclosure. I am satisfied that none of them militate against the granting of the relief sought. The only point that has given me pause for thought relates to the minor breaches of confidentiality that have taken place as explained in Mitchell 7 at paragraphs 18 to 23 and in relation to the filing of Mitchell 7 itself. However I consider it very unlikely that they will have resulted in this application coming to the attention of the Defendant.

46. Accordingly, and for the reasons I have given, I make the Order sought preventing EFG Bank from informing the Defendant (or anyone else) of the Disclosure Application and sealing the court file concerning that application until the conclusion of the hearing of the Disclosure Application. I will now hear from Mr Hayman KC in relation to the finalisation of the Order, and any further directions that may be necessary in relation to the hearing of the Disclosure Application on notice to EFG Bank.