Neutral Citation Number: [2023] EWHC 1540 (Admin)

Case No: CO/3510/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

22nd June 2023

Before:
MR JUSTICE FORDHAM

- -

Between:

ANTHONY MARK PATTERSON	**Appellant**
- and -	
COURT OF GLOSTRUP (DENMARK)	**Respondent**

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- -

Rachel Scott (instructed by Cadwalader, Wickersham & Taft LLP) for the **Appellant**
Catherine Brown (instructed by CPS) for the **Respondent**

- -

Hearing date: 22.6.23

Judgment as delivered in open court at the hearing

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Approved Judgment

I direct that 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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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM:

Introduction

1. In this renewed application for permission to appeal, the Appellant (aged 52) is wanted for extradition to Denmark. That is in conjunction with an accusation Extradition Arrest Warrant (ExAW) issued on 2 June 2021 and certified on 17 December 2021. He is wanted to stand trial on two interrelated counts. The first is alleged complicity, the second alleged attempted complicity, in fraud. Extradition was ordered by District Judge Godfrey ("the Judge") on 20 September 2022, after a 3 day hearing on 5, 6 and 7 September 2022, for reasons given in a judgment which occupies 37 pages and 116 paragraphs. There are two grounds of appeal on which permission to appeal is now sought. One of the features emphasised in these extradition proceedings is that, in parallel with criminal proceedings in Denmark conducted by the Danish Prosecutors against the Appellant and a co-defendant Sanjay Shah, there are related civil proceedings in London conducted by the Danish Tax Authority as claimant. The overlapping subject matter can be seen from the summary of Andrew Baker J in Skatteforvaltningen v Solo Capital Partners LLP [2023] EWHC 590 (Comm) at §§1-9. It is sufficient for present purposes to say this. Danish Dividend Tax could be reclaimed by US or Malaysian investors and refunded if a parallel tax liability had arisen, falling within a double taxation treaty. The Danish Tax Authority says in the civil proceedings in London that it was wrongfully induced, by fraudulent reclaim forms and supporting documents, to pay refunds. In the civil proceedings that is said to amount in aggregate to more than DKK (Danish Krona) 12.5bn (around £1.5bn). The Danish Prosecutors in the criminal proceedings in Denmark want to prosecute the Appellant – and if possible Mr Shah – in respect of alleged frauds which succeeded and alleged attempted frauds which did not.

Section 2(4)(c)

2. The first ground of appeal features s.2(4)(c) of the Extradition Act 2003. That provision requires, for each offence, "particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence" and "the time and place at which [they are] alleged to have committed the offence'. This first ground of appeal is concerned with particularisation of the "place" and "time" and "conduct". In other words, the where, when and what. The Judge's analysis included a detailed discussion of a line of some 7 authorities on s.2 particularisation, from Von Der Pahlen v Austria [2006] EWHC 1672 (Admin) to Klar v Belgium [2021] EWHC 3001 (Admin). I had not detected any respect in which it was being said that that discussion of the legal principles was inaccurate or incomplete. As Ms Scott today accepts, this ground of appeal is not about understanding the law, but about applying it. The Judge concluded that the content standards – and the purposes – of legally adequate particularisation had been satisfied, by reference to the contents of the ExAW, but properly supplemented by Further Information dated 27 July 2022 and 29 August 2022. That means the Appellant has properly been told with a reasonable degree of certainty the substance of the case against him, and is able to raise any relevant extradition bar or safeguard. The Judge did a cross-check as to purpose by reference to the 'dual criminality' bar transposition exercise, and the 'specialty' safeguard. Dove J, who refused permission to appeal on the papers, thought the Judge's assessment was unimpeachable. I agree.

3. From a reading of the ExAW itself, it is readily discernible that the allegation of the Appellant's complicity in fraud is in substance as follows. During 2013 to 2015 there were 3,205 applications for refunds of Danish Dividend Tax, in an aggregate amount of DKK8.95bn. These were effected through the arrangement of 3,205 fictitious trades (more specifically, fictitious or of such a nature that the investors did not receive a share dividend), to produce 3,205 fraudulent Dividend Credit Advice slips. They involved 185 US and 24 Malaysian investors. The Appellant was "in charge" of "arranging" these 3,205 fictitious (or of such a nature that the investors did not receive a share dividend) trades. The Appellant received his cut, being some 1.5% of the DKK8.9bn obtained in the refunds from the Danish Tax Authority. Again, from reading the ExAW itself, the allegation of attempted complicity in fraud is in substance as follows. Exactly the same enterprise had continued in 2015, in the same way. But there were 160 Danish Dividend Tax refund applications, made on behalf of 71 US and 4 Malaysian investors, to the tune of DDK553m. These did not succeed in obtaining refunds. That was because from August 2015 the Danish Tax Authority stopped paying them.

4. As to "where" the Appellant was acting, there is beyond argument no "wholesale failure" and no lack of sufficient particularisation. The ExAW and Further Information refer to the Appellant was acting in 2013 while working in London as a "Solo Capital Partners" employee then, from 2014, acting while working as a consultant for Mr Shah in Dubai. That Further Information was plainly admissible. It coloured in detail. The ExAW itself said that what the Appellant did he did "as an employee of the Solo Group … and as a consultant". This in my judgment, beyond argument, supports a clear inference viewing the Warrant holistically (cf. Manuel v Portugal [2020] EWHC 744 (Admin) §§12-16). There was no wholesale failure. As Ms Brown points out, in Alexander v France [2018] QB 408 (at §8) the date was missing from the EAW but there was no "wholesale failure" (as described at §75). The Judge was not led into material error, including when he referred to the harmful effects of the alleged criminality being felt in Denmark.

5. As to "when" the alleged criminal conduct took place, the particulars were plainly sufficient when measured against the standards in the statute and as described in the case law. The interface and overlap between 2013 to 2015 for the alleged completed frauds, and 2015 for the alleged attempted frauds, is clearly explained in the ExAW itself, as are the 160 attempts (out of 194) which are clear and do not arguably undermine specialty.

6. As to "what" is the relevant conduct which is alleged, the standards of the statute and case law are again plainly satisfied. The ExAW explained that what is alleged against the Appellant is that he was "in charge" of the "arranging" of the 3,205 fictitious trades (or trades of such a nature that the investors did not receive a share dividend) for the fraud in 2013 to 2015, and then the 160 fictitious trades (out of 194) as attempted frauds in 2015. The obviously integral nature of those trades and their character is clear from the description of their purpose. That purpose was to generate the fictitious Dividend Credit Advice slips for the purpose of applying for the fraudulent refunds. The ExAW also spells out the 1.5% cut from the refund proceeds, which the Appellant is being said to have received, for his role in arranging the trades which were fictitious (or trades of such a nature that the investors did not receive a share dividend). The involvement in any fictitious trades would clearly give rise to

knowledge of the fiction. What is said, I emphasise, in the ExAW is that the Appellant was "in charge of the planning" of "the 3,205 trades" – not just the trading system but the "trades" – which were "fictitious or of such a nature that the investors did not receive a share dividend". The Further Information, again entirely permissibility given the absence of any "wholesale failure" of particularisation, gives further colouring in. It too says, as something "specifically described", that the Appellant was "in charge of planning the trades". It is not said that the Appellant personally submitted the fraudulent refund applications. But it is said that he received information about them, allocated clients to the agents dealing with them, and was aware of them. That is amply sufficient to particularise "why" he has the alleged knowledge. And so I can see no arguable ground of appeal based on section 2(4)(c). The Judge's careful and clear analysis is in my judgment unimpeachable.

Section 19B

7. The second ground of appeal which is advanced features s.19B of the 2003 Act. The Judge dealt with this in careful and clear terms, referring to two familiar authorities along the way. Like the first ground, this ground of appeal is not about the Judge supposedly misunderstanding the legislation as illuminated by the case-law, but about supposedly misapplying it. It attacks the overall evaluation as wrong. It was said (in the written arguments) that the Judge had fallen into error as describing the s.19B test as "proportionality", but that was cherry picking from the wrong cherry tree, by taking a reference to a later passage in which the Judge was concerned with s.21A. On this part of the case, Ms Scott emphasises the London civil proceedings, and the choice of "forum" for their pursuit. She says that this special feature was given insufficient weight in the assessment of "forum" for s.19B, both in principle, and as to practical consequences.

8. On the question of s.19B forum, the Judge accurately identified the sequence of questions and the statutorily-prescribed factors, in this "interests of justice" forum bar. He recognised that a substantial measure of the Appellant's relevant activity was performed in the UK, based on the time acting as a Solo Capital Partners employee in London in 2013. So far as the statutorily-specified matters were concerned, the Judge recognised in the Appellant's favour that evidence necessary to prove the offences is or could be made available in the UK, and that the Appellant has connections to the UK which are a substantial factor tending against extradition. The Judge then specifically included, as a feature strengthening those relevant connections, the existence of the civil proceedings which the Danish Tax Authority has chosen to pursue in London. He also recognised that the co-defendant Mr Shah may or may not be proceeded against by the Danish Prosecutors in criminal proceedings in Denmark, depending on the outcome of a request for his extradition from Dubai (which continues to have its twists and turns). However, having weighed all of these matters in the balance, together with the other specified matters relating to the interests of justice, the Judge concluded that the forum bar should not prevent extradition in this case. The Judge considered that those specified matters which he assessed as being in favour of extradition were significantly more compelling than those weighing against it, and that extradition would be in the interests of justice for the purpose of forum.

9. In my judgment, that was an unimpeachable evaluative conclusion and outcome. It is not arguably undermined as wrong by the Danish Tax Authority's chosen civil "forum" of London, in principle and as to its implications, even if that feature were

associated with a different statutory feature, and even if reweighed on an appeal by this Court. As the Judge explained, the loss and harm occurred overwhelmingly in Denmark which was a weighty factor. As he also explained, despite the Danish Tax Authority's civil proceedings in England, it remained in the interests of the Danish Tax Authority and the Danish taxpayer – that is to say, the victims – that the domestic Danish criminal justice system should deal with criminal proceedings prosecuted by the Danish Prosecutors. In relation to delay, the Judge referred to the Further Information which had convincingly explained – having described this 6 year Danish criminal investigation producing several thousand documents for use in criminal proceedings as evidential material – that, if the UK authorities were to take over the prosecution, it was assessed that this would inject a delay measured in years. On the evidence, the Judge unassailably assessed that the additional delay would be substantial. The Judge also said that, notwithstanding the uncertainty about the co-defendant Mr Shah, it was in principle desirable to have a single trial in Denmark, which he treated as a factor favouring extradition.

10. The Judge had well in mind the practicalities, including the implications for the Appellant of the prospect of having to defend himself in a criminal prosecution in Denmark, with the ongoing difficulties in also seeking to defend himself in civil proceedings continuing in London. The Judge properly observed that the Danish authorities should be trusted to do what they reasonably can to assist the Appellant in participating from Denmark, and the Judge in London should be trusted to take such steps as were considered proper to ensure the fairness of the civil proceedings. The Judge also recognised that a criminal prosecution in the UK would be likely to involve a grant of bail for the Appellant. Points have been emphasised by Ms Scott about the comparative implications of bail in the UK and potential remand in custody in Denmark, viewed in the context of the value of avoiding lengthy pre-trial detention. But these cannot arguably undermine as incorrect the Judge's overall evaluative conclusion, including when deployed in conjunction with all of the other points relied on. And so, in agreement with Dove J's assessment on the papers, I can find no ground of appeal with a realistic prospect of success on the section 19B forum issue. This ground of appeal lacks viability and with its failure the application for permission to appeal itself fails.

22.6.23