Ref. LM-2021-000192
[2024] EWHC 2725 (KB)

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

Court 70,
Royal Courts of Justice,
Strand, London

Before MASTER DAVISON

IN THE MATTER OF

(1) SEG BELL
(2) ILYA ZUBAREV **(Claimants)**

- v -

(1) RATNA SINGH
(2) OLIVER BERNATH **(Defendants)**

MR P DIGBY, (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) appeared on behalf of the claimants
THE FIRST AND SECOND DEFENDANTS appeared in person

JUDGMENT
4 OCTOBER 2024

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MASTER DAVISON:

1. These are applications for interim third-party debt orders in respect of pensions held by (1) Mattioli Woods Plc, (with whom both the defendants have pensions), and (2) Phoenix Life Limited, with whom the second defendant has a pension. The total value of the Mattioli Woods pensions is, if my arithmetic is correct, some £295,000 and the Phoenix Life pension some £180,000.

2. My general practice where pensions are concerned is for the application for interim third-party debt orders to be on notice. However, through an oversight, I did in fact make an interim third-party debt order on the papers in respect of the Mattioli Woods pensions. When this oversight was pointed out to me, I said that I would consider that application *de novo* today, although I did not revoke the interim third-party debt order that I had made. So the position is that, in respect of the Mattioli Woods pension, I am considering whether the order should be made final, and, in respect of the Phoenix Life pension, I am considering whether to make an interim third-party debt order which is a necessary precondition of any final order.

3. The jurisdiction to make a third-party debt order derives from CPR Part 72. Here there is a judgment debt against the defendants based on a cause of action in misrepresentation. The total amount of the judgment debt and costs is somewhere north of US$ 1.5 million. It is not in dispute that the defendants hold the pensions which I have described. And it is not in dispute that the necessary formalities of service stipulated by the rules have been complied with. Finally, the third-parties, i.e. the pension providers, have indicated that they take a neutral stance on the applications.

4. Because these are pensions there is a twist to the normal third-party debt order procedure. In respect of pensions there is no debt "due or accruing due to the judgment debtor" (the wording of the rule). So, in order to make an effective third-party debt order it is necessary for the court to make an auxiliary order, pursuant to the power contained in section 37 of the Senior Courts Act 1981. That order would require the defendants to exercise their rights to draw down their pensions, whereupon a debt would become due upon which the third-party debt order would bite. The jurisdiction to make such an auxiliary order is well established and has been well established since the case of *Blight v Brewster* [2012] EWHC 165 (Ch).

5. Following that line of authority, the situation in this case is that there is no reason not to make such an auxiliary order, if the third-party debt orders are otherwise justified.

6. In opposition to the third-party debt orders the defendants have put forward a variety of objections which I can deal with quite briefly.

7. The principal ones are these. First, the defendants say that the record of their oral examination before a court officer was altered or tampered with, including by court staff. That is, of course, a serious allegation to make, in particular to make against the staff of the court, who would have no reason or motive for what is alleged. In my view, these are wild and implausible allegations, which I reject. But, even if there was something in the allegations, the fact is that they have no bearing on the third-party debt orders. As I observed to Ms Ratna Singh during the submissions that she made to me, it is not in any sense a precondition of obtaining a third-party debt order that there has been an oral examination of the debtors. And the record of that examination – be it a true record or a record containing errors – has no relevance to the applications presently before me.

8. Second, the defendants say that the witness statements of Mr Bunting (of the claimants' solicitors) referred to and relied upon documents submitted at hearings at which he was not present. There can be no valid objection to the evidence based on that ground. But the passages objected to, or the principal ones objected to, concern the defendants' other liabilities and, again, have no direct bearing on the third-party debt orders applied for in these applications.

9. Third, the defendants say that the claimants could look to other parties, in particular Mr Dempfle, or other assets in order to satisfy the judgment debt. That, I am afraid, is irrelevant. The claimants are entitled to take enforcement action against all available assets, and they are not obliged to look to other debtors, if there are other debtors. All they are obliged to show is that these defendants owe to them the amount set out in the judgment. And they have done that. It is not, indeed, contested.

10. Fourth, the defendants complain they have not been able to get hold of a transcript of the oral examination. It appears, from what I have read, that it may not be a practice to record oral examinations because the record of the examination is contained in form EX140. But if there is a transcript, and if the defendants have had difficulty obtaining it, that is not the claimants' fault and it is not relevant to any issues before me today.

11. Fifth and lastly, it is said by the defendants that Mr Digby of counsel represented that the claimants were not seeking to recover the entirety of the judgment debt. Having looked at the material said to support this, I would call that a complete mischaracterisation of what Mr Digby actually said. But, even if he had said what the defendants say he did, that would not, without more, be binding on the claimants. I might add the observation that it, anyway,

represents no more than the practical truth of the present situation, which is that there is going to be a large shortfall between the amount of the judgment debt and the amount that is available in enforcement proceedings.

12. Although not a point specifically taken by the defendants, but which does nevertheless emerge from the material before me, it is relevant to look at the effect of making these orders on other creditors, of whom there appear to be many. But these claimants are, by far, the largest creditors and the existence of other creditors for smaller sums and a smaller percentage of the defendants' overall liabilities is not, in my judgment, a reason not to make third-party debt orders.

13. I have considered all these matters and I have listened carefully to what Ms Ratna Singh said on behalf of herself and Dr Bernath, and I am afraid that I can see no reason at all not to make the interim third-party debt order final in the case of Mattioli Woods, and to make an interim third-party debt order in the case of Pheonix Life. In the latter case there will have to be a further hearing to consider whether to make that interim third-party debt order final.

14. Finally, I will make an auxiliary order which, subject to anything that Mr Digby wants to say by way of refinement, will be in the form set out in the application notice, i.e. that the defendants take any necessary steps to draw such benefit from the third-parties as they are entitled and, in default of them doing that, the solicitors for the claimants have authority to exercise those steps.
