



Neutral Citation Number: [2023] EWHC 1106 (Admin)

Case No: CO/1160/2023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 May 2023

Before:

MR JUSTICE CHAMBERLAIN

Between:

- (1) DALSTON PROJECTS LIMITED
(2) SERGEI GEORGEIVCH NAUMENKO
(3) PRISM MARITIME LIMITED

Claimants

– and –

SECRETARY OF STATE FOR TRANSPORT

Defendant

Nigel Giffin KC and John Bethell (instructed by **Jaffa & Co**) for the **Claimants**
Jason Pobjoy and Emmeline Plews (instructed by the **Government Legal Department**) for
the **Defendant**

Hearing dates: 5 May 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 10 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

- 1 These proceedings concern a superyacht, “the Phi”, which has been moored at Canary Wharf since the end of 2021. Its beneficial owner is Sergei Georgievich Naumenko, the second claimant. The first and third claimants are part of the corporate structure through which the yacht is owned. Following the Russian invasion of Ukraine in February 2022, the National Crime Agency and Border Force Maritime Intelligence Bureau investigated vessels with connections to Russia. The Phi was identified as a vessel of interest. On 28 March 2022, the then Secretary of State, the Rt Hon. Grant Shapps MP, exercised powers conferred by regs 57C(1) and 57D(1)(a) of the Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2019/855) to detain the Phi, on the ground that it was owned, controlled or operated by a person connected with Russia. That decision was reviewed but maintained on 11 April 2022 and 3 January 2023. The latter of these decisions was taken by the current Secretary of State, the Rt Hon. Mark Harper MP.
- 2 On 27 March 2023 the claimants issued proceedings under s. 38(2) of the Sanctions and Anti-Money Laundering Act 2018 (“SAML A”). The relief sought was an order setting aside the decision to detain and damages (i) under s. 8 of the Human Rights Act 1998 (“HRA”) for breach of the claimants’ rights under Article 1 of Protocol 1 to the ECHR and (ii) in the tort of conversion. Section II of CPR Part 79 applies to those proceedings. By CPR 79.5, applications to set aside sanctions decisions are to be made under the Part 8 procedure, as modified by Part 79.
- 3 CPR 79.7 provides that, when the court issues a claim form seeking to set aside a sanctions decision under s. 38(2) of SAML A, it must fix a directions hearing between 14 and 28 days thereafter, unless the court directs otherwise. That timetable has been slightly extended by agreement between the parties. The parties are agreed on the directions that should be given, save for two matters. The agreed directions provide for a timetable leading to a substantive hearing in July 2023. Everyone agrees that, at that hearing, the court should consider whether the decisions of 28 March, 11 April 2022 and 3 January 2023 were lawful and, if not, whether they should be set aside. The claimants submit that the court should also consider whether they are entitled in principle to damages (i) under the HRA and (ii) in conversion. The defendant agrees (i) but not (ii). There was also a minor disagreement about the terms of the listing direction, which it was possible to resolve by fixing dates for the substantive hearing which suited everyone.

Submissions for the claimants

- 4 Nigel Giffin KC for the claimants accepts that it is appropriate to separate issues of causation and quantification of damages, to be decided on another occasion. If they cannot be agreed, they may call for detailed factual and/or expert evidence. However, the hearing in July ought to deal with the question whether the claimants are entitled in principle to damages under the HRA and/or in conversion. The latter is likely to involve resolution of a legal issue as to whether the decision of Flaux J (as he then was) in *The Van Gogh* [2008] EWHC 2794 (Comm), [2008] 2 CLC 708 should be departed from or distinguished. There may also be other issues of principle.
- 5 There is no need for the claim in conversion to be made by a separate Part 7 claim. By s. 38(5) of SAML A, if the court decides that the challenged decision should be set aside, it

may “make any order, or give any such relief, as could in the absence of this section be made or given in proceedings for judicial review of the decision”. In proceedings for judicial review, the court has power under s. 31(4) of the Senior Courts Act 1981 (“SCA”) to award damages, restitution or the recovery of a sum due “if (a) the application includes a claim for such an award arising from any matter to which the application relates and (b) the court is satisfied that such an award would have been made if the claim had been made in an action begun by the applicant at the time of making the application”.

- 6 There are examples of courts dealing with claims for damages in conversion as part and parcel of judicial review proceedings: see e.g. *Gulf Insurance Ltd v Central Bank of Trinidad & Tobago* [2005] UKPC 10 at [53]-[56] (judgment for damages to be assessed); *R (Atapattu) v Home Secretary* [2011] EWHC 1388 (Admin) at [3], [93] and [176] (claimant entitled in principle to damages for conversion, with causation and quantum left over); *R (Checkprice UK Ltd) v HMRC* [2010] STC 1153 at [1], [18]-[20] and [51]-[63]. Paragraph 12.8.4 of the *Administrative Court Judicial Review Guide* (2022) (“the Guide”) provides as follows:

“Where the assessment and award of damages is likely to be a lengthy procedure, the general practice of the Court is to determine the judicial review claim, award the other remedy sought (if appropriate) and then transfer the claim either to the County Court or to an appropriate division of the High Court to determine the question of damages. All parties must address their minds to the possibility of transfer as soon as it becomes apparent that issues other than damages have been resolved.”

- 7 Section 39(2) of SAMLA provides that in proceedings on an application under s. 38 in respect of certain specified kinds of decisions, “[i]f the court would, in the absence of this subsection, have power to award damages”, it may not do so unless satisfied that the decision concerned was made in bad faith. It is common ground that the decision here is not one of the specified kinds, but Mr Giffin says that s. 39(2) shows that the draftsman expressly contemplated the possibility of awards of damages in proceedings under s. 38 of SAMLA. He also refers to the decision of the Court of Appeal in *Bank Mellat v HM Treasury (No. 5)* [2016] EWCA Civ 452, [2017] QB 67, where the court considered a claim for damages under the HRA in proceedings under CPR Part 79 to challenge financial restrictions under the Counter-Terrorism Act 2008.

Submissions for the defendant

- 8 Jason Pobjoy for the defendant submits that any claim for conversion would have to be brought by way of a separate Part 7 claim. Section 38 of SAMLA provides for a modified form of judicial review, but does not entitle the court to entertain related civil law claims. Section 38(1) focuses exclusively on challenging the sanctions decision. It does not apply to other types of decision, let alone allow the bringing of civil causes of action. It permits the court to grant damages under s. 8 of the HRA, since these would flow directly from a ground of challenge (breach of s. 6 of the HRA), but it does not permit the court to entertain a claim for “an entirely distinct cause of action”, such as conversion.
- 9 Mr Pobjoy adds that Part 79 is carefully designed to ensure that challenges to sanctions decisions are brought and determined expeditiously and with appropriate procedural safeguards, using a modified version of the Part 8 procedure. This is not appropriate for the determination of issues involving substantial disputes of fact. Provision is made for

the court to consider CLOSED material, which is unlikely to be appropriate for civil proceedings. (There is no suggestion that the Secretary of State intends to rely on CLOSED material in this case.) If it were possible to have civil disputes determined as part of a claim under s. 38(2) of SAMLA, there would be a risk that the entire Part 79 scheme would be subverted. Section 31(4) of the SCA does not assist. That, together with CPR 54.3(2), ensures that the court hearing a judicial review claim has sufficient procedural flexibility to hear judicial review proceedings and a related civil claim together, but there is no equivalent in s. 38 of SAMLA, or in CPR Part 79.

Discussion

- 10 In my judgment, Mr Giffin is correct that, in a claim under s. 38(2) of SAMLA, the court may in principle award damages for conversion.
- 11 First, the language of s. 38(5) is clear. If it decides that a decision should be set aside, the court may “make any such order, or give any such relief, as could in the absence of this section be made or given in proceedings for judicial review of the decision”. The orders the court can make on judicial review include, by s. 31(4) of the SCA, awards of damages “arising from any matter to which the application relates”. As the cases referred to by Mr Giffin show (see para. 6 above), that can include damages for conversion in an appropriate case.
- 12 Second, although Part 79 lacks an analogue of CPR 54.3(2), that cannot negate a power conferred by primary legislation (s. 38(5) of SAMLA) to grant the relief that would have been available in proceedings for judicial review in the absence of s. 38 of SAMLA. In any event, s. 39(2) makes it clear beyond doubt that the relief that may be granted under s. 38(5) includes damages.
- 13 Third, the above analysis is consistent with the reasoning of Lord Thomas CJ (with whom Lewison and Longmore LJ agreed) in *Bank Mellat*, at [9(vi)]. Although the claim was brought under a differently worded statutory provision, the differences between that provision and s. 38(5) are not material.
- 14 Fourth, there is no principled basis for distinguishing between damages under s. 8 of the HRA and tort damages available at common law. Neither could be claimed in judicial review proceedings if it were not for s. 31(4) of the SCA. There is no principled basis for the submission that the former flows directly from a ground of challenge and the latter is “an entirely distinct cause of action”. Both s. 8 of the HRA and common law torts are distinct causes of action. Either could in principle be maintained separately from a claim for judicial review. Section 31(4) of the SCA means that both can be claimed in judicial review proceedings, provided only that the claims arise from the matter to which the judicial review application relates. Section 38(5) of SAMLA means that the same is true in proceedings under s. 38(2) of that Act.
- 15 Fifth, it is true that the modified Part 8 procedure under CPR Part 79 is unlikely to be apt for determining substantial disputes of fact. But the same is true of the procedure under CPR Part 54, which is also a modified form of the Part 8 procedure. Despite this, claims for damages or other financial remedies in judicial review present little practical difficulty. As the extract from the Guide set out at para. 6 above shows, in all but the most straightforward cases, the general practice of the court is to decide the legality of the challenged decision first and then give directions for resolution of the ancillary

damages or financial remedy claim. In judicial review, there is an express power in CPR 54.20 to order a claim to continue as if it had not been started under Part 54 and to give directions as to the future conduct of the claim. There is also power under Part 30 to transfer a claim to the county court or another division of the High Court. CPR Part 79 contains no analogue of this power, but that does not matter because CPR 8.1(4) (which applies to claims governed by Part 79) empowers the court at any stage to “order the claim to continue as if the claimant had not used the Part 8 procedure” and then to give any directions it considers appropriate; and Part 30 is equally applicable to claims under Part 79.

Conclusion

- 16 It follows that the directions should provide that, at the hearing listed in July 2023, the court should determine any pure issues of law relating to the claimants’ entitlement to damages both under the HRA and in the tort of conversion. Insofar as the claimants’ entitlement to damages under either of these heads depends on the resolution of issues of fact, the court will give such directions as are required thereafter.