Neutral Citation Number: [2019] EWHC 2139 (Ch)

Case No: BL-2018-002691

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Wednesday, 31st July 2019

Before:
MR. RICHARD SPEARMAN QC
(sitting as a Judge of the Chancery Division)

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Between:

(1) VNESHPROMBANK LLC (a company registered and in liquidation in the Russian Federation)	**Claimant / Respondent**
- and -	
(1) GEORGY IVANOVICH BEDZHAMOV	**First Defendant / Applicant**
(2) UNIFLEET TECHNOLOGY LIMITED	**Second Defendant**
3) PERSONS UNKNOWN (being the legal or natural persons through and/or to which the proceeds of the fraud have been transferred)	**Third Defendant**
(4) BASEL PROPERTIES LIMITED	**Non-Cause of Action Defendant / Respondent**

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MR. ROMIE TAGER QC and **MR. SIMON MCLOUGHLIN** (instructed by **Keystone Law**) appeared for the **Claimant/Respondent.**
MS. BLAIR LEAHY (instructed by **Mishcon de Reya LLP**) appeared for the **First Defendant/Applicant.**

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Approved Judgment

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR. RICHARD SPEARMAN QC :

1. This is an application that comes before the court pursuant to a notice dated 26th July 2019, in which the order sought is: "Confirmation by way of declaration or variation to the extent necessary that paragraph 10(2) of the worldwide freezing order made by Arnold J on 27th March 2019, and continued by Fancourt J on 10th April 2019, permits the first defendant to pay £341,680 to Fenton Whelan in relation to a development of 17 Belgrave Square and 17 Belgrave Mews West, London SW1 (which I will refer to as "the Property")". It also asks, if and to the extent necessary, for time for service of the application to be abridged, pursuant to CPR 23.7(4). As the hearing started on 30th July, time does need to be abridged, and I so order.

2. The draft order seeks a declaration that, pursuant to the worldwide freezing order, as varied by a subsequent order made by Falk J on 17th May 2019, the first defendant's solicitors, Mishcon de Reya LLP, are entitled to pay, on the first defendant's behalf, £341,680 in respect of the fees owed to Fenton Whelan in relation to the development of the Property from the net proceeds of sale of Badrutt's Palace Hotel AG, which are currently held in Mishcon de Reya's client account. The reference to that hotel is to a property in which the defendant had an interest -- he may have been the sole owner, but in any event he certainly had an interest in it -- which was sold. The proceeds of sale have been remitted to Mishcon de Reya. On the evidence of the first defendant those proceeds represent his sole liquid assets, or certainly his sole liquid assets of any substance, which are caught by the worldwide freezing order.

3. The order itself is substantially, if not entirely, in standard form. It contains, at paragraph 10(2), by way of an exception to the order, the following exception:

> "This order does not prohibit the respondent from dealing with or disposing of any of his assets in the ordinary and proper course of any business carried on by him, provided that (i) no sums may be paid or assets transferred to any company which is directly or indirectly owned and/or controlled by the respondent and (ii) before doing so in respect of any asset or assets comprising part of a single transaction or series of connected transactions which have an aggregate value of more than £50,000, the respondent must give the applicant's legal representatives 48 hours' written notice."

4. There is no suggestion that Fenton Whelan is caught by proviso (i).

5. As to proviso (ii), it is apparent from the fact the application has been made that there is at least a potential concern on behalf of the first defendant or his legal advisers that the proposed disbursement to Fenton Whelan would not be in the ordinary and proper course of a business carried out by him. I say this because that proviso does not set a £50,000 limit on what can be disbursed in the ordinary and proper course of business; it merely provides that where more than £50,000 is being disbursed there must be 48 hours' written notice.

6. The first defendant's evidence relating to the acquisition of the Property is set out in his 7th witness statement, dated 26th July 2019. He explains there, at paragraphs 5-8, how he came to acquire the Property, the terms on which he did so and the provisions

that were agreed relating to the possibility of obtaining an extended lease and redeveloping the Property. In the time available at this time of the day I do not propose to read all of that out when delivering an ex tempore judgment, and those paragraphs can, if necessary, be incorporated into the judgment. The heart of the matter is that he says that he was introduced to the Property as a potential development prospect, and that is why he acquired it. He was hoping that he would be able to obtain a 129-year lease extension, which, as I understand his evidence and the documents that I was referred to, was conditional upon planning permission being obtained.

7. The first defendant then gives evidence as to the value of the Property in paragraphs 9-12. Again, I do not propose to read all of those paragraphs out. They, also, can be read in to the judgment. At the heart of that evidence is reference to a draft valuation report, prepared by a very well-known and reputable firm of estate agents and valuers, Savills, dated 28th June 2018, which relates to a set of valuations made as at 31st January 2018. I have had the opportunity to look at that report, and his summary of it appears to me to be correct, namely: (a) the market value of the commercial lease of the Property was £6 million (I interpose to say that the Property at that time had been used as office premises for some period and not as residential premises); (b) the market value with planning permission and the right to a 129-year lease on completion of development would be £28.5 million; and (c) the market value of a 129-year leasehold upon completion of the conversion project would be over £60 million. Obviously, in order to achieve that latter figure, there would be expenses incurred in carrying out the development, and so one is not looking at a net enhancement, even on those figures, of as much as the difference between the lower figures and the £60 million, but certainly one is looking at a substantial enhancement if the proposed development takes place.

8. Then at paragraph 13 of that witness statement, the first defendant deals with the position of his indebtedness to lenders called Clement Glory Ltd. In substance, what he says is that the indebtedness is of the order of $35 million.

9. I have referred to the Savills' valuation. The relevant page of that valuation, setting out the figures which I have taken from the first defendant's evidence, is to be found at page 449 of bundle 2 of the papers in front of me, and page 53 of the report. The report is in a draft form. The evidence before me is that the reason for that is that it was drawn up in that way with a view to being converted into a final report, once it was clear who the developer or other interested parties engaged in the prospective development might be. That is the explanation as to why it remained a draft report, because down to the present time the development has not, in fact, proceeded.

10. One of the very few matters in this hotly contested litigation which is not in dispute, is that on 4th December 2018, the planning applications subcommittee of Westminster Council met and, with regard to the Property, resolved that conditional planning permission should be granted, subject to the completion of a section 106 agreement, to secure a contribution to the City Council's affordable housing fund of £1.427 million, index linked and payable prior to the commencement of development, and also certain other the costs. The subcommittee further resolved that if the section 106 agreement was not completed within six weeks from the date of that resolution, then the director of planning should have delegated authority to decide what to do.

11. Broadly, the two options that were identified by the committee were that the director of planning should decide whether the permission should be issued with additional conditions attached to it in order to secure the benefits that the Council required; alternatively it was open to the director of planning to decide to refuse the permission on the grounds that the proposals were not acceptable, and to give reasons for thus exercising the delegated authority.

12. There was also, on the same day, a contract of sale entered into between (1) the first defendant, (2) an SPV incorporated in Jersey, known as 17 Belgrave Square Limited ("the SPV"), and (3) Clement Glory Limited, a BVI registered company, which, according to the first defendant, is owed a lot of money by the first defendant. Clement Glory Limited had a charge over the Property, and this was restructured, but the substance of the first defendant's case is that it was and remained a secured borrower, with rights over the Property.

13. It transpires that the SPV was set up by Fenton Whelan, and two individuals who are named in the papers, but whose names do not matter for present purposes, are the ultimate owners and controllers of both Fenton Whelan and the SPV. If my understanding is correct, the likely reason for using the SPV was to carry out the development in a tax efficient way, and the idea was that it would raise moneys in order to enable the development to be carried out.

14. On 16th May 2019, solicitors professing to act on behalf of the first defendant gave written notice of rescission of that sale agreement, on the grounds that consents, which needed to be obtained by what was called in the agreement the longstop date, had not been obtained, and therefore a right of rescission arose in accordance with the express words of clause 10.4 of that agreement.

15. The correspondence which has led up to this application started on 27th June 2019, and has continued right up until the commencement of this hearing, and indeed I think probably into this hearing. What was mooted in that correspondence, starting with a letter from Mishcon de Reya of 27th June, was that payments to Fenton Whelan should be made out of the moneys caught by the worldwide freezing order in Mishcon de Reya's client's account. What was proposed at that stage was that there should be an initial payment of £170,840 (i.e. half what is said to be due), and further payment should be made later.

16. The breakdown of the £341,680 is referred to in that letter, and in other documents, and it comes down to £221,680 of disbursements that have either been incurred or, according to Fenton Whelan, are liable to be incurred, by Fenton Whelan, to third parties, including, I think I am right in saying, Savills, for example; and £120,000, that is £100,000 plus £20,000 VAT, in respect of Fenton Whelan's own fees for services that Fenton Whelan have rendered.

17. The urgency of the matter, and why it has come on in front of me in the way it has, revolves around the significance of today's date, 31st July 2019. In substance what is asserted by the first defendant's solicitors in correspondence and is carried through to the evidence, which I will refer to in a moment, and what is at the heart of the submissions of Ms. Leahy, who has appeared for the first defendant, is that there is going to be a change of planning policy affecting Westminster City Council, in that there is a City Plan, the consultation period for which ends today. Thereafter, there

will be discussions as to the extent to which Westminster City Council will adopt it, but it is said that as soon as the consultation period has completed, so that the shape of the City Plan can be known, it will be a relevant matter for planning considerations, and that unless a section 106 agreement is completed by close of business today, with effect from 1st August 2019, the Westminster City Council, looking prospectively at what is going to happen with the emerging policy under the City Plan, will not, or may not, grant planning permission for the development of the Property, because the proposed development would not accord with elements of the prospective new planning policy.

18. That is explained in various ways in the correspondence. One example of that is at page 4 of a letter from Mishcon de Reya of 4th July 2019, in a subparagraph (q), and again in view of the time I do not propose to read that out. It is at page 818 of volume 2 of the bundle of papers in front of me.

19. Standing back from that detailed paragraph, what is said, effectively, is that it is not suggested that 31st July is a rigid deadline, but it is significant because there will be, or may be, a shift in planning policy after the consultation period is over on 31st July, that is today, and that could easily further jeopardise the grant of planning permission, which of course, at the moment, remains conditional. It has been in jeopardy ever since the six-week deadline contained in the 4th December 2018 planning application's subcommittee minutes expired without a section 106 agreement being signed, but to date on the evidence Westminster City Council has not, or its director of planning has not, implemented either of the two options set out in those minutes.

20. The key evidence, or a significant part of the key evidence, relating to this question of urgency is to be found in the witness statement of Mr. James Van Den Heule of Fenton Whelan, dated 26th July 2019, at paragraphs 16-19, and again those paragraphs should be read into this judgment.

21. The nub of the matter there is that, according to Mr. Van Den Heule, Fenton Whelan's solicitors, Wedlake Bell, were told in May 2019 about the significance of the 31st July 2019 date. After they learnt that, and I infer passed it on to Fenton Whelan, Mr. Van Den Heule then spoke with some planning consultants called Montagu Evans, and they surmised that the reason underlying the 31st July 2019 deadline was to do with the City Plan, and more specifically with when the consultation for the City Plan came to an end, which, as I have said is on this very day, 31st July 2019. Mr. Van Den Heule then goes on to explain why he says that the new planning policies will be followed with effect from 1st August, and to give evidence as to what effect that may have on the value of the Property if planning permission cannot be obtained for the current proposed development but there has instead to be a development in accordance with at least one aspect of the proposed City Plan, which limits the size of certain dwellings to 200 square metres.

22. The thrust of his evidence is that if the Property cannot be developed as a single, very large residential property, but has to be developed as a number of smaller units, it will be worth very much less, possibly £30 million less. Further, this will involve higher development and construction costs, so that the effect on profit will be even more than the £30 million difference between developing and selling as a large residence and as several smaller residences.

23. Mr. Tager QC, who has appeared for the claimant bank in this application, objected to part of that evidence, on the grounds that it was expert evidence and no permission for expert evidence had been sought or obtained. He referred me to a decision Andrew Baker J, namely BB Energy (Gulf) DMCC v Al Amoudi and Others [2018] EWHC 2595 (Comm), as authority for the proposition that the rules relating to the admissibility of expert evidence apply on interlocutory hearings as much as they do at trial. With regard to that submission, I do not consider that these paragraphs contain expert evidence. In my judgment, it is perfectly open to someone with extensive experience of the change of policy effects on planning matters to give evidence as to what that experience has been, and what the expectation is in relation to the change that is under discussion here. Similarly, in my view, it is clearly open to him to give evidence from his experience as to whether planning permission would be granted on the terms of the conditional permission in future.

24. Standing back from the matter, it seems to me blindingly obvious that if the current planning permission does lapse, and cannot be made unconditional, that, potentially at least, a very, very large reduction in the value of the Property will follow. Various figures were debated during the course of the hearing. Some are mentioned in the Savills report. Mr. Tager himself mentioned some in the course of interrupting part of Ms. Leahy's submissions to clarify what he contended he had actually been saying about valuation figures in his own submissions. Naturally, I would not tie Mr. Tager or his clients to a figure that he gave off-the-cuff. However, the Savills material suggests (albeit going back to January 2018) that the planning permission would add £22.5 million to the value of the Property. Mr. Tager was inclined to accept that it would add at least £15 million to the value.

25. Obviously, if the current conditional permission is not obtained, or lapses, it does not mean that equivalent permission could not be obtained at a future date, or that some other permission could not be obtained, and so forth. On the face of it, however, it seems to me to be clear beyond any scope for reasonable argument, that the loss of the ability to turn the current conditional permission into unconditional permission could very significantly affect the value of the Property, and certainly result in a large measure of uncertainty and very probably additional costs in applying for planning permission again.

26. The other aspect of Mr. Van Den Heule's evidence that I ought to refer to is what he says about Fenton Whelan's position on outstanding fees. That is dealt with in a section starting at paragraph 20 of his witness statement of 26th July 2019, and it goes right up to paragraph 28. In particular, he gives evidence at paragraph 25 that Fenton Whelan has incurred third party disbursements of £221,680, including Savills and others, and that their fees are £120,000 inclusive of VAT, as I have already gone over.

27. At paragraph 26, he says that the notice rescinding the sale contract that had been served by the first defendant on 19th May 2019 is not accepted as being valid. Two points are taken there. One is that service of that notice was an impermissible act in light of the terms of the worldwide freezing order, and the other is that the solicitors serving the notice did not have authority to serve it. He then goes on to say, in paragraphs 27 and 28, that the SPV will not complete the section 106 agreement unless the fees are paid, and it would be unfair if Fenton Whelan were not paid.

28. The structure of the sale agreement, which I have not rehearsed yet on this topic, in short, is that what was envisaged was that, at a stage when certain sums under that agreement fell due for payment to the first defendant, who was the owner of the Property, and was selling it under the sale agreement, that moneys would be held back from that payment and would be used to pay Fenton Whelan's fees. There does not appear to be any direct contract which I am aware of between Fenton Whelan and anybody relating to payment of Fenton Whelan's fees, but given that the SPV was a party to the sale agreement, and that the owners and controllers of Fenton Whelan and the SPV are the same individuals, the conclusion I draw is that Fenton Whelan were agreeable to an arrangement under which they carried out work and earned fees in relation to the planning permission and the development of the Property, on the basis that the moneys would be paid to them in that way. The moneys in question, therefore, would not come directly to Fenton Whelan from the first defendant, but would, in effect, be docked off sums that would otherwise be payable to him by the paying party under the sale agreement.

29. The only other document that I think I need refer to at this stage is the section 106 agreement. That is a document that appears to exist only in draft. It has as parties (1) the first defendant, (2) the SPV (termed there "the developer"), (3) the Duke of Westminster as freeholder, (4) Clement Glory Ltd as mortgagee, and (5) the City Council. Fenton Whelan's position has been that is the only section 106 agreement that has been prepared, albeit that it exists only in draft.

30. Fenton Whelan does not accept that the rescission of the sale agreement has taken place, and has adopted the stance that the price of the SPV agreeing to sign up to the 106 agreement, and therefore unlocking the terms of the conditional grant of planning permission, and preserving the planning grant before the new City Plan is taken into account, is that Fenton Whelan would want its fees to be paid. If the rescission is accepted as being effective, it would seem to me that the SPV could not, any longer, sensibly be a party to the section 106 agreement, at least as matters stand at present. One way of keeping the SPV in would be for the shares in it to be transferred to the first defendant by Fenton Whelan, and for him to then use the SPV as the developer. In a second witness statement dated 31st July 2019, served on the second day of the hearing, Mr. Van Den Heule indicated that Fenton Whelan would be agreeable to effecting such a share transfer in exchange for their fees being paid.

31. Mr. Tager, for the claimant, has classed Fenton Whelan's stance, at various times, as blackmail, and certainly as being without any substance, on the grounds that he says that the rescission of the sale agreement is unarguably valid, and that the grounds for saying it was invalid are specious. He submits that all that needs to be done is for the relevant parties (which it is common ground would need to include all those who have any interest in the Property), to sign a section 106 agreement without the SPV as a party. That could have been done at any time over the previous months, and Fenton Whelan have no basis, no leverage, and (in accordance with the expression that I chose to use in the course of the hearing) no spanner that they can throw into the works, to say otherwise, and to hold out for payment of their fees by the first defendant.

32. The first defendant's position is that it would be in the ordinary and proper course of business to pay Fenton Whelan what they ask for, because they do in reality have leverage over this. The rescission issue has never been resolved by the court, and

they are arguing that the contract has not been rescinded. On the basis, which I accept, that a local authority is unlikely to be content with a section 106 agreement that does not involve the SPV while that argument is being maintained, that argument would lead to delay in any section 106 agreement being signed, even it if emerged at the end of the day that the first defendant was right in his contention that the sale contract has been rescinded. That delay alone, on the evidence, could well be damaging to the first defendant's commercial interests, for the reasons rehearsed above.

33. Possibly more importantly, I think, on the evidence Fenton Whelan are the party that has close contacts with Westminster. According to their evidence, it is due to their good relationships with the City of Westminster, the Grosvenor Estate and so forth, that the planning permission remains in its conditional form and has not already been terminated, when a section 106 agreement was not completed earlier in the year. If they are not kept on board, I consider that they will be able to impede the completion of a section 106 agreement. I think, reading between the lines, if one was sought to be drawn up excluding the SPV, they would assert that the SPV is a necessary party, and that if the SPV is excluded it should not be signed (and I would interpose that I can readily envisage that a local authority would hesitate before ignoring that assertion), and of course if it has to be drawn up with the SPV then Fenton Whelan have taken the position that the SPV will not sign unless they are paid the fees that they are due. I would also add that, on the evidence, it would benefit the first defendant to maintain good relations with Fenton Whelan, and may well harm his commercial interests to fall out with them, because even if he proceeds to develop the Property himself or using a developer which is unrelated to Fenton Whelan, there may still be a role for Fenton Whelan to play in furthering the development, and they have great experience and good connections such that they could bring real value to the table in that regard.

34. The first defendant does not suggest he has any actual legal obligation to pay the fees in question. He submits, in a sentence or two, that this is a commercially sensible, practical and expedient step to take. It fully accords with the merits of the position, because Fenton Whelan have indeed incurred the disbursements and earned the fees they claim are due, and they would have been paid, under the structure of the now (as he says) rescinded sale agreement, these fees out of moneys that would otherwise have come to him.

35. With that perhaps somewhat lengthy, and maybe not perfectly structured, explanation of the background, but doing my best to distil a very large number of papers that I have been referred to over the course of the last day or so, I come to the heart of the application. In this regard, in my judgment, my task has been made relatively easy by the way in which the case has been argued.

36. The thrust of Ms. Leahy's submissions is that this sum of money is not a very large sum in the scale of this litigation. The claim is, I think, for $1.8 billion. The total assets presently in Mishcon de Reya's client account are of the order of $18 million. Set in that context, it is a relatively modest payment. It is sought to be made in order to preserve the planning position and avoid the risk of Westminster City Council taking a hard line over that with the consequences that I have outlined. It is, therefore, in no way untoward, but is instead entirely reasonable, and a payment that the court ought to permit.

37. Mr. Tager's position, on the other hand, is that this is a scheme that has been cooked up in order to extract £340,000 out of the sums presently subject to the worldwide freezing order. He put the matter in various ways in the course of his submissions, but one way, according to my notes, was that he said that the first defendant and Fenton Whelan, came up with a wheeze to extract £340,000 out of those sums, and they manufactured the current position. In explaining what he meant by "manufactured", he did not suggest that the disbursements were manufactured or bogus. He suggests that what was manufactured was whether the first defendant had any responsibility to pay anything to Fenton Whelan, and whether Fenton Whelan actually had any leverage or spanner that they could wield over this; that there was, as I have already said, no serious argument that there was no right to rescind; and that the whole question of bringing a section 106 agreement to completion with appropriate parties, putting it in front of the Council, and getting the Council to sign it, could be achieved for something like £10,000 and not £340,000.

38. Mr. Tager suggested that Fenton Whelan's evidence was untruthful in many respects, and he added that allegation to numerous allegations about historical dishonesty on the part of the first defendant in complying with orders of the court, in what was said in earlier witness statements, and in what was said in the correspondence.

39. So, the case theory of the claimant, advanced by Mr. Tager no doubt on instructions, is that the first defendant and Fenton Whelan have put their heads together, and they have come up with this scheme of making a payment which is not a bona fide payment, and which is going to be split between them. He invited me to infer that this plan to divide the spoils must follow from the fact there was no reasonable explanation as to why the first defendant should want to pay this money, and so the inevitable inference is that he is getting a kick-back or some other benefit (unexplained, but a benefit of some sort).

40. Mr. Tager relied on the previous conduct of the litigation, the contents of the correspondence as he submitted that it should be read, and other incidents, such as the fact that the application for planning permission, that was made on 9th February 2018 by Montagu Evans, apparently as agents for Fenton Whelan, named as the owner of the Property, not the first defendant, who was the owner on 9th February 2018, but instead named the SPV as the owner.

41. Those sorts of things, all put together, meant that one should be deeply suspicious of anything emanating from the first defendant. His evidence should be rejected, unless it was corroborated by independent evidence. In summary, I think Mr. Tager would submit that there is no such evidence. Mr. Van Den Heule and Fenton Whelan have a plain motive in wanting to get this money released, because they will be paid, and pocket at least some of the £100,000 which on Mr. Tager's case theory is going to be split between them and the first defendant, and Fenton Whelan have put in evidence which does not make sense and includes, he would say, an attempt to introduce by the back door expert evidence without the necessary permission of the court.

42. In answer to that, Ms. Leahy has submitted, in her words, that this is a ludicrous conspiracy theory. It apparently involves some division of £100,000, or maybe some other benefit being obtained by the first defendant, and how can that possibly be a realistic fraudulent venture for the first defendant to embark on, given the scale of this litigation, the sums involved and indeed the costs of the exercise in arguing about a

sum of this size. She says, if one looks over the correspondence, Mr. Tager's points are wrong. There has not been the vacillation of the position (and indeed outright dishonesty) that he invited me to conclude the correspondence shows. In fact (and I will not read out all the letters, but the three letters she referred to are at pages 810, 814 letter (q), 818 letter (q), and in my view the top of page 835 of the bundle as well) the letters actually show that the assertion that 31st July 2019 is a significant date, which was made some time ago, has never been challenged in the correspondence and only comes to be challenged now that this application has been made.

43. Mr. Tager's allegations, which are extremely serious and far-reaching, would, in my judgment, have faced great difficulty in finding a proper basis for acceptance with the court on the materials that were available up until today. But, in my judgment, in light of the second witness statement of Mr. Van den Heule, they are impossible to sustain.

44. That witness statement goes over all the most significant allegations, and quite clearly and categorically rebuts the suggestion that moneys will be paid by way of a back-hander or that some sort of other advantage will be provided to the first defendant. It also makes perfectly clear that Fenton Whelan would have been willing to come to an agreement that in exchange for being paid their fees, they would co-operate in either ensuring that a section 106 agreement was completed in its current form, or transferring all the shares in the SPV to the first defendant; alternatively, they would only accept payment of fees on condition that the conditional permission was not withdrawn, or on condition that the director of planning did not impose further conditions. That is a summary of paragraph 19 of Mr. Van den Heule's second witness statement. Those are the type of conditions that I suggested during the course of the hearing that the parties might like to explore whether they could agree in resolution of the current application, because it seemed to me that they would go a long way to meeting some of the other allegations and concerns expressed by Mr. Tager, to the effect that it would be pointless to release monies to Fenton Whelan because the section 106 agreement would not or could not be completed for one reason or another, but which the claimant seemed unreceptive to considering in light (I infer) of its case theory of fraud.

45. Mr. Van den Heule addresses also the claimant's suggestions that other parties might not want to sign, and that the whole thing is a put-up job, because no one is ever going to sign, and says that is not right either. He makes the point already made in evidence and in Ms Leahy's submissions, and discussed earlier in this judgment, that making the planning permission unconditional would unlock substantial value. He describes the suggestion that what Fenton Whelan is doing amounts to blackmail as an extraordinary allegation. His rationale is, effectively, that Fenton Whelan was always going to be paid out of the first defendant's money. The transaction under which that was going to happen has collapsed. However, in substance, the first defendant, as the owner of the Property, has gained the benefit of everything that Fenton Whelan has done, and there is nothing untoward about Fenton Whelan expecting to be paid, and the first defendant is just doing the decent thing by doing that. Mr. Van den Heule takes strong objection to the suggestion that this is properly classed as blackmail (which obviously, as matter of law, is a criminal offence that is punishable by a significant term of imprisonment).

46. As I say, in my judgment matters have been made easy for me by the stark way in which this case has been argued. I consider these allegations are not sustainable

against the first defendant. I think that it is quite extraordinary for the claimant to suggest that there is a conspiracy of this sort over what is basically a split of £100,000, at most. The inherent improbability of embarking on a convoluted, elaborate and expensive charade to make off with a sum of that sort is more than amply supported by the evidence. I think that the sort of submissions that have been made face, in my judgment, an insurmountable hurdle in the shape of a witness statement from Mr. Van den Heule of the sort that I have just gone over, and which I, for one, would be extremely hesitant about rejecting and finding to be a tissue of lies, and part of a concerted fraudulent conspiracy, purely on an assessment of the papers, which is all that this application involves; and in my judgment there is a perfectly good and sensible reason why these moneys should be paid.

47. It may well be because this application has been prolonged to the extent that it has by the length of argument that the time for getting value out of payment to Fenton Whelan by saving the day on the planning permission has gone. It may be too late. It may be that the 31st July 2019 is not, and never was, a real hard deadline. That is the tenor of some emails passing between a consultant to the claimant's solicitors and personnel of the Council, which were exhibited to a second witness statement of one of the claimant's solicitors which was produced on the second day of the hearing, although those emails did not deal with the specifics of the conditional planning permission relating to the Property. Certainly Mr. Van den Heule in his second witness statement suggests that it may be that, with his good relationship with the City Council it may be possible to persuade them to extend for a few days the time at which, on his evidence, they might otherwise be inclined to change their attitude.

48. However, that is not the basis of my decision. It does not matter whether the 31st July is a hard deadline. It does not matter whether it may be possible to get planning permission after this. In my judgment, it is an entirely reasonable approach for a property developer, such as the first defendant, to take, to buy off the difficulties that in my view it is clear that Fenton Whelan are in a position to cause by paying them no more than the fees that they have earned and from which he as owner of the Property stands to benefit. Albeit he does not have a direct legal obligation to pay, it is an ordinary and proper use of his own assets, which is what this freezing injunction is concerned with, because there is no proprietary or tracing claim to the moneys in question. That is something that, in my judgment, he is entirely free to do with his own money.

49. In reaching that conclusion, and I will not recite it in view of the hour, I have had regard to the summary of the relevant law to be found in paragraphs 22-26 of the judgment of Lewison LJ in Michael Wilson & Partners Ltd v Emmott and others [2015] EWCA Civ 1028, and also to the recent decision of the Court of Appeal in Koza Limited v Ipek and others [2019] EWCA Civ 891. In the latter case what was in question was an undertaking not to dispose of assets, save in the ordinary and proper course of business, not a freezing injunction, but similar considerations were held by the court to apply. In short, the court took the view that once the directors of a company had come to a bona fide decision that expenditure, in that case of the order of £3 million, was in the company's interests, it was not for the court to second-guess that decision. I have taken that point, also, into account in reaching my decision.

50. For those reasons, I propose to grant the relief that is sought in the terms of the draft order already referred to. I apologise to everyone for the length of time that took, but I did not have time to make it any shorter by reflecting on it.

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