

Neutral Citation Number: [2022] EWHC 2571 (Comm)

Case No: PT-2022-MAN-000017

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND WALES
MANCHESTER CIRCUIT COMMERCIAL COURT

Manchester Civil and Family Justice Centre,
1 Bridge Street West,
Manchester
M60 9DJ

Friday, 25 February 2022

BEFORE:

HIS HONOUR JUDGE HALLIWELL
(Sitting as a High Court Judge)

BETWEEN:

MRS EDHEM

Applicant

- and -

(1) MR MEHMET EDHEM
(2) MRS S EDHEM

Respondents

MR S CONNOLLY appeared on behalf of the Applicant
MR M EDHEM appeared in person
MRS S EDHEM did not appear and was not represented

APPROVED JUDGMENT

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1. JUDGE HALLIWELL: This is the adjourned return date of Mrs Muazzez Edhem's application for a freezing injunction against her son, Mr Mehmet Edhem, and his former wife, Mrs Sina Abdo Mohammed Edhem. For ease of reference, I shall refer to them respectively, according to their designation in these proceedings, as the Applicant, the First Respondent and the Second Respondent.
2. The Applicant has not issued substantive proceedings under Part 7 or 8 of the CPR since her claim is made, under *Section 27 of the Tribunal Courts Enforcement Act 2007*, to enforce a tribunal award as if recoverable under an order of the High Court. Counsel for the Applicant confirmed, at the beginning of the hearing, that the claim is thus limited to £450,000. I shall deal with the calculation of the ceiling later.
3. The hearing is being conducted remotely. Mr Stephen Connolly appears as counsel for the Applicant and the First Respondent attends in person. The Second Respondent does not attend. She has not participated in these proceedings at any stage. The First Respondent advises me that they have now divorced and she is abroad, possibly in North Yemen. However, the Second Respondent has not said or done anything to confirm to the Court that this is so.
4. The factual background can be stated shortly. The Applicant maintains that the First Respondent forged her signature on a registered transfer of property at 27 Netherford Road, Clapham and procured that it was purportedly witnessed by a third party. The registered transfer or TR1 bears the date 16 July 2018.
5. The Applicant's claim on the forged transfer came before the First Tier Tribunal in July and August of 2021. On 19 November 2021, Mr Max Thorowgood, sitting as a judge of the Tribunal concluded that the Applicant's signature on the transfer was, indeed, forged by the First Respondent, the Applicant did not sign it and her signature was not witnessed by Millicent Mitchell, the purported signatory. He also concluded that the First and Second Respondent or some other woman posed as the Applicant to secure registration of the transfer.

6. Judge Thorowgood subsequently awarded the Applicant her costs of the proceedings, to be assessed on the indemnity basis, and made an order for the payment of £238,955.27 on account of those costs, payable by 21 February 2021, four days ago. This amount has not been paid.
7. On two previous occasions, I granted freezing orders to the Applicant subject to a ceiling of £650,000. However, I have already mentioned that, if the application is limited to a claim under *section 27* of the *2007 Act*, it must be reduced to £450,000. It was previously envisaged that the claim incorporated the rents and profits of the property and dilapidations. However, if she is to advance such a claim, the Applicant must issue substantive proceedings under Part 7 or 8 of the CPR.
8. Subject to this amendment and with certain other modifications, the Applicant seeks to continue the relief previously granted. If I am to grant such relief, I must be satisfied that the Applicant has a good, arguable case on the merits, she has assets to which the freezing order can apply, there is a risk of dissipation, and is just and convenient to make an order.
9. Relief is sought against the Second Respondent under the *Chabra* jurisdiction, so-called because it was confirmed in the judgment of Mummery J in *TSB Private Bank v Chabra [1992] 1 WLR 231*. Under this jurisdiction, it is open to the court to grant relief against a defendant against whom no separate cause of action has been advanced. To satisfy the test for such a claim, I must reach the conclusion that there is good reason to suppose that there are assets held in the name of the Second Respondent which would be amenable to process, ultimately available to satisfy a judgment against the First Respondent.
10. I am satisfied that the Applicant has a good, arguable case on the merits. Relief is sought in aid of execution of a court judgment. A court has determined that the First Respondent did indeed forge the Applicant's signature on the transfer. On this basis, the transfer would have been void. In any event, there is an extant order of the First Tier Tribunal requiring the First Respondent to pay the Applicant's costs on the indemnity basis and, on 7 February, the First Tier Tribunal ordered him to pay £238,955.27 on account by 21 February. This amount remains outstanding.

11. The First Respondent advises me that the judgment is subject to appeal. He has referred me to a notice of appeal in the bundle. I understand this has now been filed with the FTT with a view to obtaining permission to appeal. However, an appeal does not, in itself operate as a stay and, to succeed on appeal, the First Respondent must identify an error of law or show that the judge's conclusions were not open to him on the evidence before him. This is not an easy task. The appeal court – in this case the Upper Tribunal – will not simply to substitute its judgment for the judgment below on a re-assessment of the merits. At least it will not generally do so. The Applicant must demonstrate that the judgment is flawed.
12. The ceiling on the proposed freezing order is £450,000. This has been calculated after taking into account the total amount of the Applicant's costs in the proceedings amounting to some £396,758 which, as I say, remains subject to detailed assessment on the indemnity basis. To this, the Applicant has added a little over £50,000 to encompass her costs of enforcement and, more specifically, her costs of these proceedings. In my judgment, whilst these costs are estimated, they are based on an assessment which is not unrealistic.
13. The First Respondent submits that injunctive relief is an equitable remedy. He also submits that the Applicant does not come to this court with clean hands. In response, Mr Connolly referred me to the commentary of the editors of *Snell's Equity* (34th Ed) in which the editors describe the clean hands principle as follows in a passage at 5 – 010. In a passage denoting the applicant for relief as “B”, they say this.

"The question is not whether any general moral culpability can be attributed to B but is rather whether relief should be denied because there is a sufficiently close connection between B's alleged misconduct and the relief sought. It is accepted therefore that the scope of the application of the unclean hands doctrine is limited and the maxim applicable only in relation to conduct of B which has an immediate, necessary relation to the equity sued for, that B is seeking to derive advantage from his dishonest conduct in so direct a manner that it is ultimately unjust to grant him relief. It is also accepted that ultimately in each case it is a matter of assessment by the judge who has to examine all the relevant factors in the case before him to see if the misconduct of the claimant is sufficient to warrant a refusal of the relief sought. The application of the maxim thus requires one of those multi-factorial assessments to be conducted by the trial judge with which an appellate court

will be slow to intervene unless the judge's conclusion was clearly wrong or based upon some evidence failure of analysis."

14. To successfully invoke the principle, the First Respondent must thus show a sufficiently close link between the alleged wrongdoing and the relief sought. In my judgment, he has not done so. The matters on which he relies are challenged and cannot properly be determined on this application. However, they do not undermine the basis of the Applicant's claim in the present proceedings in respect of 27 Netherford Road and the costs award in her favour.
15. Before I can grant relief, I must of course be satisfied the First Respondent has assets inside or outside the jurisdiction on which - in the First Respondent's own words - the order can bite. The First Respondent maintains that he does not have any substantial assets. Obviously, I cannot definitively determine what assets he has on this application. However, on the evidence placed before me, I am satisfied there is reason to believe he has assets inside or outside the jurisdiction, on which, as he puts it, the order can bite. Until 1 February 2022 he owned the property at 52 Sandy Lane, Cheam. It has now been sold. The official copy entries in respect of the registered title shown that it was sold on 1 February for £971,000. The First Respondent maintains that, after accounting for a charge on the property, the net proceeds were in the region of £526,000 and, of that, £520,000 he has paid to Mr Merfat Esmail in Yemen in repayment of a loan with the remainder applied in the payment of litigation expenses. If that is so, he chose to do so without making provision for the Applicant. However, in the absence of substantial independent corroborative evidence, I am not satisfied the First Respondent has provided a convincing explanation, on which I can safely rely, as to what has become of his assets, including the proceeds of sale of properties.
16. It is not without significance – as Mr Connolly observes – that the First Respondent has previously calculated his monthly outgoings in the sum of £9,300 or thereabouts. If so, he must have an undisclosed source of income unless he has elected to divest himself of all his assets very recently. There is no good reason to believe this is so.
17. I am satisfied on the evidence placed before me that there is a substantial risk of dissipation if I do not grant relief. Following a lengthy hearing before the FTT last year, the FTT - Mr Thorowgood - was satisfied that the First Respondent was guilty, in

his view, of conduct amounting to serious dishonesty. Mr Thorowgood's judgment stands unless and until successfully appealed. As touched on already, Mr Connolly observed that there are serious concerns about the circumstances in which the First Respondent transferred £520,000 to a bank account abroad in the name of Mr Esmael from the proceeds of sale of 52 Sandy Lane, Cheam after allowing his solicitors to give the misleading impression he was seeking to remortgage the property rather than to sell it. Whilst it is suggested that the sum has been applied to meet a loan from Mr Esmael relating to the purchase of gold stolen from the First Respondent, I am not able to accept this explanation in the absence of independent confirmatory evidence.

18. The First Respondent appears to have connections abroad and can be taken to have the wherewithal to transfer and dispose of his assets. Coupled with Mr Thorowgood's conclusions, I am satisfied there is a real and substantial risk the First Respondent will deal or otherwise dispose of assets to defeat a judgment if I do not grant the relief sought.
19. The First Respondent submits that the Applicant did not make full and frank disclosure when applying for injunctive relief. However, I am not satisfied I have been provided with substantial evidence on which I can draw such a conclusion. In any event if, as the First Respondent suggests, the Applicant has understated her assets or failed to disclose her indebtedness to HMRC in respect of IHT, I do not see how that could be material to the application itself. It is not seriously suggested she is unable to meet her liability under her cross undertaking in damages. I am not satisfied there is evidence on which I can reasonably conclude she has failed to make full and frank disclosure of all facts that are material or that were material to the application at the time that it came before me earlier in the month.
20. I am also satisfied it is just and convenient to make the order sought in the administration so as to ensure so far as possible that, if the Applicant's claim ultimately succeeds, there will be assets to meet it.
21. To grant relief against the Second Respondent under the *Chabra* jurisdiction, I must be satisfied there is reason to believe she holds assets which would be amenable to the

process of the court, assets which have come to her through the First Respondent, or at least are held for him or over which he has a measure of control.

22. I must exercise caution in relation to the Second Respondent, not least because she has not participated in the hearing and may well be abroad as the First Respondent himself believes. I am also mindful that he maintains they are now divorced and has filed documentation to suggest this is so. Nevertheless, it will remain open to her to come to the court and apply for an order setting aside any order I make against her on the basis that she has not participated in the hearing.
23. I shall allow the order to continue against the Second Respondent on the basis that there is evidence to suggest that the First Respondent has transferred property to her for nil consideration - 27 Foulsham Road, Thornton Heath - and, having done so, the First Respondent, was later able to utilise the proceeds of sale. There is thus reason to believe, whatever the current nature of the relationship between the First and Second Respondents, the Second Respondent's assets or assets held in her name may be deployed in the same way if I do not grant injunctive relief. For the avoidance of doubt, this would apply to assets held by her for the benefit of the First Respondent.
24. On balance, I am satisfied that the requirements for the grant of relief under the *Chabra* jurisdiction are satisfied. If the Second Respondent wishes to challenge the order, she can come back to the court to do so.
25. The Application is allowed in respect of each respondent.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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