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Case No: CL-2024-000139

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

The Rolls Building
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Fetter Lane, London
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Before:

HIS HONOUR JUDGE PELLING KC

- -

Between:

CJSC ALFA BANK (BELARUS)	**Claimant/ Applicant**
- and -	
LEK SECURITIES UK LIMITED	**Defendant/ Respondent**

- -

RICHARD SLADE KC (instructed by **Peters & Peters Solicitors LLP**) for the **Claimant**

- -

APPROVED JUDGMENT

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HIS HONOUR JUDGE PELLING KC:

1. This is an application made without notice for a Proprietary Freezing Order designed to ensure that the defendant does not further deal with assets belonging to the claimant over until a return date.

2. The circumstances which lead to this application, in summary, are as follows. The claimant is a bank organised in accordance with the laws of Belarus that it is treated as subject to the asset freeze imposed on designated persons under UK sanctions regulations by reason of two of its minority indirect shareholders being designated persons under those regulations. The defendant, Lex Securities UK Limited, is a UK registered company, the person behind it being a Mr Charles Lek. The claimant as one part of its business receives or has received as Trustee cash from its customers for onward investment by the claimant. The claimant placed a large quantity of these trust funds with the defendant and it is in relation to those trust funds that this claim is concerned.

3. The relationship between the claimant and defendant was regulated by a Custody Brokerage and Business Service Agreement dated 18th October 2016. As is apparent from the relevant provisions of that Agreement, the bank was to establish an account with the defendant, and the various transactions that then took place were to be cleared through the account operated and established in accordance with the Agreement. There was an obligation on the part of the defendant to supply to the claimant securities purchased in the course of the execution of its mandate, as provided for particularly in Clause 2.2.2 of the agreement.

4. The Agreement was in a relatively standard form for a Financial Services Agreement of this sort. It provided that and is consistent with the notion that the funds that were being managed by the defendant were not monies that belonged to the defendant but were funds held on trust by the claimant for its customers and was paid to the defendant solely on the basis that it was held by the defendant as nominee or agent or trustee for the claimant. The agreement for example, precluded the defendant from creating a lien over the assets concerned and provided that the defendant would hold all the relevant assets free of liens and any right or set-off.

5. The circumstances which lead to the claim were explored at great length at the hearing before me. I do not propose to take up time describing the whole of the development of the dispute because it is not necessary to do so. The dispute has its origins in 2022 when the claimant's accounts held with the defendant were frozen in accordance with the sanctions legislation. This caused the defendant to inform the claimant by an email of 23rd March 2022 that it was notifying the branch of HM Treasury concerned with sanctions administration - the Office of Financial Sanctions Implementation ("Office") - of the action taken by the defendant, which was to freeze the assets in accordance with the sanctions regulations.

6. There was then some correspondence between the defendant and the claimant as to the basis of these arrangements, but they were formally summarised in a letter of 20th April 2022 which was in the following terms:

> "As referred to in our email of 1st April 2022 to Mr Pavel Korzik of CJSC Alfa Bank, we confirm that our client has frozen the accounts of CJSC Alfa

> Bank pursuant to the statutory legal requirements of the UK Russia Sanctions EU Exit Regulations and the Sanctions and Anti-Money Laundering Act 2018. We note that our client is currently working with CJSC Alfa Bank to obtain a licence from the Office of Financial Sanctions Implementation to enable our client to return funds and assets to CJSC Alfa Bank."

7. I can move forward now to a letter of 8th July 2022, because that informed all customers of the defendant, including the claimant, that the defendant had entered into what is described in the letter as a "*voluntary application for Imposition of Requirement Agreement*" with the FCA. The general effect of this was described in the letter as meaning that the defendant would no longer be able to execute trades as it had done in the past, that it was unable to find an alternative dealer or broker within the timeframes which it would be required to find them and therefore had decided to reduce its level of trading with immediate effect. The letter went on: "*This will enable us to facilitate you to move to another broker and to ensure that you are not put to any additional risk. Lek UK will continue to operate in accordance with FCA Rules and Regulations."*

8. The attempt to obtain a licence from the Treasury referred to in passing 20th April letter ultimately failed for the reasons set out by the Treasury in its letter of 21st November 2023. I need not take up time describing what is contained in that letter.

9. The immediate cause of the present application starts with a conversation between Mr Pavel Korzik and Mr Lek on 8th December 2023. In that conversation the defendant acting by Mr Lek informed the claimant acting by Mr Korzik that it had deposited the claimant's assets with a private bank located in Luxemburg called Quintet Private Bank Europe SA ("Quintet"). On the evidence currently available, the defendant did not obtain a licence that permitted such a transfer. The conversation continued that Quintet would henceforth replace Lek UK and perform a similar task and that accordingly the claimant should liaise directly with Quintet in relation to what are described in these proceedings as the Quintet Assets.

10. On 18th December 2023, and reflecting the conversation to which I have just referred, a letter was sent by the defendant addressed to "*Dear Client*", which said as follows:

> "As you have been advised, Lek Securities UK Limited no longer wishes to act as your broker custodian. We have requested that you provide us with instructions as to where to send your assets, but you have not provided us with the requested information, or we are not authorised to follow your instructions for a variety of reasons. As a result we have deposited your assets with the following bank custodian: Quintet Private Bank Europe SA…" The letter then went on to give the postal address of Quintet and identified two officials at Quintet who would be managing the assets. The letter concluded: "We trust that you will be in excellent hands and that Quintet will provide you with excellent service."

As Mr Slade KC submitted on behalf of the claimant in the course of the hearing, the general effect of this letter was to imply that the funds that had previously been controlled, or most of the funds previously controlled by Lek, had been transferred to Quintet who would thereafter have a principal to principal relationship with the

claimant. If true, this was contrary to the trust agent or nominee role adopted by the defendant under its agreement with the claimant.

11. Unfortunately, that was not the view which Quintet apparently took. On 19th December 2023 the claimant wrote to the Quintet officials that had been identified in the defendant's letter seeking to open up communications concerning the assets that had been transferred by the defendant to Quintet. The ultimate response to this was an email of 21st December 2023 from a Mr Joel Vergues of Quintet, who said this:

> "As mentioned during our call yesterday, please note that Quintet does not intend to enter into a business relationship with Lek Security clients. Our sole client and counterparty for the underlying assets remain Lek Securities UK Limited. Please liaise directly with Lek Securities UK Limited if you have any concerns."

12. Thus, there was a diametrically different picture being presented by the correspondence to which I have referred. On the one hand the defendant was giving the impression to the claimant that the assets it had hitherto controlled and held on Trust for the claimant or as its nominee or agent, who in turn held the assets on Trust for its customers, had been passed to a regulated security holder, namely Quintet, who would thereafter look after the assets for as long as they were frozen and thereafter deal with them in accordance with the instructions of the claimant. Quintet on the other hand was giving the impression in the correspondence and conversations which thereafter took place with representatives of the claimant that the assets were held to the order of the defendant. It is unsurprising that this has given rise to a significant concern on the part of the claimant as to who is controlling the assets it held on trust for its customers and on what basis. In order to attempt to clarify the position, thereafter there followed correspondence which took place between the claimant and its solicitors, on the one hand, and the defendant on the other, the effect of which was a failure by the defendant to provide any satisfactory response to any of the entirely pertinent questions that had been asked.

13. As I have already indicated, the sums transferred to Quintet as it turned out were not the whole of the sums held on behalf of the claimant. The other funds that were held on behalf of the claimant, which total about $4.6 million, were continued to be held by the defendant but had been dealt with in what appears to be an unconventional manner. Ultimately, the defendant supplied the claimant with a Trust Deed bearing the name of Charles Russell Speechlys LLP on its front page but not in fact provided by that firm. The dates in this Deed are confusing, because the Deed is described as having been executed and delivered on 29th December, whereas on the front sheet it is described as dated 4th January 2024. The recitals in the Trust Deed refer to the defendant as having a Brokerage Agreement with the claimant, that the defendant currently holds or controls shares or monies, as set out in the schedule, for the account of the claimant (thereby acknowledging that as between the claimant and the defendant the defendant acknowledged it held the funds concerned on trust for the claimant) and then, somewhat surprisingly, provides at recital (d) that the Trustee, that is to say the defendant, will provide a copy of the Deed to the beneficial owner, that is the claimant, and the beneficial owner, that is the claimant, shall be deemed to accept the terms of the Deed on receipt. This is on any view an highly improbable legal basis for the claimant becoming bound by the deed at any rate absent its execution on behalf of the claimant. The Deed is described as being supplemental to the

Agreement but the Agreement required that all variations or amendments to it had to be in writing and signed by both parties. This document is signed only by Mr Lek, and even in relation to his signature, not in accordance with the requirements for the signature of the document as a Deed, as set out on the face of the document itself. Paragraph 1 of the Deed provides that the Trustee, that is to say the defendant, declares that the Assets and all proceeds thereof will be held by the Trustee, that is the defendant, on Trust for the claimant. Sas with the recital referred to a moment ago, this too was an unequivocal admission that as between the claimant and the defendant the defendant, it held the funds concerned on trust for the claimant. There are then various assets identified in the schedule that I need not take up time describing.

14. The Deed, as I have said, was sent to the claimant under cover of an email of 5th January which was laconic in the extreme, saying: "*We have created a Trust Deed; tried to give you a call."* Thereafter, the communications which followed were wholly unsatisfactory.

15. On 15th January the solicitors instructed by the claimant wrote to the defendant in comprehensive terms. That letter drew attention to the fact that the movement of funds to Quintet appeared to be in breach of the relevant sanction regulations. It drew attention to the terms of the conversation that I referred to earlier and asserted that the steps taken by the defendant appear not to be permitted either by either the Agreement between the parties or relevant general law. This letter ran to some nine pages and concluded by saying this:

> "For the avoidance of doubt, our client regards its legal and regulatory compliance obligations with the utmost seriousness, and trust that Lek will co-operate fully with any request for information that our client needs in order to satisfy itself that all steps taken by Lek to date have complied with the corresponding legal and regulatory obligations owed by Lek and its legal advisers."

The letter required a response by 19th January.

16. There was no response by that date beyond a holding letter which sought an extension of time. This caused some concern on the part of Peters & Peters, the claimant's solicitors, who wrote again on 23rd January seeking a response by 26th January. This resulted in an email of 9th February from Charles Russell Speechlys saying that they were no longer instructed.

17. By a letter of 21st February 2024 sent to Mr Lek by the claimant's solicitors they expressed the view that there was no right on the part of Mr Lek to deduct any expenses from the sums ostensibly held subject to the Trust Deed and requiring responses. Mr Lek responded initially saying he was travelling and would respond in the following week and then ultimately responded by a letter of 29th February 2024. Aside from an assertion that Mr Lek did not consider he was under any obligations in relation to the management of the funds without reward and in circumstances where effectively the defendant "*no longer wished to be in business and had asked all its clients to arrange for alternative custodians*", went on to say the following:

> "Lek has transferred remaining clients' assets to Trusts in the expectation that serving as a Trustee will not be considered to be a regulated activity and that

> as a result Lek UK can deregister with the FCA and avoid the associated costs and required labour."

That was apparently an explanation in relation to the creation of the Trust to which I referred a moment ago. In relation to Quintet, Mr Lek said this:

> "Quintet has served as one of the Lek UK sub-custodians for many years. Completely independent and unrelated to the steps taken by Lek UK, Quintet decided that it wanted 'Know Your Customer' information concerning Lek UK's underlying clients and it established separate accounts for each of them and segregated the assets of each client into a separate account. All of this was done without input or consent from Lek UK. As a result of Quintet's actions, and for other reasons, Lek UK notified Quintet that it had breached its contract with Lek UK and Lek UK terminated its relationship with Quintet and advised the bank that it should deal direct with the underlying client for which it had obtained all required KYC. It appears that Quintet now regrets its actions and would rather continue to deal exclusively with Lek UK, but as a practical matter Lek UK cannot provide any meaningful benefit by remaining a middleman between Quintet and the underlying customer…"

18. The position is therefore, in summary, that Quintet maintain in the only relevant communication I have been shown from Quintet to the claimant that it holds the assets to the order of the defendant, whereas the defendant maintains it has washed its hands of the relevant assets and they are in the exclusive control of Quintet, with whom, of course, the claimant has no contractual or other direct relationship.

19. In those circumstances, entirely unsurprisingly, the claimant is concerned to ensure that its assets, whilst frozen, are nonetheless securely held in the interest of those on whose behalf it acts as Trustee, namely its customers. In those circumstances, and having regard to the unsatisfactory nature of the correspondence to which I have referred, the claimant has commenced these proceedings.

20. At the outset of the application I enquired of Mr Slade what the position was in relation to Quintet, to which the response was that Quintet has not been joined as a party to these proceedings and as far as the claimant is concerned the claimant believes that Quintet will act responsibly, subject to the point that it holds the assets, or claims to hold the assets on the instructions of the defendant. It is in those circumstances that the claimant, amongst other things, seeks an order referred to in paragraph 26 of the Particulars of Claim that

> " … the defendant shall not, whether by itself, its directors, officers, partners, employees or agents, or in any other way, give instructions to Quintet to dispose of, deal with or diminish the value of the Quintet assets, being those assets belonging to the claimant which have apparently been transferred to Quintet by the defendant."

21. Turning now to the relief which is sought, the claimant seeks an order in essentially two forms, the first being a proprietary injunction which is designed to effectively require the respondent, that is the defendant in these proceedings, not to dispose of, deal with or diminish the value of any asset constituted by or derived from the whole

of the claimant's assets, being the assets which were paid over by the claimant to the defendant pursuant to the Agreement to which I referred at the start of this judgment.

22. Two classes of assets are identified in the order as being (1) all securities held pursuant to the Agreement relinquished or otherwise transferred by the respondent to Quintet, and (2) the cash balance of $4.6 million odd which are purportedly held pursuant to the Trust Deed, to which I referred earlier in this judgment, which are described as the Trust Deed Funds.

23. There are two things I need to say in relation to the order that is sought. First of all, the cross-undertaking in damages which is offered is in qualified terms rendered necessary by the status of the claimant in relation to the Sanction Regulations referred to earlier and the qualification in the cross-undertaking is the insertion of words in parenthesis "*subject to the prior granting of any necessary licence by the Office of Financial Sanctions Implementation…*" These are words which, in my judgment, must, of necessity, be inserted since they reflect the general law of England and Wales and therefore are entirely appropriate in the circumstances.

24. The fact remains, however, that I ought to consider whether or not a narrower more focused form of Order would be appropriate, at least in relation to the Quintet assets, having regard to the principal relief which is sought and the problem which is apparent on the face of the correspondence. That problem, as I have pointed out, is an assertion by Quintet that it holds the Quintet Assets to the order of the defendant. As it seems to me at the moment, that does not require a proprietary injunction to control that behaviour, at any rate over until a return date, and in relation to the Quintet Assets the position will be appropriately governed by an Order in the terms of paragraph 26 of the particulars of claim. That will preclude the defendant from giving any instructions to Quintet to deal with the Quintet Assets.

25. As I have already indicated, the claimant has commenced these proceedings without joining Quintet as a defendant and on the assumption that Quintet is to be trusted to deal appropriately with the assets, subject to its assertion that it must deal with those assets in accordance with the directions of the defendant. An injunction in the terms set out in paragraph 26 of the Particulars of Claim will preclude the defendant from giving any such instructions. If the defendant is right and those assets were transferred to Quintet so that they cannot be dealt with any longer by the defendant then any problem that arises is a problem as between the claimant and Quintet, but that is not something I can regulate in the circumstances of this case having regard to what I have been told concerning the claimant's belief as to the likely conduct of Quintet and the fact that Quintet is not a defendant.

26. Different considerations arise in relation to the Trust Deed Funds, for the reasons identified by Mr Slade in his submissions and I have endeavoured to identify in the course of this judgment. The Trust Deed is of highly questionable legal effect. It has been entered into in circumstances where unilaterally the defendant has decided to close its business, surrender its leases stop trading and critically ceasing to be regulated by the FCA. The Trust Deed is a unilateral document and it is not one which complies with the requirements of the Brokerage Agreement, for the reasons I have identified.

27. In those circumstances, the question arises whether or not I should grant an injunction broadly in the terms sought in relation to such assets that are held by the defendant purportedly subject to the Trust Deed. The application, as I have said, is an application for an interim proprietary injunction and, as Mr Slade submits, the test to be applied in whether or not to grant such an order is the well-known *American Cyanamid* test. Therefore, the first question which has to be asked is whether there is a serious issue to be tried. The issue which has to be tried is the issue of whether or not the assets apparently held subject to the Trust Deed unilaterally issued by the defendant are assets which belong to the claimant in its capacity as Trustee for its customers. I am entirely satisfied on the evidence which is available that there is no sensible basis upon which the defendant can claim any interest in the assets which are purportedly held subject to the Trust Deed. To that extent, as it seems to me, the test identified in *American Cyanamid* as being the threshold test of whether there is a serious issue to be tried is satisfied in relation to that category of assets.

28. So far as the Quintet assets are concerned, those are assets which should not have been dealt with as they have been, at least to the level required for the purposes of this application, and should not be further dealt with on the instructions of the defendant. Therefore, in those circumstances, I am satisfied that first of all there is a serious issue to be tried as to whether the assets should have been dealt with in the way that they have been dealt with, and secondly, that it is appropriate in those circumstances to grant the sort of narrowly focused injunction that I have already identified. Damages are not an adequate remedy in circumstances such as this because the assets concerned are held by the claimant as Trustee for others and therefore should be recoverable or controlled by it or on its behalf *in specie*. Damages are not adequate because it leaves the ultimate beneficial owners of the assets (the claimant's customers) vulnerable to insolvency risk throughout the chain leading to the assets. Therefore and in those circumstances it is appropriate that there should be an order made in the terms that I have indicated.

29. The only question is whether or not the cross-undertaking that is offered is so narrow as to lead me to refuse to grant the injunctions I am otherwise minded in principle to grant. So far as that is concerned, the following points lead me to conclude that that would not be an appropriate approach to adopt.

30. First of all, the qualification which is introduced into the cross-undertaking in damages is one required by the general law applicable in England and Wales and therefore cannot possibly be objected to. Secondly, it is entirely unclear to me what damages could sensibly be said to be likely to be suffered by the defendant as a result of an Order in the terms that I propose to make.

31. An additional point was made by Mr Slade to the effect that the defendant holds some $4.5 million worth of assets that have been sourced from the claimant. I do not consider that provides any satisfactory answer to any problem otherwise created by the cross-undertaking because, as I have said, those are not funds belonging beneficially to the claimant but are funds held by the claimant on trust for its customers. Therefore, it would be wrong in principle, as it seems to me, for any order made on the cross-undertaking to be executed against funds held in that way because the liability that would arise on the cross-undertaking is a personal liability of the claimant to the defendant and the assets which are held by the defendant are assets which belong to the claimant only in its capacity as Trustee and therefore in which it

has no ultimate beneficial interest. Nonetheless, this point does not arise for the reasons that I have identified, which is that I am satisfied it is unlikely that any realistic claim could be made on the cross-undertaking and in any event the cross-undertaking is a satisfactory cross-undertaking; it will simply mean that it may take longer to obtain payment than would otherwise be the case.

32. In those circumstances, and subject to refining the drafting along the lines I have indicated, I am prepared to make the Order sought.

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(This Judgment has been approved by the Judge.)

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