Neutral Citation Number: [2019] EWHC 1906 (Ch)

Case No: BL-2018-002691

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

Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 19/07/2019

Before :

HIS HONOUR JUDGE JARMAN QC

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Between :

VNESHPROMBANK LLC	**Claimant**
- and -	
(1) GEORGY IVANOVICH BEDZHAMOV	**Defendants**
(2) UNIFLEET TECHNOLOGY LIMITED	
(3) PERSONS UNKNOWN	
(4) BASEL PROPERTIES LIMITED	

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Mr Romie Tager QC, Mr Philip Kremen and Mr Simon McLoughlin (instructed by **Keystone Law**) for the **claimant**
Mr Robert Anderson QC, Mr Tom Richards and Ms Celia Rooney (instructed by **Mischon de Reya**) for the **defendant**
The other parties did not appear and were not represented

Hearing dates: 9 July 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE JARMAN QC

HH JUDGE JARMAN QC :

1. The claimant bank and the first defendant (to whom I shall refer simply as the defendant) have each made an application to vary a worldwide freezing order (WFO) which the claimant obtained against the defendant in March 2019. The claimant wishes to remove from the WFO as already varied an exception allowing the defendant to pay £14,750 per week rent on a penthouse suite in Park Lane, London. The defendant wishes to increase his spending limit on ordinary living expenses under the WFO, currently set at £40,000 per month to over £165,000 plus €165,000 per month. Each application is vigorously opposed. He also wishes to pay debts, some of which are accepted by the claimant, but others are not.

2. The background is that the defendant, a Russian national, prior to 2015 was a very wealthy businessman working in Russia and living in Moscow with his partner of 20 years and their three children, now aged 16, 11 and 6. His partner's daughter was and is living in London studying as an undergraduate. The defendant says he had assets worth US $ 0.5 billion and an annual income in the order of £2 million.

3. Whilst the family were on holiday in Monaco in 2015, criminal proceedings were launched in Russia against him and his sister, who was an executive employed by the claimant, in which they were accused of defrauding the claimant of substantial sums of money. He denies any wrong doing but his sister pleaded guilty to substantial charges and is now serving a prison term. The Russian prosecutors sought his extradition, but this was refused by the Monegasque authorities.

4. His partner and their two youngest children remain living in a rented apartment in Monaco at a rent of about €230,000 per quarter. He and their eldest child, who has EU citizenship, came to London to live. He says this was primarily because he feels safer there, after threats had been made on his life and safety, and to receive medical treatment, including surgery, in respect of an ongoing heart problem. He has claimed asylum here.

5. The claimant in these proceedings claims £1.34 billion from him, alleging that this is the amount by which he has benefitted from the alleged fraud. He denies any part in it and asserts that "so far as [he] is aware" he has not benefited as claimed. It is not a proprietary claim.

6. He has been made bankrupt in Russia, and his assets there have been seized. He has other assets, but the only readily realisable asset are the net proceeds of a recent sale of his shares in a Swiss hotel, as a permitted exception under the WFO, which now amount to some £14.3 million held by his London solicitors pending the outcome of these proceedings.

7. He owns a lease of a commercial property in Belgrave Square, in respect of which he is in the course of obtaining planning permission to convert into luxurious residential accommodation. Although he purchased this for some £32 million, a valuation of it some 18 months ago gave a value in its then state as £6 million and as £28 million if the planning permission is obtained. In its converted state it would be valued at £60 million if a long lease can be obtained and £70 million if the freehold can be obtained. However, the property is charged with a short-term loan of US $35 million in respect of which default interest of US $7 million per annum is due.

8. He or companies controlled by him also have over £3 million in Swiss bank accounts, but these have been frozen for the last three years pending criminal and civil proceedings against him in Switzerland.

9. He also has interests in US companies and his lawyers there say that he has a claim which could be worth US $40-45 million, but very few further details are given.

10. He refers in his witness statements to other business interests which he is pursuing in the UK, but no details are given of these apart from an interest which his partner has in a wine bar in Monaco. Moreover, there is no evidence that he or his partner have generated any income since leaving Russia in 2015.

11. It is not surprising in these circumstances that he says in terms in his witness statement that he recognises the need to cut back on some of his expenses and is willing to cut back further. It is also clear that some of the debts he wishes to repay are owed to friends who have been lending him money to keep up certain aspects of his lavish lifestyle. Substantial assets such as yachts and paintings have also been sold or used to make funds available for the family.

12. Just how far he may be expected to cut back further on expenses was a matter of hot dispute between the parties which has polarised their respective stances. At the extremes, in my judgment, there are viewpoints of each of them which lack reality. For example, in setting out his monthly expenditure, the defendant includes a monthly sum for parking fines which he says his chauffer accumulates. On the other hand, the claimant suggests that his 16 years old daughter should take the 35-minute walk to and from school rather than being driven.

13. This polarisation filtered into the legal submission which the parties made as to the proper approach which should be adopted in dealing with the present applications. It was common ground that the purpose of the WFO is to prevent dissipation of assets and not to put the claimant into a position akin to a secured creditor. It was also common ground that the issue is one of discretion.

14. There, however, the commonality ends. Mr Tager QC for the claimant, submits that the amount of living expenses must be reasonable and that the court should impose a limit which results in rational and prudent expenditure. Mr Anderson QC, for the defendant, submits that in a non-proprietary claim it is not for the court to impose prudence and the question is what level of living expense are the "ordinary" living expenses of the defendant. That is so even if at that level the assets of the defendant will be exhausted by the time the proceedings are finalised. He does not shrink from the fact that at the defendant's claimed level of expenditure, the fund held by his solicitors will be exhausted within a couple of years and maybe before these proceedings are finalised.

15. Accordingly, it will be necessary to refer to the authorities which counsel cited, and to keep in mind that some of these involved proprietary claims. There are references to living expenses in authorities since freezing orders were first made in the late 1970s, then known as Mareva injunctions.

16. In *PCW (Underwriting Agencies) Limited v Dixon* [1983] 2 All ER 158, Lloyd J, as he then was said at page 164:

> "All injunctions are of course discretionary. I would regard it as unjust in the present case if the defendant were compelled to reduce his standard of living, to give up his flat or to take his children away from school, in order to secure what is as yet only a claim by the plaintiffs."

17. In *TDK Tape Distributor (UK) Ltd v Videochoice Ltd* [1986] 1 WLR 141, Skinner J referred to "ordinary" living expenses and described them at page 146 thus:

> "..ordinary recurrent expenses involved in maintaining the subject of the injunction in the style to which he is reasonably accustomed. It does not include exceptional expenses like the purchase of a Rolls-Royce or the equivalent in legal terms of the private employment of Queen's Counsel to defend you against a serious criminal charge."

18. In *Southern Cross Commodities Pty Ltd v Martin and others* 1986 WL 1255210, Sir John Donaldson MR observed that account must be taken of the extent to which the funds subject to the freezing order would be eroded by the expenditure. That case was referred to by Woolf LJ as "having very special facts" in *Kea Corporation v Parrot Corporation* 1986 WL 1245369. He then went on to say:

> "A person who is subject to a Mareva injunction still remains the owner of the property which is subject to the injunction and normally entitled to use that property for his reasonable expense living in this country, including if he is subject to proceedings in this country, meeting the costs of those proceedings."

19. *Halifax Plc v Chandler* [2001] EWCA Civ 1750, is a Court of Appeal authority upon which Mr Anderson QC places particular reliance, and accordingly it is necessary to quote at some length from the lead judgment of Clarke LJ, as he then was:

> "[16] It is well settled that a freezing injunction is not granted in order to provide the claimant with security for its claim. It is, at least in part, for that reason that the standard form of order permits the defendant to spend monies on legal expenses and indeed on ordinary and proper business expenses. The order ordinarily either includes a specific weekly sum for legal or business expenses or permits a reasonable sum for such expenses.
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> [17] These principles are not in dispute. Three examples may be given. (1) A defendant is entitled to pay his debts as they fall due even if the creditor could not recover them at law, as, for example, because of the provisions of the Moneylenders Act (see the decision of Robert Goff J in Iraqi Ministry of Defence and Others v Arcepey Shipping Co SA, The Angel Bell [1981] 1 QB 65, [1980] 1 All ER 480 which has frequently been followed in the 20 years or so since it was decided). (2) A distinction is drawn between cases where the claimant has a proprietary claim and cases where he does not…

> [18] In cases of what may be called ordinary business expenses the court does not usually consider whether the business venture is reasonable, or indeed whether particular business expenses are reasonable. Nor does it balance the defendant's case that he should be permitted to spend such monies against the strength of the claimant's case, or indeed take into consideration the fact that any monies spent by the defendants will not be available to the claimant if it obtains judgment. As I see it, that is because the purpose of a freezing injunction is not to interfere with the defendant's ordinary business or his ordinary way of life.
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> [19] In the fourth edition of Mareva Injunctions and Anton Pillar Relief, Gee says at page 318:
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> "The court will always be concerned to ensure that a Mareva injunction does not operate oppressively and that a defendant will not be hampered in his ordinary business dealings any more than is absolutely necessary to protect the plaintiff from the risk of improper dissipation of assets. Since the plaintiff is not in the position of a secured creditor, and has no proprietary claim to the assets subject to the injunction, there can be no objection in principle to the defendant's dealing in the ordinary way with his business and with his other creditors, even if the effect of such dealings is to render the injunction of no practical value."
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> [20] In my judgment, the relevant principles are correctly stated in that passage…
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> [23]… In so far as the judge said in his judgment of 29 October that if the Appellant failed in the Brown action the Halifax "will have a smaller fund upon which to attempt to revive and enforce their claim to the mortgage debt", and that that fact fell to be balanced against the considerations which mitigated in favour of the Appellant's application, in my judgment he erred in principle. In my opinion, the correct approach would have been to hold that the Appellant was in principle entitled to incur reasonable expenses in connection with the Brown action and that the freezing injunction should be varied accordingly. A freezing injunction should not in principle prevent such expenditure, given that it was bona fide legal expenditure in connection with an action which had a reasonable prospect of success and which was on foot when the injunction was granted."

20. In *In the Matter of Cantor Index Ltd v Lister* [2002] CP Rep 25, Neuberger J, as he then was, in considering whether on the proper construction of the freezing order in that case permitted a living expenses provision to be rolled over, observed:

> "The purpose of this part…is to enable the defendant to live his private and social life in a reasonable way, no doubt taking into

> account his previous lifestyle, despite the making of the Freezing Order."

21. The same judge, in *Anglo-Eastern Trust v Kermanshahchi* [2002] EWHC 2938 (Ch) at paragraph 25 cited Woolf LJ in *Kea Corporation* as set out above.

22. In *Travel Holidays v Soliman* [2013] EWHC 4334 (Comm), Hamblen J, as he then was, made a finding that claimed food expenses were high, and varied the limit imposed having regard to that finding.

23. Mr Anderson QC submits that references to the lifestyle to which a person is "reasonably accustomed" should be taken to mean that a person was sufficiently accustomed to that lifestyle to justify the description "ordinary." The standard form of living expenses exception contains no requirement that they be reasonable as well as ordinary, and in that respect, they are to be contrasted to the usual exception for the expenditure of a reasonable sum on legal fees.

24. Mr Tager QC, whilst accepting that the accustomed lifestyle is a factor to be taken into account, submits that it is only one factor, and that there should logically be no distinction in principle between a legal fees exception and a living expenses exception.

25. In my judgment, there is a distinction in that the focus of ordinary living expenses is upon what historically a person has been accustomed to spend by way of living expenses, whereas the legal fees exception focusses not upon what a person has been historically accustomed to spend but upon what is reasonable for such a person to spend on legal fees on an ongoing basis. The guiding principle to be derived from the authorities in my judgment is that it is unjust for persons to have to reduce their lifestyle because of a freezing order in a non-proprietary claim where the fund in question belongs to such persons.

26. There is no indication in the authorities that such a principle should be applied differently where the lifestyle is lavish rather than modest, and in my judgment the focus in either case should be upon what the ordinary living expenses are. That is not to say that any inquiry as to whether claimed expenses are excessive is illegitimate, as that inquiry may inform the question of whether such expenses are ordinary.

27. On the facts of this particular case, the inquiry as to ordinary living expenses is not as straightforward as it might be in other cases, because of the very substantial change in the circumstances of the defendant and his family in and since 2015. Their prior lifestyle is a factor to be taken into account, but in my judgment is not a very weighty factor. Of more weight is what has happened between then, and the granting of the WFO in March 2019, and the change in lifestyle during that time, and what is likely to have happened to that lifestyle now and in the future even if the WFO had not been made. From a very substantial asset base and a very substantial income, the defendant now has relatively modest assets and has generated no income since 2015. No doubt he was hoping to do so, but so far this has not materialised. As he recognises to some extent, it is likely that his lifestyle and that of his family would have been further curtailed even without the WFO.

28. In my judgment, the appropriate cap on living expenses in the WFO should be approached in light of those findings. It is appropriate in the circumstances of this case

to determine such a cap and leave it to the defendant to decide how to spend within that limit, rather than to deal in detail with each of the defendant's claimed living expenses.

29. That approach should be applied in respect of the very substantial rent that is currently been paid on apartments in Park Lane and Monaca. Leases were taken of these in 2016 when it is likely that the defendant was hoping to begin to generate income by his business acumen. The lease on the Park Lane apartment is due to expire next month, although the defendant has negotiated, an extension of 6 months provided the rent is paid in advance. Arnold J varied the WFO to allow the payment of the rent until the expiry of the original term, but in doing so made it clear that it would be another matter as to whether it would be appropriate to make a similar allowance after such expiry. In my judgment it is unlikely that rent of nearly £60,000 per month would continue to be sustainable in the circumstances set out above even without the WFO.

30. Having indicated that I do not propose to deal with each of the claimed living expenses in detail, it is clear in my judgment that some of the largest of these do not properly come within the meaning of ordinary living expenses and I will deal with these. In considering the defendant's evidence in respect of them, the claimant in witness statements has gone into considerable forensic detail about the reliability of such evidence. I bear in mind that the defendant has not given oral evidence about them and it would not be appropriate to deal with his evidence on the basis of a mini-trial.

31. However, that does not mean that his evidence must be accepted at face value, however implausible. This is especially so in light of the fact that he has not countered the evidence of the supervising solicitor who served the WFO upon him, to the effect that the defendant initially denied who he was, but that did not work because the solicitor had seen photographs of him. In my judgment, the attempt to conceal his identity from an officer of the court in the act of serving a court order upon him is a serious matter and causes me to be cautious about accepting his evidence in this regard at face value especially where it is not corroborated.

32. Part of his claimed living expenses includes private security in London at some £24,000 per month and in Monaca at €29,000 per month. This is on the basis that in 2016 the Monegasque police informed him of a death threat and in 2017 he was threatened with kidnap in the UK. After this he employed private security until April 2018, when he no longer had the funds to do so. In April 2019, he was interviewed by British police in connection with the well-publicized poisoning of Russia nationals here, but it is not suggested that the defendant had any connection with Russian security forces. I do not underestimate the seriousness of the threats, but these were now made some two years ago and for nearly 12 months before the WFO no private security was employed. In my judgment, such expenses do not form part of his ordinary living expenses.

33. He also claims monthly expenditure of £20,000 for business entertainment, £5,500 for clothes for him, €10,000 for clothes for his partner, £2,500 for concierge services and £2,000 for barbers and toiletries, and £2,500 on golf club fees and expenditure which he says are necessary to meet business associates. I accept that some such expenditure might have been involved in selling his shares in the Swiss hotel, and in the Belgrave Square project, but this is likely to be relatively modest. Apart from those, no details are given of any ongoing business ventures which would justify such a level of expenditure. In my judgement it is appropriate to make some allowance under this head, but far more modest than claimed.

34. His claimed living expenses also include private medical treatment. The ongoing need for this is unpredictable, and accordingly the parties have sensibly agreed that his reasonable uninsured medical bills can be paid provided the bills are disclosed on a monthly basis. Accordingly, these form no part of his current ordinary living expenses.

35. The rest of the claimed expenses include the wages of chauffeurs, cooks, nannies and housemaids in London and Monaco, frequent travel costs for his family to visit here, pocket money of £4000 per month for his stepdaughter and £2000 per month for his daughter and food bills. In my judgment it is likely that by now there would have been some paring down of such expenses even without a WFO.

36. Looking at the matter in the round, in my judgment the appropriate limit on living expenses on the present evidence is a total of £80,000 per month to include rent. That equates to almost half of his claimed income prior to 2015, and in my judgment that is the appropriate figure given his dramatic change of circumstances. As both parties acknowledged, it will be open to either to apply for further variation if so advised.

37. I turn now to the issue of debts. Mr Tager QC in closing submission accepted that a number of the debts set out in the schedule to the draft order can be paid. These include the defendant's credit card debts up to the time of the WFO. His partner also has such debts, and in her witness statement says she does not have sufficient assets to pay rent or school fees. In my judgment these debts up until the time of the WFO should be paid, but thereafter should be met out of the living expenses exception. The same applies to rent arrears in respect of the Monaco apartment.

38. Turning to the remainder of the debts in dispute, there are two essential bases for such dispute. The first is that some of them have been incurred since the WFO and should have been paid from the living expenses exception then imposed. The second is whilst some of the alleged loans from friends are evidenced by payments into the bank account of the defendant or his partner, in respect of others there is no evidence to corroborate what is said by the defendant, which is surprising.

39. The debts include those said to be owed to Tim McCandless, a friend of the defendant, for concierge services and for payments made on his behalf. Mr McCandless filed a witness statement dated 14 June 2019 to say that he had paid various sums on behalf of the defendant, including £48,000 by way of rent in February 2018, and that he was still in the process of reconciling the amounts he was owed. This sum was initially included in the schedule attached to the draft order which was handed in at the hearing on behalf of the order, but was crossed out on the draft, with the explanation that Mr McCandless was still carrying out his reconciliation. That, in my judgment, gives further cause for being cautious about accepting at face value the evidence as to the debts where not documented or corroborated.

40. In my judgment, the claimant's objections to the payment of the disputed debts are well founded, and only those debts which were indicated as accepted on behalf of the claimant should be paid out of the funds. The rest should be repaid as part of the living expenses exception. Debts relating to legal expenses should be paid in the usual manner within the legal fees exception.

41. In conclusion, the claimant's application succeeds, as does that of the defendant to the extent indicated.

42. I invite counsel to file a draft order agreed if possible and written submissions on any consequential matters not agreed within 14 days of handing down.