Neutral Citation Number: [2024] EWHC 2846 (Comm)

Case No: CL-2024-000225
CL-2024-000420
CL-2024-000426

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

AND IN THE MATTER OF THE ARBITRATION ACT 1996

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 8 November 2024

Before :

CHARLES HOLLANDER KC

- -

Between :

CE ENERGY DMCC

Claimants/ Applicants

- and -

(1) ULTIMATE OIL AND GAS DMCC

Defendant in CL-2024-000420 and CL-2024-000426/Respondent

(2) ALHAJI ABDULRAHMAN MUSA BASHAR

Defendant in CL-2024-000225/Respondent

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Nicola Allsop (instructed by **Stephenson Harwood LLP**) for the **Claimant**

Thomas Steward (instructed by **HFW LLP**) for the **Defendants**

Hearing date: 28 October 2024

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JUDGMENT

Deputy High Court Judge Charles Hollander KC :

1. There are before me applications in relation to a worldwide freezing order (WFO) granted ex parte on 29 July 2024 by Robin Knowles J. The application for a WFO was brought pursuant to s. 37 of the Senior Courts Act 1981, in support of separate High Court proceedings against the Second Defendant, Mr Bashar, and the First Defendant ("Ultimate") and, pursuant to s. 44 of the Arbitration Act 1996, in support of arbitral (LCIA) proceedings against Ultimate. I have referred to Ultimate as the First Defendant and Mr Bashar as the Second Defendant although in some of the proceedings their order is reversed.

2. The WFO, against both Defendants, was to a value of about US$33m. The order provides for:
    a. Disclosure to the Claimant's solicitors within 48 hours of service of all assets worldwide with a value of over £10,000
    b. Confirmation on affidavit of the above within 7 days of service
    c. Mr Bashar is allowed to pay US$5000 per week in living expenses
    d. Ultimate is allowed to dispose of assets in the normal course of business but before doing so must tell the Claimant's legal representatives
    e. Either Defendant may dispose of assets so long as the total unencumbered value of its assets remains above US$33m.

3. The return day was 22 August 2024. That hearing came before me. I adjourned the matter for a full day's hearing, made some limited variations of the ex parte order and gave directions. Now the Claimant applies for a continuation of the freezing order and ancillary disclosure. The Defendants apply to discharge the WFO.

Factual summary

4. The Claimant is a UAE incorporated commodities trading company based in Dubai.

5. The Second Defendant, Mr Bashar (sometimes spelt Bashir) is a Nigerian businessman who is the sole owner of the First Defendant.

6. The Claimant sold gas oil and Jet A1 to Ultimate. The relevant contracts comprise:

    1) *The Spot Contracts* Five spot contracts were entered into between 14 November 2022 and February 2023 (the "Spot Contracts"). These contain arbitration clauses in favour of the now defunct Emirates Maritime Arbitration Centre ("EMAC"). Ultimate eventually paid for the cargo supplied under the Spot Contracts but sums in respect of interest and demurrage remain outstanding. The Claimant has commenced DIAC arbitral proceedings in respect of these outstanding sums. The WFO against Ultimate does not extend to any sums outstanding under the Spot Contracts which are claimed in the DIAC arbitral proceedings.

    2) *The Term Contract* The Term Contract was entered into by the Claimant and Ultimate on 25 April 2023. The Claimant delivered two cargoes of gasoil to Ultimate under this contract. Ultimate failed to pay for the product, which is stored in two terminals in Nigeria owned by Rahamaniyya Oil & Gas Limited ("Rahamaniyya"), which is ultimately owned and controlled by Mr Bashar, and Zamson, a company which is operated and majority owned by Mr Bashar's brother but which the Claimant believes belongs to Mr Bashar, which Mr Bashar denies.

    3) For the second cargo under the Term Contract 11,227.762mt out of 29,371,884mt has now been paid for by Ultimate and released to Ultimate. Ultimate has also paid some of the interest charged by the Claimant.

    4) On 6 October 2023, the Claimant terminated the Term Contract. The intended third cargo under the Term Contract was never delivered.

    5) The Term Contract contains an LCIA arbitration clause. The Claimant has instigated LCIA arbitral proceedings in respect of the sums outstanding under the Term Contract. The arbitration claims are for AED 1,615,702.72 (interest), and AED 1,897,238.32 (demurrage), for the first cargo; and AED 74,955,364.74 (principal) and AED 9,957,788.32 (interest), for the second cargo . AED 3.5 roughly equals US$1.

6) The WFO extends to the sums claimed in the LCIA arbitral proceedings and by letter dated 11 September 2024, the LCIA tribunal granted permission under s.44 of the Arbitration Act 1996 for this application to be determined by the court. Ultimate has not paid its share of the arbitral fees.

7) *The Payment Agreement* The Payment Agreement was entered into by the Claimant and Ultimate on 14 January 2024. The Payment Agreement sets out a mechanism for payment of Ultimate's outstanding debts under the Spot Contracts and Term Contract (which were irrevocably admitted by Ultimate as being due to the Claimant in the Payment Agreement) and the provision of future cargoes in the event Ultimate complied with its obligations under the Payment Agreement.

8) The Payment Agreement contains an LCIA arbitration clause. The Claimant has not brought proceedings under the Payment Agreement, and says this is because the Payment Agreement makes it clear, at Clause 3.2, that it does not supersede the earlier contracts or the parties' accrued rights thereunder.

9) *The Guarantee* Mr Bashar provided a personal guarantee in respect of Ultimate's obligations under the Payment Agreement, which is the basis of the Claimant's claims against him. Proceedings were commenced in this court on 17 April 2024, there have been Particulars of Claim, Defence and Reply and an application for summary judgment is being heard in January 2025.

10) *The New Spot Contract* This was entered into on 24 January 2024. In respect of the further cargo under the New Spot Contract, Ultimate has paid for 1,657.998mt, which has been released to it by the Claimant. A further 1,594.783mt and 522.692mt was released against payments on 3 and 5 September 2024. In relation to the New Spot Contract, proceedings were issued in this court on 25 July 2024, claiming AED 28,878,706.62 in respect of the New Spot Contract. A Defence served on 18 October 2024 claims that payments have been wrongly allocated.

11) The cargo delivered by the Claimant under the Term Contract and the New Spot Contract is stored in terminals in Nigeria: one owned by Rahamaniyya and the Koko Depot, owned by Zamson. The cargo stored thus represents (i) the remaining amounts of the second cargo under the Term Contract, and (ii) the cargo under the New Spot Contract: the quantities at Rahamaniyya comprise part of the second cargo under the Term Contract (tanks 5 and 6) and the cargo under

the New Spot Contract (tanks 11 and 12); the quantities at the Koko Depot comprise the rest of the second cargo under the Term Contract (tanks 1, 1b and 2).

7. I should add that the precise details and values of the cargoes have changed from time to time as sums have been paid off.

8. The Claimant says it was willing to enter into the New Spot Contract because as at 24 January 2024, Ultimate appeared to have complied with its obligations under the Payment Agreement: Ultimate paid the first instalment under the Payment Agreement, it provided nine post-dated cheques for the sums due under the Payment Agreement, it procured a personal guarantee from Mr Bashar and it provided a further post-dated cheque for 120% of the provisional value of the New Spot Cargo. However, as appears below, with the exception of one cheque for a modest amount, the post-dated cheques that have been presented have all been returned unpaid and Mr Bashar has not complied with the demand under the Guarantee.

The cargoes

9. As explained above, the cargoes are stored in terminals in Nigeria. The Claimant says it retains title to the cargoes under the terms of the sale agreements and are entitled to title in the cargoes, as unpaid sellers. Ultimate say they anticipate selling the cargoes for significant sums, and some payments have been made to the Claimant as parts of the cargoes have been sold. The Claimant claims that Ultimate have not co-operated in its attempts to have the cargoes inspected, and, with limited exceptions, they have been refused access for sampling. The Defendants say that the Claimant is not in a position to deal with the cargoes because they do not have a licence to sell the cargoes in Nigeria. They say that the cargoes cannot be released under the terms of the Collateral Management Agreement a tripartite agreement with Collateral Management International Mauritius Limited) without the consent of the Claimant. By contrast the Claimant points to the ownership of the terminals where the cargoes are stored.

10. When I sent to the parties a draft judgment, I said that the value of the cargoes was about US$25m. I took this figure from the Defendants' written skeleton, which stated:

"Mr Bashar estimates the value at over US$28 million (Bashar 1/12) and even Mr Humphreys-Davies says it has a value of approximate US$23.6m (Humphreys-Davies 2/16(b)). "

11. Stephenson Harwood wrote to me in the light of the draft judgment on behalf of the Claimant to draw my attention to the fact that Humphreys-Davies 2/22 (which in fact appears to post-date the parties' skeletons) states that at 23 October 2024 the value of the cargo stored was (according to the Claimant) US$15.65m.

The cheques

12. On 4 April 2024, the Claimant presented seven cheques signed on behalf of Ultimate signed by Mr Bashar for payment all of which were returned dishonoured on the ground that they bore an "irregular signature." Mr Bashar has repeatedly denied that the cheques were irregularly signed.

13. Mr Bashar says he cannot understand why the bank has done this and enquiries made with the bank have shown that the signature on the cheques matches the signature held for him by the bank. He says that he has asked the bank what is going on but has simply been told that the bank is investigating.

14. The Claimant says there is more to this than is suggested by Mr Bashar.

15. The comparatively small eighth cheque (for AED 88,884.29) was curiously honoured by the bank although the signature was the same.

16. On 23 August 2024, the Claimant presented a further cheque for payment. This cheque was for a significantly greater sum – AED 50,745,085.43 (the "Ninth Cheque). This cheque was dishonoured. Initially, on 24 August 2024, the Claimant was informed by its bank that Ultimate's bank, Emirates Islamic Bank, had returned the Ninth Cheque stating, "Represent again after 3 working days or later" with no reason given.

17. On 26 August 2024, Armour Consultants (acting for the Defendants) wrote to Stephenson Harwood (for the Claimant) complaining that the Claimant was not entitled to present the

Ninth Cheque because the Claimant had not given the 7 days' notice required by the Payment Agreement. Armour stated that Ultimate's bank had been informed that the attempt to encash the Ninth Cheque was impermissible.

18. Ultimate separately made a payment of US$ 500,000 to the Claimant on 31 August 2024.

19. On 1 September 2024, more than 3 working days after the initial rejection (and more than 7 days after the initial presentation), the Claimant re-presented the Ninth Cheque for payment. On 3 September 2024, and in advance of the Claimant receiving any notification from its bank in respect of the Ninth Cheque, Mr Ratra of Ultimate left a voicemail on the phone of Mr Humphreys-Davies (the Claimants' solicitor) complaining, "…*What's happening? We are paying you money and you are still lodging the cheque. What, what, what you want us to do?*"

20. Later the same day, the Claimant was informed by its bank that the Ninth Cheque had been returned unpaid due to "signature irregular."

21. The dealings with the cheques reflect badly on Mr Bashar. Events relating to the Ninth Cheque indicate very strongly that Mr Bashar has had some involvement in the dishonouring of the cheques and that his protestations of incomprehension as to the "signature irregular" are difficult to countenance.

22. Further criticisms can be validly made. On the one hand, Mr Bashar complains not to understand why the cheques were returned "signature irregular." But at the same time he goes as far as to suggest in his evidence that the Claimant has deliberately engineered the events that have led to dishonouring the cheques. That suggestion is based on Mr Bashar's suspicion that the Claimant uses the same bank. In fact the Claimant does not use the same bank.

23. It might be expected that the honourable way to behave (if Mr Bashar was telling the truth in his contention that he does not know why the bank returned his cheques "signature irregular") would have been to offer replacement cheques. But he has refused to do so on the basis that the Claimant has no entitlement to replacement cheques.

24. It is not surprising in these circumstances that the Claimant believes Mr Bashar was involved in the dishonouring of the cheques, and they believe the problem may well have been that there were no sufficient funds in the account. No bank statements have been provided to the Claimant by the Defendants. When the Defendants made their asset disclosure under the terms of the WFO, the only bank account disclosed had only a small positive balance. Their explanation was that no other account had a balance of over £10,000 and thus was not an asset that fell to be disclosed.

25. The Claimant reported the dishonoured cheques to the Dubai police, as this is said to constitute a criminal offence in UAE. An arrest warrant has been issued against Mr Bashar in the UAE.

Defences to the various claims

26. The Defendants accept that the Claimant has a good arguable case for claims to the value of the WFO. Indeed, they appear to accept monies are due in relation to the cargoes.

27. They say (i) payments have been wrongly allocated by the Claimant and thus some at least of the cheques should not have been presented because the sums were not due (ii) some at least of the cheques should not have been presented because the Payment Agreement required 7 days' notice before presenting cheques (iii) cheques were presented wrongly in excess of sums due (iv) Mr Bashar's liability under the personal guarantee cannot extend beyond the liability of Ultimate.

28. Whilst I do not need to decide whether these defences are arguable, it is obvious that there has been a long history of non-payment by the Defendants, significant monies are and remain outstanding to the Claimant, and the Claimant's case looks very strong.

Payments made

29. Some payments have been made since the grant of the WFO. In addition to the (small) Eighth Cheque, Ultimate has paid a further AED 12,662,384.29.

The Sahara litigation

30. In separate proceedings brought by Sahara Energy Resource Limited, where Mr Bashar and Ultimate were Defendants, Mr Bashar was previously found to be in contempt of the High Court following breaches of an injunction in proceedings arising out of a failure by Ultimate to pay for or deliver up product supplied to Ultimate by a third-party seller. The Claimant points out that Mr Bashar was committed to prison for a period of ten months and fined £500,000, which, the Claimant says indicates the seriousness of Mr Bashar's contempt.

31. Mr Bashar was in contempt of Court for almost two years. Mr Bashar initially sought to set aside the committal order on the grounds that the hearings when he had been committed had not come to his knowledge, evidence that was rejected by the Court as having no real substance and being wholly implausible: see [2020] EWHC 1585 at [63] [79] per Jacobs J. Following the claimant in that case being made whole, Mr Bashar successfully applied to purge his contempt, with the support of the claimant: see further judgment of Jacobs J at [2022] EWHC 3285 (Comm). Mr Bashar did not serve any time in prison. Jacobs J said at [14] that it seemed Mr Bashir may not initially have been well-advised although

> *"I do not consider I can place considerable reliance on that, because I do not have full information as to what they were advised*."

32. The Claimant relies upon what happened in the Sahara litigation in support of the risk of dissipation. The Defendants say that what was said to Robin Knowles J about the Sahara action involved a breach of the full and frank disclosure obligation as it failed to explain the full position fairly.

Risk of dissipation

33. The central issue before me related to the risk of dissipation. I shall now deal with that issue.

Disclosure of assets by the Defendants

34. Mr Bashar provided information about his assets pursuant to the disclosure obligations under the WFO. The Claimant relies upon what it says was the unsatisfactory nature of the disclosure, the lack of information provided about those assets, and the subsequent failure and refusal to answer further questions in support of the risk of dissipation.

35. On 5 August 2024 Mr Bashar provided a list of assets valued over £10,000. As for companies, he listed his 100% shareholding in Ultimate and in Ultimate Agro DMCC, his 67% shareholding in Rahamaniyya Oil & Gas Ltd and his 70% interest in Rahamaniyya Fertilizer Ltd. The total value of these assets was said to be about US$105m. Half of this was said to be the value of trade receivables for Ultimate, which was confirmed to be the resale value of the cargoes. He listed his own assets, the vast majority of which were property assets, the overall total being US$128m.

36. The Claimant complains that the initial disclosure, by list on 5 August 2024 ("the 5 August List") contained glaring omissions and inadequacies. It says:

    1) The Defendants failed, in the 5 August List, to disclose assets totalling US$ 41.4million, including Mr Bashar's own home in Nigeria, a rice mill in Nigeria, Mr Bashar's second and third homes in Nigeria and five petrol stations in Nigeria.

    2) Ultimate disclosed a single "Bank balance" with a value of US$ 19,082. The name of the bank was not given, and no details of the account were provided.

    3) Ultimate disclosed "Intercompany Receivables" of US$ 9,522,224 and "Trade Receivable" of US$ 49,640,383. No breakdown or any details were given.

    4) Mr Bashar disclosed a single personal bank account with Emirates Islamic Bank, UAE with a balance of US$33,076. Despite being resident in Nigeria, Mr Bashar did not disclose a Nigerian bank account, and no details of the bank account were given.

    5) Mr Bashar disclosed multiple properties in Dubai and a villa and office in Nigeria. No details were given as to whether any of the properties were subject to mortgages or other encumbrances and it was unclear if the value ascribed to each property was a net or gross value.

37. The Defendants also provided a schedule of rental income in response to paragraph 13 of the WFO, the relevant part of which required:

> *"…Such information must include the destination of any income or other sums derived from the properties listed at paragraphs 8(2) to 8(25) of this Order, including without limitation, the bank account(s) such sums are paid into, the name of the holder of the bank account(s), and any onward payments of said sums."*

38. The Claimant points out that the schedule of rental income did not comply with this. The bank account was not identified. The name of the holder of the bank account was not provided. No information was given as to any onward payment of the sums. The schedule identified the following banks as recipients of rental payments totalling US$ 445,776.57 per year: (i) Emirates NBD Bank, (ii) Janata Bank Ltd, (iii) WIO Bank PJSC, (iv) Dubai Islamic Bank, (v) ADCB Islamic Banking, (vi) Commercial Bank of Dubai and (vii) First Abu Dhabi Bank. With the exception of Emirates Islamic Bank, the Respondents did not disclose any of those bank accounts.

39. Stephenson Harwood for the Claimant pointed out omissions by Mr Bashar in their letter of 9 August 2024 and invited the Defendants to remedy them. On 12 August 2024, Mr Bashar provided his confirmatory affidavit under paragraph 15 of the WFO. Exhibited to the affidavit was a further list of assets (the "12 August List"). The 12 August List disclosed assets with a value of US$170,250,642, being an increase of US$ 41.4million as compared to 5 August List. The figure in the 12 August list includes a few assets of significant value not previously disclosed, such as Mr Bashar's own home, where he was living when he prepared the 5 August List.

40. Payment notifications provided on behalf of the Defendants following the grant of the WFO demonstrate that Ultimate has made significant payments from multiple bank accounts totalling millions of dollars, yet the Defendants have refused to disclose any further bank accounts.

41. Mr Bashar apologised in his Affidavit for not identifying the missing assets in the 5 August List but offered no explanation. HFW's letter of 6 September 2024 stated on behalf of the Defendants, "*The 5 August list was the best available list that could be*

prepared in the time available and was later updated in the 12 August 2024 list verified by affidavit. Time is permitted between the two dates so that a Respondent can be sure of the list before swearing an affidavit. In the event, the 5 August list identified sufficient assets to meet the quantum of assets to be preserved."

42. The Defendants say that they complied with the terms of the WFO and the Claimants are not entitled to go beyond its terms. They say further bank accounts were not disclosed because their asset value was not at the relevant time have more than £10,000 therefore there was no obligation to refer to them.

Risk of Dissipation: Claimant's submissions

43. The Claimant relied on the following matters in support of the risk of dissipation against Mr Bashar:

    1) The merits of the claim against Mr Bashar are overwhelming and the defences advanced by Mr Bashar is shadowy.

    2) Mr Bashar signed cheques on behalf of Ultimate, which (with a single exception and a further cheque which has not been presented) have been dishonoured with the reason given as "irregular signature." It appears that these cheques were either deliberately signed by Mr Bashar in a way which meant that they would not be honoured or, that they were dishonoured following Ultimate's instructions to its bank on account of there being insufficient funds in Ultimate's bank account.

    3) Mr Bashar is the subject of a criminal complaint, at the Claimant's instigation, in the UAE arising out of the dishonoured cheques. An arrest warrant has been issued against him.

    4) Mr Bashar has made numerous promises of payment on behalf of Ultimate, which have been broken.

    5) Mr Bashar has previously been committed to prison for contempt.

    6) Mr Bashar has failed to give full disclosure of this assets. Mr Bashar initially failed to disclose his home in Nigeria, worth in excess of US$ 21,000,000. With the exception of a single bank account (in respect of which no detail has been

provided), Mr Bashar has refused to disclose any other bank accounts in his name. His responses to reasonable requests for information have been evasive and obstructive.

44. Insofar as Ultimate is concerned:

1) The merits of the claim against Ultimate are overwhelming: Ultimate admitted in the Payment Agreement that the sums under the Term Contract were due to the Claimant, which sums are now claimed in the LCIA Proceedings.

2) Ultimate's engagement with these proceedings leaves a lot to be desired: (i) Ultimate challenged the jurisdiction of the tribunal on the erroneous basis that arbitral proceedings should have been commenced under the Payment Agreement and not the Term Contract; (ii) Ultimate has failed to pay its share of the arbitration costs, which the Claimant has been forced to fund in order to progress the proceedings.

3) Ultimate provided cheques in order to procure the Claimant to enter into the Payment Agreement and to procure the Claimant to provide further cargo to Ultimate, which cheques have (save for one) all been dishonoured and Ultimate has refused to provide replacement cheques or make payment of the equivalent sums.

4) Ultimate has reneged on numerous promises of payment.

5) Ultimate has refused to confirm that the Claimant is entitled to sell the cargoes.

6) Ultimate has refused, without lawful justification, to allow the Claimant full access to the product stored in two storage facilities in Nigeria, which still belongs to the Claimant.

7) Ultimate has similarly failed to give full disclosure of its assets, disclosing only a single bank account.

45. The Claimant says that although the Defendants have disclosed real property, to which they ascribe significant value, it does not follow that this is a factor against there being a risk of dissipation for the following reasons:

1) The property is located in Nigeria and the UAE and the Court cannot assume that either jurisdiction has a system of Land Registration similar to the UK, enabling the existence of a freezing order to be registered against real property;

2) The Defendants have repeatedly declined to provide any information as to whether: (i) any of these properties are already encumbered by legal mortgages or other security, (ii) the values provided by the Respondents take into account any such encumbrances and are gross or net values.

3) The Defendants have disclosed significant assets other than real property.

Risk of dissipation: Defendants' submissions

46. The Defendants submitted that there was no evidence which supported a risk of dissipation. On the contrary:

1) Mr Bashar has a large number of assets which have been disclosed. Those assets are to a much greater value than the sum covered by the WFO. Many of them are in real property which will be very difficult to dispose of speedily.

2) The cargoes are in storage in Nigeria. They have a very substantial resale value. They cannot be removed without the consent of the Claimant. There has been no suggestion of any improper dealing with them.

3) The Claimant was well aware of the Sahara case and the judgments, indeed the same counsel and solicitors acted for Sahara as act for the claimants in the present case. The Claimant carried on dealing with the Defendants after they knew all about the Sahara case.

4) Exactly why the bank dishonoured the cheques is unclear and the bank have not provided information.

5) There had been correspondence between the parties and litigation commenced for several months prior to the WFO.

6) There is no specific event which has led the Claimants to believe there would be a risk of dissipation.

Risk of dissipation: the law

47. Cockerill J in *Petroceltic Resources Limited & Ors v David Fraser Archer* [2018] EWHC 671 (Comm) set out principles in relation to risk of dissipation which are common ground between the parties:
    a. The claimant does not need to establish the existence of a risk of dissipation on the balance of probabilities: rather, there must be an arguable case, or plausible evidential basis for finding a risk of dissipation;
    b. The risk of dissipation must be established separately against each respondent;
    c. The purpose of a WFO is not to provide the claimant with security;
    d. Each case is fact specific and the relevant factors must be looked at cumulatively.

48. In *Holyoake v Candy* [2018] Ch 296 [50-51] Gloster LJ emphasised that it was for the Claimant to provide the court with evidence to support the risk of dissipation and it was important not to reverse the burden of proof:

    "First, it is critical to remember that the burden is on the applicant to satisfy the threshold. The court will of course decide on the basis of all the evidence before it. However, in practice, if an applicant has not adduced sufficient evidence, the application will fail. The claimant's evidence will be immaterial unless, unusually, it lent support to the application. Second, it follows that, unless an applicant has raised a prima facie case to support a freezing order, the claimant is not obliged to provide any explanation or answer any questions posed and nor can a purported failure to do so be held against the claimant. It is only if the applicant has raised material from which a real risk of dissipation can be inferred, that the claimant will be expected to provide an explanation. Then, in appropriate circumstances, the lack of a satisfactory explanation may give rise to an adverse inference."

49. At [58] Gloster LJ pointed out that the apparent disconnect between Mr Candy's lifestyle and wealth was not evidence of risk of dissipation :

"…(ii) In short this factor amounted to an absence of evidence which disproved any risk of dissipation, rather than any positive evidence actually suggesting a risk of dissipation. …

iii) I agree with [counsel] that to accept this factor as significantly supporting a conclusion of real risk of dissipation would be to reverse the burden and to place it on Mr Nicholas Candy to explain how he could afford his lifestyle. Generalised, it would mean that any individual who lived a lavish lifestyle would be compelled to disclose their financial information if they became subject to a freezing order application, without more. As the present facts demonstrate, it might even entail that one (very) high value purchase, which was not obviously affordable, could be used to call into question a party's entire financial position. The nuclear remedy of a freezing order would then become a commonplace threat."

50. In *Les Ambassadeurs Club Limited v Albluewi* [2020] EWHC 1313 (QB) the club obtained a WFO after their gambler former client, the defendant, had dishonoured 17 cheques. Freedman J discharged the WFO as he was not satisfied as to risk of dissipation. At [40]-[43] the judge said:

"40. There are certain features which when taken together are unsatisfactory: they were characterised by [counsel] in his submissions before this Court as showing a lack of commercial probity. In particular, there is the fact that this indebtedness was incurred by a man of evident wealth, his promise to pay and his failure to respond other than in a desultory manner to the repeated attempts of Ms Mignon to make contact with him.

The following points are significant in this regard.

41. First, during the period of the four months prior to proceedings being brought, it appears that the Defendant believed that he owed the debt, and so his behaviour is to be seen notwithstanding his apparent belief that he did owe the moneys. Absent evidence to the contrary, the inference is that the idea of running an illegality defence based on an allegation of the supply of credit did not surface until after the commencement of proceedings. Secondly, on the premise that he is a very wealthy man, even allowing for cash flow difficulties, the failure to arrange for payment sounds more like choosing not to pay rather than being unable to pay. If that is not right, then the Defendant has incurred the indebtedness at the time when he had cash flow difficulties in circumstances where he might not be able to discharge them at their due date, albeit that at this stage it is not said that this was with a dishonest intention. Thirdly, the Defendant was indebted to other casinos which he admits: this appears to indicate a lack of probity either in incurring debts where he may not have the cash flow to discharge them forthwith or in withholding payment if he was able to pay for the same. The Defendant has not been frank with the Court by explaining the position as to the amount of these debts despite an admission that he owes them.

42. The question is how far this lack of commercial probity goes and critically whether in all the circumstances it shows a real risk of dissipation of assets. It is to

be noted from the section above about the law, even where the cause of action on which the claim is based is one of dishonesty, this may not justify the inference that the defendant has assets which they are likely to dissipate unless restricted. It depends on all the circumstances of the case.
43. Just as dishonesty does not necessarily prove a real risk of dissipation, how much more so where the case is some lack of commercial probity falling short of dishonesty. The further removed one is from dishonesty in terms of a low commercial morality, the more difficult it will be for a claimant to rely upon the instant conduct falling short of dishonesty as giving rise to the inference of real risk of dissipation."

51. Freedman J's comments at [55] are relevant to the submission of the Claimant about the *Sahara* case:

"In fact, the history is that there have been three CCFs, and each of them has been dishonoured. The first one was not honoured in 2015 and led to an interruption of more than 2 years before it was paid and an interruption of four years until 2019, when the Defendant applied to be and was readmitted by the Claimant. The second CCF was not honoured in August 2019 but was paid by 3 September 2019. The third CCF was not honoured and the indebtedness has still not been satisfied. Thus, this was in reality a case where the Claimant knew about the unreliability of the Defendant, and yet appears to have taken the view when giving each CCF that there was a greater gain about having the business of the Defendant than not having his business. This was to the extent that the Claimant was prepared to increase the authorisation each time following default and to give greater incentives including discounts and the like. The prospects of getting money from him must have been regarded as greater than of his defaulting, perhaps because of a conviction that if he defaulted, he would eventually pay. It is possible that the Claimant did not think that this default would arise. It is more likely that the Claimant thought that it would in the end be paid. This preparedness to do business with a person not of good standing with the Claimant, and with a record of default, is a significant factor against a real risk of dissipation. It indicates that that was not the conviction of the Claimant at the time of the increase in authorisations, and it begs the question as to how a defaulter went from being a person with whom an authorisation could be increased twice to a person in respect of whom there was a real risk of dissipation of assets."

52. I should also note in *Ivy Technology v Martin* [2019] EWHC 2510 the Court noted at 44(vi):

> "*Where a defendant knows that he faces legal proceedings for a substantial period of time prior to the grant of the order, and does not take steps to dissipate his assets, that can be a powerful factor militating against any conclusion of a real risk of dissipation.*"

Risk of dissipation: Discussion

53. The Claimants are entitled to say that Mr Bashar's conduct has been unsatisfactory, that they have an extremely strong case against the Defendants, and Mr Bashar's conduct, particularly in relation to the dishonoured cheques, appears to have involved stringing them along.

54. But notwithstanding that, I struggle to see what evidence there is of risk of dissipation.

55. Ultimate is wholly owned by Mr Bashar. So it is Mr Bashar's position that needs to be principally looked at.

56. The WFO is in a sum of US$33m. The effect of the order is that Mr Bashar was required to reveal each of his assets over £10,000. Mr Bashar's affidavit reveals assets to the value of US$170m. Many of those are real property assets. There are complaints by the Claimant that the Defendants have been unhelpful in not answering further questions and that the 12 August List disclosed a further US$42m assets not disclosed in the initial 5 August list. There is some force in these complaints, and the detail given is often more limited than would ideally be the case, and indeed, in some cases, less than that required under the terms of the WFO. But these complaints have to be seen in the light of the fact that Mr Bashar has disclosed assets several times the value of the WFO limit. Moreover, much of the value of the assets is real property, and whilst I do not have evidence as to how easy it is to dispose of property in the UAE, it is obvious that there would be significant problems in disposing of a large number of properties.

57. There are cargoes sold to Ultimate at the terminals in Nigeria. The Claimants say that the refusal (at least in part) to permit sampling by the Claimants is a form of conversion. But there is no suggestion that Ultimate has sought to misappropriate the cargo and it must in practice provide a significant level of security for the Claimant.

58. After the hearing there was further correspondence sent to me about the status of the cargoes and the complaints made by the Claimant in relation to inspection. I do not need to reach any conclusion as to those complaints. The cargoes provide a measure of further security for the Claimant and (whether or not there can be argued to be a theoretical risk of them being misappropriated by the Defendants) there is no suggestion that there has been any attempt to dispose of them improperly without taking into account the interests of the Claimant.

59. It is fair for the Claimant to point out (as it did in a letter from Stephenson Harwood after receiving the draft judgment) that the cargoes may (if the Claimant's latest figures are correct) have a market value less than I had understood (see Paragraph 10-11 above). The security in effect thereby provided (see para 58 above) is thus less than I had originally anticipated. I have considered whether this makes any difference to my conclusions. The answer remains that I still do not consider there is evidence of dissipation.

60. The WFO provides for a separate injunction against each Defendant in relation to the value of the WFO. But although that was the correct way to frame the order, in practice it involves a measure of double counting as Mr Bashar is the sole owner of Ultimate and the claims relate to the same debts.

61. In many WFO cases where the claimant seeks to show risk of dissipation, there is some positive evidence which supports risk of dissipation, and that evidence is bolstered by other evidence which, although not directly showing risk of dissipation, suggests that the defendant is the sort of individual or entity which by its conduct may dissipate assets. In such circumstances the strength of the claimant's case on the merits, the fact there is evidence of fraud by the defendants, that there is evidence of low standards of morality, or lack of frankness may provide the necessary material from which the court can infer risk of dissipation. But it all depends. The problem for the Claimant in the present case is that there is no primary evidence which shows risk of dissipation. Merely because the Defendants have failed to pay their debts and cheques have been dishonoured does not, in the same way as it did not in *Les Ambassadeurs*, itself provide

evidence of dissipation. Whilst the way the Defendants have behaved will in some cases be highly material to risk of dissipation, the court still needs to look at the matter in the round and decide whether it is satisfied there is risk of dissipation.

62. The Claimant relies on the findings in the *Sahara* case. But the relevant point is made in *Les Ambassadeurs:* knowing of that conduct by the Defendants, and the findings of this court in that case, the Claimant was content to carry on dealing with Ultimate and Mr Bashar and enter into a series of contracts with them.

63. My understanding from oral submissions was that I was told the Sahara case did not involve a WFO. After I provided a draft judgment I was told that in fact Teare J did grant a freezing injunction (to the value of US$5.2m) in that case, although the order was not in the hearing bundle. But that is a point as much against the Claimant as in its favour, given that subsequent to the Sahara litigation, and their knowledge of what occurred, they were willing to deal with the Defendants.

64. The criminal complaint as to the dishonoured cheques was a process instigated by the Claimant's complaint. So it does not take the matter further.

65. Proceedings were commenced under Mr Bashar's personal guarantee on 17 April 2024. The WFO was obtained on 29 July 2024. It was three and a half months after those proceedings were commenced before the WFO was obtained. The Defendants suggested that there was delay by the Claimant in applying for the WFO. In my view, the real point is that the parties had been corresponding and litigating for months and it is hard to identify a specific reason or "trigger event" that gave rise to a risk of dissipation.

66. I have some sympathy with the Claimant, who has had to put up with the Defendants' failure to comply with their payment obligations over an extended period of time and what I have referred to as a measure of being strung along. But the issue is risk of dissipation of assets, which is not the same issue.

67. Ultimately, risk of dissipation is a fact specific issue. I am not satisfied that the evidence shows any risk of dissipation of assets at all by either Defendant.

Discretion

68. A WFO is sometimes referred to as a "nuclear weapon". The order made is onerous. It has involved Ultimate and Mr Bashar providing large quantities of asset information to the Claimant. It has meant that Ultimate has had to disclose to the Claimant each dealing in the normal course of business, an onerous requirement for a trading company. It has given rise to vast inter-solicitor correspondence. I do not regard this as giving rise to a separate ground for discharge, but it emphasises the importance of the court being satisfied as to each element of the WFO test. It is also notable that the effect of the injunction has been to freeze US$33m of assets for *each* Defendant.

Other matters

69. The Claimant has applied for additional disclosure in aid of the WFO. As I am discharging the WFO, that application must be dismissed. It does not seem to me appropriate to express any view on how I would have treated the application if I had not discharged the WFO.

70. The Defendants made a number of complaints as to full and frank disclosure on the ex parte application. I have to say I regard these points as unrealistic. The obligation to make full and frank disclosure on an ex parte application for a WFO is of fundamental importance and is an important protection for the Defendant. This court in particular places a burden on the applicant to comply with it scrupulously. But the obligation must be treated with some realism. The points taken by the Defendant are that the Claimant did not :

    a. provide a full and fair summary of the *Sahara* case, and in particular failed to mention to the Court Mr Bashar's explanation for his previous conduct, namely that he was ill-advised by his lawyers.

    b. Draw to the Court's attention the possibility that the supposed "*irregular*" signatures on the post-dated cheques was a mistake by the bank, and failed to draw to the Court's attention the explanation that had been given on 16 April 2024.

    c. Explain to the Court the relevance of the fact that C has control over the cargo and the possibility of being able to sell it in due course.

d. Bring to the Court's attention the unusually wide terms of the order

e. Provide any note of urgency, contrary to the normal rule that a note explaining the urgency of the case should be provided to the Court on *ex parte* hearings.

71. Matters (d) and (e) would have been well apparent to Robin Knowles J . (b) was a matter where the Claimant was entitled to be critical of the Defendants' behaviour, as has been borne out by subsequent events. (c) is not a matter where what the Defendants say the position is can be said to be at all clear cut. I do not regard there to have been any lack of fair disclosure in relation to the *Sahara* matter. I reject the full and frank disclosure complaints.

72. There is also an application by the Defendants for retrospective permission to make a payment of US$75,000 in relation to an automatic payment under a loan agreement, if it is necessary. This payment was notified to the Claimant at short notice. The Claimant asked for more information before deciding whether to consent. As the payment does not on the face of it have the effect that either Defendants' assets are reduced to below the WFO sum, it does not seem likely that it was necessary to seek leave. Given that in the scheme of things a transfer in this sum does not undermine the protection given by the WFO, and leave would surely have been given if necessary, to the extent necessary I give retrospective leave.

Disposition

73. I discharge the WFO and refuse the Claimant's application for further disclosure. To the extent necessary, I give retrospective leave to the extent necessary for the US$75,000 payment.

74. This judgment will be given remotely. No attendance is necessary. The parties are invited to seek to agree consequential orders. To the extent that they cannot agree, I will hear submissions either in writing or at a short further oral hearing fixed for counsel's convenience. I am grateful to both counsel for their assistance.