Neutral Citation Number: [2021] EWHC 1819 (Comm)

Claim No: CL-2020-000211

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
ADMIRALTY AND COMMERICAL COURT

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

Date of hearing: Friday, 19th February 2021

Before:

MR. JUSTICE WAKSMAN
Remote hearing via MicrosoftTeams

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Between:

(1) NJORD PARTNERS SMA-SEAL LP **(2) NPSSF DEBT CO S.À R.L.** **(3) AIE III INVESTMENTS, L.P**	**1st to 3rd Claimants**
(4) NORDIC TRUSTEE AS	**4th Claimant/ Judgment Creditor**
- and –	
(1) ASTIR MARITIME LIMITED	**1st Defendant**
(2) MUHAMMAD TAHIR LAKHANI	**2nd Defendant/ Judgment Creditor**
(3) MUHAMMAD ALI LAKHANI	**3rd Defendant**

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APPROVED JUDGMENT

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MR. ANDREW DE MESTRE QC for the **Claimants**
MR. SIMON SALZEDO QC and MR. RICHARD BLAKELEY for the **Defendants**

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MR. JUSTICE WAKSMAN:

1. I will set out a little background to what is an application for a stay pending an appeal. As I think Mr. de Mestre (for whose submissions I am grateful) recognised, an application for a stay in these circumstances where the Master has already refused permission to appeal inevitably entails looking at the question of whether there is a real prospect of a successful appeal. I am therefore going to deal with both of those matters now together, even though I am told that the necessary paperwork for a renewed application for permission would not be ready until Monday.

2. On 14th July 2020 summary judgment was entered against this defendant, Mr. Lakhani, who has taken part in proceedings all the way along, there were various different teams of solicitors and counsel. Summary judgment was entered on that date for $47 million, none of it has been discharged.

3. In November, the claimant made an application in the usual way which in the first instance is without notice and on paper to the master to provide for a date for the oral examination of Mr. Lakhani as a judgment debtor. The evidence disclosed properly that he was abroad and matters of that kind and the master directed that that application for the oral examination should in fact be made on notice. He had solicitors here at the time on the record but he was served out pursuant to an order of the master as well as his solicitors being served. So, at that point on the face of it there may have been a contested application.

4. On that basis a hearing date of 22nd February, which is Monday coming, was fixed and it was fixed, I am told, to a slightly later date in order to accommodate Mr. Lakhani's then counsel. In the event he did not serve any evidence in response when he ought to have done and those acting for the claimants asked whether he was going to do so. There was no response at all and in the light of that they went back to the original plan which was for the master to make the order on paper and there is no procedural objection taken to the fact that this is what he did.

5. On that occasion, and I will call it the Part 37 order, the master on 11th January said that Mr. Lakhani should attend court via a video conference to provide information about his means in the usual way and then that order appended a series of classes of documents which he should produce at the same time.

6. What then happened was that on 3rd February Mr. Lakhani applied to set aside the Part 71 order and that was heard by the master on 16th February. There were a number of arguments put forward by his then counsel, who does not appear before me today, as I have said it is Mr. de Mestre who was not there on that occasion. A number of the arguments advanced for the purpose of what was described as a set aside of Master Davison's order have not been pursued and I need not say anything more about them.

7. Let me summarise what the deputy master did say on the single point, a variant of which is put forward before me today. The deputy master rejected the application to set aside as hopeless, for the same reason he refused permission to appeal and so he then directed that if there was now to be an application for permission to appeal to the appellant court, which in this case is the High Court, then it has to be made to a High Court judge and that is how I come to deal with that and the question of a stay.

8. At paragraph 20 the deputy master considers the various arguments and a point was taken about the compatibility or otherwise of the Part 71 order with the relevant treaty which had been made and which was referred to, a treaty which, it is common ground, would amount to domestic law. The relevant treaty is the treaty between the UK and the UAE, which is where Mr. Lakhani resides, which came into force in 2008 but is dated 2006 and it begins by saying:

> "The Parties shall grant each other under this Treaty mutual judicial assistance in civil and commercial matters to the highest degree possible."

9. Then it deals with things like "the service of judicial documents," "the taking of evidence by means of Letters of Request or commissions", which is Article 4.

Article 12 then states:

> "The taking of evidence in civil and commercial matters by means of Letter of Request addressed to the competent judicial authorities ...".

10. That is then set out with various procedural rules. The first point to make is that I am not dealing with a letter of request which is a specific form of evidence gathering. The letter of request is in fact the English or the UK appellation for that procedure, it is not surprising it is referred to in the treaty because this is a treaty between the UK and UAE. The point that was being taken before the deputy master was that to order an oral examination by video link in the UAE itself was inconsistent with and incompatible with the treaty and that it could amount to an infringement of UAE domestic law.

11. Orders of the court sometimes do involve possible infringements. One thinks immediately of orders against foreign defendants to produce affidavits or documents in relation to freezing injunctions and if the points are taken the court has to decide in its discretion, and it is a matter of discretion, whether or not to make the order in that form. The mere fact that there may be something which is unlawful in the other territory does not automatically rule out the order. Mr. de Mestre does not suggest otherwise.

12. The master was dealing with the question then whether there would be a sense in which the Part 37 order here was unlawful. What the master said in rejecting that was first of all in principle the decision of the Supreme Court in *Masri (No. 4)* where Lord Mance was dealing with a slightly different point, but none the less said that the application for oral examination of a judgment debtor as opposed to, for example, an officer of a judgment debtor, can validly be served abroad and in that sense CPR 71 has extra territorial effect.

13. There is actually a very obvious reason why that distinction is made and that is because a judgment debtor is, by definition, someone who has already been found to be amenable to the English jurisdiction because otherwise there could not be a valid judgment debt against them in the first place and the court therefore has established territorial jurisdiction in that sense and personal jurisdiction over the individual concerned. It is not some random individual or witness who a party here considers might be useful one way or the other and in my judgment that is a critical point.

14. The learned master went on to say that the principle of whether an individual person residing abroad who is a party to the English proceedings may be subject to Part 71 order he said had been decided, he said he did not consider there was any basis for concluding that the English court should refuse to make a CPR Part 71 order in respect of Mr. Lakhani. If it were simply a question of discretion then the discretion lay very firmly in favour of upholding the order

15. Matters proceeded apace because although the deputy master made that order on 16th February and it came out in written form only yesterday, as did his decisions, none the less Mr. Lakhani, through his lawyers, has now sought a stay on the basis that any appeal would be pointless if the hearing which is challenged is to go ahead on Monday. As I say, Mr. de Mestre has accepted that it is really a question of showing first of all a real prospect of success.

16. In the materials that have been flying around today there was in fact some material from Dentons, a firm of solicitors, about questions of whether there was any unlawfulness or penalty under the treaty if this order was to take effect in the way that it has been made. Quite wisely, Mr. de Mestre abandoned that attempt to introduce what was unquestionably new evidence on the basis that it was going to fail under *Ladd v Marshall*, as I should record it would, because the truth of the matter was that Mr. Lakhani has known since towards the end of November what it was that the claimants were going to be applying for and has had ample time to amass any materials of that kind.

17. What we are left with is a variant of the argument before the master. I do not even accept that it was put in this way before the master but Mr. Salzedo has been content to deal with it and so will I. The point is now made that as a matter of jurisdiction and construction and not simply as a matter of discretion CPR itself cannot apply to order a hearing which will take place by video link in another country in circumstances where there is a treaty that deals with evidence taking. That is, broadly speaking, his point. The first limb of the argument is resting on the language of 71 and he relies on the fact that there are words to the effect that the judgment debtor "must attend the court". He says that can only mean the physical building. If that was right then the court would have no power to order an examination here by video link in another part of the country of the judgment debtor.

18. Mr. de Mestre did not say that that would be the consequence of his argument, although, in my judgment, as far as the language is concerned, it obviously is. All he could say is that the language would not prevent an oral hearing here but it would broad. There is nothing in the language to make that distinction at all. One is forced to conclude that a fair reading of the language is obviously that the court can be a physical building, it is actually the law that the court can decide to constitute a court anywhere, including abroad, which is why it is in fact that witnesses have been giving evidence by video link for so long. There is nothing in the language itself at all to make this point about territorial limits.

19. The second way that he puts it is to say that it could not have that extra territorial effect because that would cause a conflict with the treaty provisions which would raise the normal presumption that instruments are not assumed to have territorial effect because it would go against the comity principle. It seems to me that this wholly overlooks the critical point that I raised earlier on which is where the individual is already subject to

the personal jurisdiction of the court as Mr. Lakhani is here. It is extremely difficult to see why in those circumstances this court, through its enforcement procedure, is not able to extend extra territorially the procedures designed to execute a judgment which has been validly obtained against that individual in the courts here. That is the first reason why I consider that the comity principle does not apply.

20. The second reason goes back to the treaty. The treaty is all about letters of request and I have no doubt there are similar treaties between the UK and other countries but it does not say anything about any other form of evidence taking. So in my judgment there is not really a conflict with the treaty at all on the materials that I have been provided with.

21. If one looks at the matter more broadly, there is no reason why there should be any comity problems here given that the court had personal jurisdiction to begin with. Therefore, in my judgment, there is absolutely nothing in the point that as a matter of construction, which only applies (a) to territories abroad and only (b) applies where they may have treaties of this kind, to say that as a matter of construction and, therefore, jurisdiction 71 cannot apply at all. All that has happened here, in my respectful view, is that the argument which is usually being made in terms of discretion has been dressed up to found a jurisdiction argument. That is the beginning and the end of it and I am afraid there is nothing in it.

22. Mr. de Mestre does not in the alternative make any other arguments and he does not make any argument so far as discretion is concerned. On that basis, which I can tidy up if anyone wants later on, there is no prospect of a successful appeal. There is no other reason for an appeal and that immediately removes any foundation for the stay application.

23. I should say with regard to the second limb of Mr. Salzedo's point I also agree with him that even if there was anything in the appeal it does not follow that a stay should be granted and merely because the very thing which is appealed against is coming on Monday is not itself a reason to grant a stay. The reason for that is that all of these points, if there was anything in them, could have been made months ago. They all could have been raised at what was intended to be an on notice hearing back at the end of November. Mr. Lakhani is not short of resources, it seems, in truth to have lawyers acting for him. All of those points could have been dealt with then. If that is the case then we would not be facing the situation of urgency which we are now. He has in my judgment brought it all upon himself.

24. Second, there is the question of balance of prejudice here. The claimants have been kept out of their money for a very long time. There is no reason why they should be forced to spend more money which is likely to be wasted. There is a world-wide freezing injunction, they are doing what they can to obtain information about Mr. Lakhani's financial position and the sooner they get that information the more likely it is they will find some way of enforcing the judgment.

25. Mr. de Mestre says, yes, but there is a prejudice as far as Mr. Lakhani is concerned. I do not agree. He is not being asked to pay over any money irreversibly or irretrievably. He is simply being asked to provide information about his assets and to provide documents. It is not suggested that the very provision of the information is a prejudice to him, nor can it be suggested that the way in which the proceedings will be conducted is in any way a prejudice, not now that we do not actually have any additional

information before the court about why taking evidence in this way would be prejudicial and on the face of it there is not. The only prejudice, if he decides to cooperate, is that he has to tell the truth about his assets. I am afraid I do not regard that as a prejudice at all.

For all those reasons, stated at rather greater length than I had intended, the application for permission is refused and the application for a stay is refused.

This Judgment has been approved by Waksman J.