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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2018] EWHC 4024 (Admin)



No. DTA/64/2005

Royal Courts of Justice

Thursday, 3 May 2018

IN THE MATTER OF EDWARD ROBERT JARVIS
A N D
IN THE MATTER OF THE DRUG TRAFFICKING ACT 1994
A N D
IN THE MATTER OF AN INTERVENTION BY ZULFU VATANDAS

Before:

MR JUSTICE MARTIN SPENCER

B E T W E E N :

THE CROWN PROSECUTION SERVICE

Claimant

- and -

EDWARD ROBERT JARVIS

Defendant

- and -

ZULFU VATANDAS

Intervener

MR TALBOT QC (of Counsel) appeared on behalf of the Crown Prosecution Service.
THE DEFENDANT did not attend and was not represented.
THE INTERVENER did not attend and was not represented.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1 This matter comes before me pursuant to the order of Soole J made on 14 December 2016 whereby he ordered that there should be a trial of the claim by Mr Zulfu Vatandas to the beneficial ownership in property at Garden Beach 8, 29680 Estepona, Spain (to which I will refer as the “Estepona property”).

2 The background facts are as follows. On 14 August 2001, the Estepona property was purchased by Mr Edward Robert Jarvis for the sum of €199,333.99 and a further payment of €13,338.38 for tax, and with the assistance of a mortgage from the Banco de Sabadell in the sum of approximately half the purchase price, namely €99,167.

3 The following year, Mr Jarvis was arrested and taken into custody in relation to various offences for which he was convicted at the Preston Crown Court on 1 October 2003 and sentenced to a term of imprisonment of four-and-a-half years, the main headline offence being money laundering.

4 Arising out of that conviction, a Confiscation Order was made on 2 November 2003 against Mr Jarvis in the sum of £478,453.18. That sum was paid in full. Having been in custody since 2002, and as, I assume, being entitled to release after serving half of that sentence, Mr Jarvis was released from prison on 21 October 2004 whereupon he was immediately rearrested and charged with drug trafficking offences, these being some of the most serious offences for drug trafficking ever prosecuted in the United Kingdom. The value of the drugs seized was some £48 million. Mr Jarvis came before the Liverpool Crown Court on 10 November 2005 when he was sentenced to a term of imprisonment of twenty-eight years.

5 Thereafter, there were further proceedings under the Proceeds of Crime Act which were protracted but eventually led to a further Confiscation Order made at the Teesside Crown Court on 6 December 2011 whereby the realisable benefit was declared to be a sum in excess of £12 million and a Confiscation Order was made in the sum of £800,567.

6 On 14 December 2016, the matter came before Soole J who made an order appointing a receiver over the assets of the defendant, those assets being set out in a schedule to the Receivership Order, and including a property in the Liverpool area, a property in Lanzarote, the Estepona property with which I am concerned, an account in Mr Jarvis’s name held at the Banco de Sabadell in Spain, and a quantity of jewellery.

7 I understand that at that hearing before Soole J, Mr Vatandas appeared by counsel and made a claim to beneficial ownership of the Estepona property. Therefore one of the provisos to the Receivership Order was in the following terms:

“No person is required to give possession and paragraphs 1 to 4 of this order below are suspended in respect of the Estepona property until the issue as between the CPS and Mr Zulfu Vatandas, for which directions are given in paragraph 7 of this order below, is determined.”

8 Then at paragraph 7 headed, “Trial of Zulfu Vatandas’s claim”, Soole J ordered:

“Zulfu Vatandas’s claim to beneficial ownership of Cañada Ortega [I think that should be the Estepona property which is the way in which Soole J said he would refer to the Estepona property] shall be tried on the following directions. Mr Vatandas shall serve any further

witness statements of fact and documents he relies on by 28 February. CPS to serve further witness statements by 31 March, and eventually the trial to be fixed for hearing before a High Court Judge with a time estimate of two days.”

- 9 The day before that hearing, Mr Vatandas had made and served a witness statement in which he asserted that he had bought the Estepona property whilst it was still under construction, that he was acquainted with Mr Jarvis, and that he and Mr Jarvis with others went to a Notary Public. He said that when they sat in the Notary Public’s office it was put to him that it might be “easier” if the mortgage would be in Mr Jarvis’s name rather than his. He says he did not understand at the time why that might be, but he did not have any objections.
- 10 He said that as soon as he discovered that the property was not registered in his name but in Mr Jarvis’s name, he instructed a lawyer in Spain to change that registration and those proceedings are still continuing. I have no information as to the existence or status of those proceedings, save as related by Mr Vatandas in that statement.
- 11 What I do have is a copy of the relevant documents executed at the time, translated from Spanish, which show that the property was bought and registered by Mr Jarvis pursuant to a deed which was notarised before a Spanish Notary, being deed of purchase number 3,182, and the Spanish Notary being one Jorge Moro Dominga of the Grenada Bar Association. The deed records the vendor as a Mr Manuel Gavira Gomez and the purchaser as Mr Edward Robert Jarvis. There is no reference at all to Mr Vatandas in the notarised documents and Mr Dominga does not record anywhere that Mr Vatandas was present or asserting any kind of right or interest in the property.
- 12 Mr Vatandas engaged with the proceedings in this court by serving further witness statements from a Mr Salas dated 28 February 2018, Mr Vatandas’s daughter and his wife, and a further witness statement from himself. He also submitted an expert report from a Mr Luis Garcia who is a lawyer and a partner at the DB Abogados law firm in Marbella in Spain. Mr Garcia was asked to address three particular questions:
- 1) What is the legal significance and effect of the Spanish land registration of a property in the name of an individual?
 - 2) Is such registration in the name of an individual conclusive evidence that such person owns the property?
 - 3) If not, what are the circumstances in which another person can assert his ownership of the property and apply for a rectification or change of the registered owner in the Spanish Land Registry?
- 13 Mr Garcia provided the following answers in the summary of his opinion:
- “1) Registration at the Spanish Land Registry means that the individual in whose name the registration is recorded is presumed to be the owner of the immovable property to which such registration refers or the title holder of the ownership right registered in his name, i.e. a mortgage, life interest (usufruct), right to use the surface of real property, etc.
 - 2) Registration at the Spanish Land Registry in the name of an individual does NOT constitute conclusive evidence that such individual is the owner of the immovable property recorded in his name.

3) In the event of discrepancy between the material reality and the registered reality, that is to say in cases where the actual owner of the immovable property has not been recorded as such at the Land Registry, such unregistered owner is legally entitled to apply for registration in his name either to the Land Registry itself or to the component court.”

14 Giving his opinion in further detail, Mr Garcia refers to **Book 3** of the Spanish Civil Code, stating:

“...on the different modes of acquiring ownership under Art.609, para.2 lays down that:

‘Ownership of and all other legal interest in assets as acquired and transferred by law, gift, testate and intestate succession, and as a consequence of certain contracts by means of transfer of possession.’”

15 He then says:

“Thus, the transfer of ownership requires title and traditio or, in plain language, the contract (title) and the delivery of the asset (traditio). Once both have occurred, ownership of the asset is deemed to have been transferred and the acquiror becomes the new owner of the immovable property in this particular case and he is not required to register his acquisition at the Land Registry nor does the value to register it lessen, reduce or limit his rights as owner.”

16 He then goes on to refer to the contract for sale and purchase governed by Title IV of the Civil Code at Art.1445 to 1537, and he says:

“As regards to the subject matter of the present report, Art.1462 is final, which states:

‘Sold assets shall be deemed as delivered once the purchaser has been given possession thereof. Where the sale has been made by notarial deed, the granting of such deed shall be equivalent to delivery of the asset of the contract unless otherwise resulting or inferred clearly from the deed itself.’”

17 Thus, it appears to me that the evidence of Mr Garcia constitutes a significant “own goal” on the part of Mr Vatandas for this reason: the deed notarised before Mr Dominga constitutes delivery of the asset (that is the Estepona property) from the vendor to Mr Jarvis, and that, in conjunction with the registration of the title at the Land Registry, appears by Spanish civil law to be final and an absolute consequence that Mr Jarvis is the owner beneficiary of the property.

18 It is not clear to me on what basis, given that Mr Jarvis is the registered owner of the property, Mr Vatandas was asserting a “beneficial” ownership. It is possible that he is asserting a beneficial ownership for the purposes of the English Law of Trusts. If that were the case, he would have to show that the English Law of Trusts can and does apply to the Estepona property and, were it sold, to its proceeds of sale.

- 19 However, in my judgment any such argument would have been doomed to failure for the reasons submitted to me by Mr Talbot QC. The property in question is in Spain. The arrangements alleged by Mr Vatandas, even were they true, would have been arrangements made in Spain. The parties appeared before a Spanish Notary. The mortgage was provided by a Spanish bank. There is no evidence that any of the purchase money originated from England. Although Mr Jarvis is, as far as I am aware, a British national, I have no evidence that he was even resident in England at that time. He was certainly involved in drug trafficking of such a scale as to merit a sentence of twenty-eight years' imprisonment and in order to have done that he must have been traveling around the world, and there is evidence that he was doing so throughout Europe and the Caribbean.
- 20 In *Martin v Secretary of State for Work and Pensions* [2009] EWCA Civ.1289, which concerned a property in France, a dispute arose as to whether English law or French law was the applicable law for determining the nature and extent of the claimant's rights in the property. The claimant and a Ms V were domiciled in England but in March 2000 a property was purchased in the name of the complainant on completion of its purchase. Ms V was found to have provided the whole of the purchase price with the help of a bank loan.
- 21 However, in relation to a dispute over social security benefits, the Social Security Commissioner concluded that French law was the applicable law for determining the existence of the putative implied trust. Under French law there was no implied trust or any other reason why the value of the property should not be included in the claimant's capital. The Commissioner set out at paras.56 to 57 the factors which favoured French law being the applicable law and found that the putative trust was more closely connected with France than with England. That decision was upheld by the Court of Appeal. Giving the judgment of the court, Mummery LJ said:
- “28. The claimant's case on applicable law rests entirely on an implied trust, which does not exist under French law, but is capable of existing under English law.”
- 22 Having referred to authorities and common law principles, Mummery LJ went on to say:
- “...at common law, even if the subject matter is foreign immovable property, English law may be the law applicable to the question whether there is an implied trust of that property. However, on the particular facts of those cases, it was plain that English law was the law applicable to the relationship between the people concerned and their property arrangements....
30. I agree with Mr James Maurici appearing for the Secretary of State that in this case the Commissioner was entitled, on the facts found by him and on a proper understanding of common law principles, to conclude French law was the applicable law, as France was the country with which the parties' arrangements had the closest connection.”
- 23 If that was true of the facts in *Martin's* case, it is even more true of the facts in this case. I add to the factors already set out the fact that all the documentation was in Spanish.
- 24 Mr Garcia, in his opinion statement, does not reveal whether there is a Spanish Law of Trusts but it seems to me that I can proceed upon the almost certain basis that there is not

because had there been he would undoubtedly have said so, but he did not, and the Spanish Civil Code following the Napoleonic principles would not normally allow for such a doctrine in a continental jurisdiction.

- 25 Therefore, insofar as Mr Vatandas was claiming a beneficial ownership in the property, in my judgment he can have no such beneficial interest pursuant to the English Law of Trusts because the English Law of Trusts does not apply to this property which is governed by the law of Spain. In my judgment, pursuant to the law of Spain, as I understand it from the report of Mr Garcia and for the reasons which I have expressed, the sole beneficial owner of this property, the Estepona property, is Mr Jarvis.
- 26 In any event, had it been necessary for the court to decide the merits of the claim by Mr Vatandas to be the beneficial owner of the property, I would have concluded, and I do conclude, that his claim has no merit whatsoever. The reasons are those which are set out by Mr Talbot in his skeleton argument at para.27. It suffices for me to indicate that those reasons set out in paras.(a) to (j) should be read into this judgment as forming the reasons for my conclusion that there is no merit in the assertions by Mr Vatandas.
- 27 Although Mr Vatandas has submitted evidence, as I have indicated, in the form of the witness statements served on his behalf, he has played no part in these proceedings and those witnesses have not attended for cross-examination. In those circumstances, the court pays little regard to the matters contained in those statements, not having been tested by cross-examination.
- 28 In all the circumstances, whether as a matter of English law or Spanish law, the finding of this court is that Mr Jarvis is the legal and beneficial owner of the Estepona property. Therefore, that property and its proceeds of sale rightly fall into the assets which are the subject matter of the Receivership Order made by Soole J and therefore may be realised by the receiver and added to those assets for the purpose of satisfaction of the Confiscation Order.
- 29 I therefore make an order in the terms sought by the Crown Prosecution Service, save that there will be some further recitals reflecting the substance of the judgment which I have just delivered.

CERTIFICATE

Opus 2 International Ltd. Hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

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This transcript has been approved by the Judge