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Case No: IP-2016-000181

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY ENTERPRISE COURT

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

Date: 15/05/2018

Before :

HIS HONOUR JUDGE HACON

Between :

MICHAEL DICHAND
- and -
HYDRAREDOX TECHNOLOGIES HOLDINGS
LIMITED

Claimant

Defendant

Michael Edenborough QC (instructed by **Clyde & Co LLP**) for the **Claimant**
Rupert Butler directly instructed by the **Defendant**

Hearing dates: 27-28 February 2018

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE HACON

Judge Hacon :

Introduction

1. Between 30 November 2012 and 16 May 2013 four patent applications concerning vanadium redox batteries were filed under the Patent Cooperation Treaty (“the PCT Applications”) in the names of the Claimant (“Mr Dichand”) and Dr Placido Spaziante as joint owners and inventors.
2. On 13 December 2013 by a written agreement (“the First Assignment”) the PCT Applications were assigned to Hydraredox Technologies Inc (“HTI”). The First Assignment was signed by Mr Dichand, Dr Spaziante and a director of HTI, Julian Sproule, who is married to Dr Spaziante’s step-daughter. On 4 September 2014 there was a second written agreement under the terms of which the PCT Applications were assigned to the Defendant (“HTHL”). HTHL is a company domiciled in England and controlled by Dr Spaziante and members of his family. The parties were agreed that both agreements should be treated as if governed by English law.
3. Mr Dichand says that he was induced into signing the First Assignment by a fraudulent misrepresentation made by Dr Spaziante a few days before 13 December 2013. Mr Dichand’s case is that because of the misrepresentation, and for alternative reasons which I will come to, there was no effective transfer of ownership of the PCT Applications by means of the First Assignment.
4. The PCT Applications have resulted in a number of patents having been granted around the world with further national and regional applications pending. Mr Dichand seeks a declaration that he and Dr Spaziante are joint owners of the PCT Applications and related rights, including granted patents, or alternatively that these are held on trust by HTHL for the benefit of Mr Dichand and Dr Spaziante.
5. Michael Edenborough QC appeared for Mr Dichand, Rupert Butler for HTHL.

The background facts

6. Mr Dichand inherited money created from the family-run *Kronen Zeitung*, a newspaper with the largest circulation in Austria. Mr Dichand has used his wealth to invest in various projects, having a particular interest in those which help to sustain the environment.
7. One of the targets of Mr Dichand’s funds was Güssing Renewable Energy GmbH, named after the Austrian town of Güssing. This was the first community in the EU to replace all fossil fuel used with renewable energy. Over the last 10 years Mr Dichand has invested about €30 million in the Güssing group of companies (“Güssing”).
8. Another was The Cellennium (Thailand) Company Limited (“Cellennium”), a Thai company involved in technology relating to vanadium redox flow cell batteries (“VRB technology”). Mr Dichand has invested in Cellennium and joined the board of that company. Dr Spaziante was Director of Research at Cellennium. Mr Dichand met Dr Spaziante in 2010 or 2011.

9. Mr Dichand saw a possible connection between these enterprises: a potential for the use of Cellennium's VRB technology at Güssing.
10. There had been problems with the VRB technology, which was based on bipolar batteries. In 2011 Dr Spaziante became convinced that the way forward was monopolar batteries. In the course of 2012 Dr Spaziante and Mr Dichand discussed and developed the idea of using the research centre at Güssing to develop monopolar VRB technology ("MVRB technology").
11. In August 2012 Mr Dichand and Dr Spaziante orally agreed to form a partnership to develop MVRB technology. The partnership was to arrange for the construction of a prototype unit ("the Prototype") and to file patent applications. The Prototype was subsequently built by an Italian company, Officine Metronik Srl ("Metronik").
12. Mr Edenborough and Mr Butler agreed to treat the partnership as if it were a partnership at will under English law. In reality it was not. Mr Dichand is Austrian and is domiciled in Austria, Dr Spaziante is an Italian citizen domiciled in Thailand and the partnership was concerned with technology to be developed in Thailand, Austria and Italy. However, I commend the parties for adopting a convenient assumption which certainly resulted in a significant saving in time and costs. It made no difference to the result. The date at which the partnership terminated, though the subject of some debate, was in the end peripheral.
13. There was quite a fierce dispute about whether Mr Dichand brought any technical expertise to the partnership. He said he did, Dr Spaziante said he didn't. Nothing turned on it. At least broadly speaking Mr Dichand's role was to provide the money and Dr Spaziante's was to provide the technical expertise.
14. It was certainly the case that substantial sums of money were paid by Mr Dichand to advance the MVRB project: to Dr Spaziante and his team in Bangkok to develop the technology, to Metronik to construct the Prototype, to patent attorneys and possibly to others.
15. The project progressed. In an email dated 5 May 2013 Dr Spaziante informed Mr Dichand that three prototypes of different sizes had been completed at Metronik. (Both Mr Dichand and Dr Spaziante generally referred to the Prototype, singular, made by Metronik and I will do likewise). Dr Spaziante also said that three patent applications had been filed, a fourth application was awaiting Mr Dichand's signature and a fifth was under final revision. Dr Spaziante stressed his view that a company should be set up as a vehicle for owning the patents and licensing the technology to others, an issue he raised several times with Mr Dichand. Mr Dichand was against the idea.
16. A fourth PCT application was filed on 16 May 2013. No fifth PCT application was ever filed. At this point Mr Dichand's and Dr Spaziante's accounts of what happened diverge.
17. Before turning to those I should mention Dr Suradit Holasut. He is a former lecturer in mathematics and physics at Oxford University. Dr Holasut returned to Thailand in about 2005 where, among other roles, he became technical advisor to the Chairman of Cellennium. He became friends with Dr Spaziante and later Mr Dichand.

Mr Dichand's account

18. Mr Dichand said that discussions on the best way forward for the MRVB project continued into December 2013. Mr Dichand was in Bangkok in early December 2013 and on or about 10 December, at Dr Spaziante's request, he met Dr Spaziante at Mr Dichand's hotel. Dr Spaziante invited Mr Dichand to sign documents setting up a Swiss company as a vehicle for the project. Mr Dichand declined. Dr Spaziante was visibly disappointed, although he accepted that it could wait.
19. Dr Spaziante also had an application for a fifth PCT application which, he said, would be jointly owned by Mr Dichand and Dr Spaziante like the other four. However, instead of asking Mr Dichand right away to sign the documents by which the fifth PCT application would be filed, Dr Spaziante said that he needed to redraft the application and that he would send it to Mr Dichand later for signing.
20. On 13 December 2013 Mr Dichand held a dinner for friends at a restaurant in the Four Seasons Hotel, where he was staying. Among the guests was Dr Holasut. Dr Holasut arrived, bringing with him an envelope which he said was from Dr Spaziante. Mr Dichand opened the envelope which contained a single page. He assumed it was connected with the fifth PCT application that Dr Spaziante had mentioned. He skim-read it, signed it and gave it back to Dr Holasut to pass on to Dr Spaziante.
21. Mr Dichand says that he thought nothing more about the document until September 2014. In that month there was a meeting attended by Dr Spaziante and, on Mr Dichand's behalf, Michael Messner. Mr Messner is Managing Director and CEO of Güssing. It emerged during the meeting that the document which Mr Dichand had signed on 13 December 2013 was the First Assignment and that the four PCT Applications had been assigned to HTI. This took Mr Dichand by surprise. He denies that the assignment was ever what he intended or agreed. He only signed it because Dr Spaziante had represented that it was a document necessary for filing a fifth PCT application. Mr Dichand says that the First Assignment is void or alternatively the PCT Applications and all rights derived from them are held by HTHL on trust for Mr Dichand and Dr Spaziante.

Dr Spaziante's account

22. Dr Spaziante's version of relevant events begins with a phone call with Mr Dichand in June 2013. Mr Dichand wanted Metronik to deliver the Prototype to Güssing. Dr Spaziante told Mr Dichand that Metronik would not hand over the Prototype unless and until it had been paid in full. According to Dr Spaziante, there followed an hour of insults and screaming from Mr Dichand. Dr Spaziante did not volunteer a description of his own behaviour during the call, but stated that he decided then to have nothing more to do with Mr Dichand.
23. Dr Spaziante said that he had a final meeting with Mr Dichand when Mr Dichand was next in Bangkok. This was not in December 2013, but between July 2013 and September 2013. (Although initially stating that the meeting had been in July, by the time of the trial Dr Spaziante thought it was more probably in September). The meeting was also attended by Mr Messner. Mr Dichand told Dr Spaziante that he had no money, no more interest in the project and that Dr Spaziante could do what he wanted with the

patents, meaning the PCT Applications. Mr Dichand was insistent, however, that he should have the Prototype.

24. Dr Spaziante confirmed that no fifth PCT application was ever filed. He denied that he had met Mr Dichand in December 2013. The meeting in September 2013 was the last occasion on which he had had seen Mr Dichand.
25. However, sometime after the September meeting Dr Spaziante explained to Dr Holasut his wish that Mr Dichand would confirm in writing that he was giving up his interest in the PCT Applications. Dr Holasut, who remained on good terms with both, offered to deliver a draft assignment of the PCT Applications to Mr Dichand on the next occasion they met. The First Assignment was drafted, put unsigned into an envelope and given to Dr Holasut. Shortly after the dinner of 13 December 2013 attended by Dr Holasut and Mr Dichand, Dr Holasut returned the envelope and enclosure to Dr Spaziante. Dr Spaziante had expected Mr Dichand to retain the First Assignment for some time so that Mr Dichand could take professional advice about it. To his surprise, it had been signed by Mr Dichand. He and Mr Sproule countersigned and thereby the assignment of the PCT Applications to HTI became effective.
26. Dr Spaziante's position was that the First Assignment transferred the PCT Applications to HTI for the straightforward reason that this was what he and Mr Dichand had agreed in or around September 2013.

Mr Dichand's case in law

27. There was no dispute that if HTI acquired the PCT Applications, they had subsequently been lawfully assigned to HTHL.
28. Mr Dichand's primary case was that Dr Spaziante fraudulently misrepresented to Mr Dichand in December 2013 that Mr Dichand would need to sign papers relating to a new patent application. This misrepresentation induced Mr Dichand to sign the document provided to him by Dr Holasut on 13 December 2013 and thus to enter into the First Assignment. Mr Dichand claimed that the First Assignment should be rescinded.
29. The alternative pleaded arguments were:
 - (1) Dr Spaziante was in breach of his fiduciary duty or duty of fidelity to Mr Dichand by misrepresenting the document later given to Mr Dichand to sign.
 - (2) Mr Dichand made a unilateral mistake regarding the terms of the document he signed.
 - (3) Dr Spaziante had been unjustly enriched by the transfer of the PCT Applications to HTHL. This was because Mr Dichand had signed the First Assignment under a false belief that it was a fifth PCT application and so it would be unconscionable for HTHL to retain ownership of the PCT Applications.
 - (4) Dr Spaziante was in breach of his fiduciary duty to Mr Dichand because he had disposed of assets of the partnership without Mr Dichand's consent, had failed

to account to Mr Dichand for the benefit acquired by HTHL and had failed to disclose the nature of the First Assignment.

30. By reason of the first, second and third alternative arguments the First Assignment was said to be void *ab initio*. Otherwise, pursuant to the fourth, the PCT Applications and patents derived from them were held on constructive trust by HTHL for Mr Dichand and Dr Spaziante.
31. In opening Mr Edenborough submitted that if I were satisfied by Mr Dichand's primary case – that there had been a misrepresentation – I need go no further. If not, I must consider each of the further alternative cases.
32. However, the argument on breach of fiduciary duty or duty of care also depended on the alleged misrepresentation. The document is on its face clear. Dr Spaziante can only have failed to disclose to Mr Dichand the true nature of the First Assignment by misrepresenting its true nature.
33. The case on unjust enrichment, as developed by Mr Edenborough, came to the First Assignment lacking consideration; it was for this reason that the First Assignment was void.
34. By the time of closing speeches Mr Dichand's case was put three alternative ways: fraudulent misrepresentation, unilateral mistake and lack of consideration.

The witnesses

35. Mr Dichand and Mr Spaziante both expressed themselves clearly and on occasion forcefully. Their versions of what happened cannot be reconciled. Mr Dichand described his level of English as conversational, but it seemed to me that his command is fluent.
36. I found Dr Holasut to be a good witness. It was not suggested by either Mr Edenborough or Mr Butler that he had an axe to grind in this dispute or that his evidence should be doubted. My impression was that he gave an honest account of what he knew.

Findings of fact

37. As I have indicated, part of Dr Spaziante's explanation of events was a phone call with Mr Dichand on 25 June 2013 during which Mr Dichand was said to have been abusive for an hour and after which Dr Spaziante resolved to end the partnership. Mr Dichand said that if this call happened at all, it would have been short and he would not have been abusive.
38. Dr Spaziante's version is supported by an email from him to Julian Sproule's wife, Caroline Meroz, dated 25 June 2013 in which he describes Mr Dichand as having been "very wilde and could not stop talking and telling me (probably) the nastiest words he could find". In the email Dr Spaziante did not say that he had decided to end the partnership; he said that he did not know what to do.
39. It seems to me more likely than not that the phone call happened at least broadly as Dr Spaziante described.

40. Next according to Dr Spaziante's version of events came the meeting with Mr Dichand in about September 2013. At this meeting, Mr Dichand and Dr Spaziante are said to have agreed to go their separate ways and, crucially, that Mr Dichand would keep the Prototype while Dr Spaziante would have the PCT Applications.
41. There was no documentary evidence to show that this meeting happened. Dr Spaziante said that it had been attended by Mr Messner, an associate of Mr Dichand's, but neither side produced evidence from Mr Messner. Dr Spaziante initially said that the meeting had happened in July. Mr Dichand's response was to produce emails to show that he was in California in July 2013. Dr Spaziante then said that the meeting could have been later, although no later than September. Having established a likelihood that there was no meeting in July, Mr Dichand did not follow this up by producing documentary evidence to prove that he could not have attended a meeting with Dr Spaziante in September.
42. Both Mr Dichand and Dr Spaziante gave evidence about the logic or otherwise regarding the split of assets which, by Dr Spaziante's account, was agreed at the September meeting. According to Dr Spaziante the PCT Applications did not relate to the MRVB technology embodied in the Prototype. I was not taken through the PCT Applications or other documents by either side to confirm or refute this. Dr Spaziante also expressed the view that none of the PCT Applications claimed valid inventions. In his witness statement he said they nonetheless had value as something to be used to impress potential investors. In cross-examination he suggested that there was a remote chance that the technology they claimed might be developed if an investor were ever found and to that extent the PCT Applications were worth having.
43. For his part, Mr Dichand said that having the Prototype would have been of no value without the PCT Applications. Again, this was an assertion which was neither endorsed nor undermined by reference to the documents.
44. There was some support for Dr Spaziante's version, at least to the extent that there was an agreed split of the assets towards the end of 2013. In an email dated 25 February 2014 to Mr Dichand, Dr Spaziante said that Metronik was threatening to dismantle the prototype and sell any salvageable parts if they did not receive €80,000. On 28 February 2014 Mr Dichand responded, saying that if Metronik harmed the prototype he would take legal action for "vandalizing *my* property" (emphasis added).
45. It was common ground that the Prototype had been the property of the partnership between Mr Dichand and Dr Spaziante. If by February 2014, as seems probable, the Prototype was now treated by them as Mr Dichand's property, it is likely that Dr Spaziante would have acquired other property of the partnership as a *quid pro quo*.
46. A key part of Mr Dichand's version was the alleged meeting with Dr Spaziante in Bangkok on or about 10 December 2013. This was when the misrepresentation was said to have been made by Dr Spaziante, i.e. that a fifth PCT application was to be made by the partnership of Mr Dichand and Dr Spaziante, that the application needed re-drafting and that it would be re-presented to Mr Dichand for signing in due course.
47. There was no documentary evidence or corroboration by any other witness that this meeting happened. As I have already mentioned, some months earlier, in an email dated 5 May 2013 from Dr Spaziante to Mr Dichand, Dr Spaziante referred to three

patent applications having been filed, to a fourth awaiting Mr Dichand's signature and to "patent no 5 under final revision". So at that stage anyway, there was a fifth PCT application in contemplation and apparently in draft. Dr Spaziante was asked in cross-examination what happened to it. He said that he had no recollection of it and added that he never spoke to Mr Dichand about any fifth PCT application.

48. Mr Butler submitted that if there had really been a meeting on 10 December 2013 at which Dr Spaziante had presented and then withdrawn documents, Mr Dichand's team would have asked for copies, which they did not do. Mr Butler said that this was an implicit recognition that no such documents ever existed. Another possible explanation is that Mr Dichand's legal team knew that it was central to Dr Spaziante's case that the documents did not exist and so it would be futile to ask for them, although Mr Edenborough did not say as much.
49. Taken in isolation, I could reach no reliable conclusion as to whether the meeting of 10 December 2013 took place or not.
50. The final and most important event was the dinner held at Mr Dichand's hotel on about 13 December 2013 at which Dr Holasut presented the First Assignment to Mr Dichand in an envelope. It was common ground that Mr Dichand signed the document and returned it to Dr Holasut, who later gave it back to Dr Spaziante.
51. In his witness statement Mr Dichand said that he skimmed the document. In cross-examination he said that he did not read it at all.
52. Dr Holasut's evidence provided the most reliable guide. According to Dr Holasut, he had been told by Dr Spaziante of a meeting between Mr Dichand and Dr Spaziante in the summer of 2013 at which Mr Dichand had said that he wanted nothing more to do with the MRVB project. Dr Holasut said that he had not been surprised to learn this. Dr Holasut volunteered to help make sure that the partnership between Dr Spaziante and Mr Dichand was properly ended, because he was friends with both of them. Dr Spaziante told Dr Holasut that he wanted Mr Dichand to assign his interest in the PCT Applications to a new company, which would also receive Dr Spaziante's interest. Dr Holasut agreed to pass a draft assignment to Mr Dichand for Mr Dichand to consider when Dr Holasut next met him.
53. This happened at the dinner party at Mr Dichand's hotel on 13 December 2013. Dr Holasut said that he had not been asked by Dr Spaziante to persuade Mr Dichand to sign the First Assignment. In fact, Dr Holasut (like Dr Spaziante) had expected Mr Dichand to take it back to Europe for consideration by his lawyers. Instead, Mr Dichand read the First Assignment and signed it.
54. The time taken by Mr Dichand to read the First Assignment is important. In his witness statement Dr Holasut said that Mr Dichand read it for a few minutes. In cross-examination he said that this meant one to two minutes tops.
55. Dr Holasut's evidence was that he did not recall Mr Dichand saying anything about an expectation that the document in the envelope would relate to a new patent application. He also said that he was sure that he would have remembered such a remark.

56. The First Assignment looks nothing like a PCT application. It is headed in block capitals “DEED OF ASSIGNMENT” and its language, although in legal form, is not particularly obscure. Towards the bottom the four PCT Applications to be assigned are listed with their details in a box headed “LIST OF ASSIGNED PATENT APPLICATIONS”. This is far from consistent with a document relating to a single (fifth) PCT Application. Mr Dichand was asked about it in cross-examination. He said that he did not believe that this was the fifth PCT application itself but was a necessary preparatory step in the process of filing a further application.
57. The First Assignment is not a long document. The entirety of it is on one side of A4 paper with room at the bottom for signatures. Mr Dichand read it for between one and two minutes. That, in my view, was more than sufficient time for Mr Dichand to understand that it had nothing to do with a fifth PCT application and that it was concerned with the assignment of the four existing PCT Applications clearly identified. Mr Dichand seemed to be a man careful in his business dealings. I think it is very likely that if he had had doubts about the effect of the document, he would have passed it to his legal advisors. He confirmed in cross-examination that he is in the regular habit of using such advisors.
58. As against that, the plan supposedly hatched by Dr Spaziante seems unlikely. According to this, he deliberately planted the idea of a fifth PCT application in Mr Dichand’s mind on 10 December 2013, then three days later used Dr Holasut to send the First Assignment in the hope that Mr Dichand would be deceived. The First Assignment is in no way dressed up to be anything other than what it is: a document assigning the PCT Applications to HTI. Dr Spaziante is nonetheless supposed to have gambled that Mr Dichand would not read it and even more improbably that Mr Dichand would not give the document to his legal advisors to consider.
59. In my view Mr Dichand knew what he was signing. He did so because he no longer had any faith in the MRVB project but wanted to keep the Prototype. It appears that at a later stage Dr Dichand came to regret this decision and probably persuaded himself that he been duped. In my judgment he was not.

The unpaid dollar

60. Finally, although the First Assignment records both that Mr Dichand and Dr Spaziante were to receive one US dollar as consideration for the assignment of the PCT Applications and further records that they both acknowledged receipt of the dollar, it was never paid by HTI. Mr Edenborough argued that as a consequence the contract was void for lack of consideration. I think the consequence is that Mr Dichand and Dr Spaziante may or may not have a claim against HTI for an outstanding debt of 50 cents each.

Conclusion

61. On the facts as I have found them Mr Dichand’s claim fails in all the alternative ways it was advanced.