Neutral Citation Number: 2015 EWHC 3420 (CH)

Case No: HC-2015-004606

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

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

Date: 10 November 2015

Before :

Mr Justice Norris

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Between :

(1) CENTAUR LITIGATION SPC (IN LIQUIDATION) **(2) CENTAUR LITIGATION LIMITED (IN LIQUIDATION)** **(3) CENTAUR LITIGATION UNIT SERIES 1 LIMITED (IN LIQUIDATION)**	**Claimants**
- and -	
Mr BRENDAN TERRILL	**Defendant**

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Felicity Toube QC, Ryan Perkins (instructed by **Hogan Lovells International LLP**) for the **Claimants/Applicants**

Hearing dates: 10th November 2015

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APPROVED JUDGMENT

Mr Justice Norris Tuesday, 10th November 2015

Judgment by MR JUSTICE NORRIS

1. MR JUSTICE NORRIS: Centaur Litigation SPC, Centaur Litigation Limited, and Centaur Litigation Unit Series 1 Limited ("the Companies") are Caymanian companies which carried on business as mutual funds ostensibly engaged in the funding of litigation.
2. Between them (and it is not possible, because of the state of the accounts, to say more than that) the Companies raised about £80 million from some 1,300 investors, most of whom were individual retail investors.
3. In 2014 the Companies became engaged in a restructuring exercise with a Mr Selinger. He had been introduced to the Centaur Group (which included the Companies and another group of companies under the "Buttonwood" name) and was told that the Group was looking to introduce a new management team so became engaged in a participation in the group's business. When he became involved he discovered that the books of the Companies were in such a state that it was difficult to know what their true financial position was.
4. One of the human agents behind various of the companies was a Mr Terrill. The Companies each had a sole corporate director. Mr Terrill was the individual behind that corporate director, being its sole director and shareholder.
5. When the difficulties with the state of the Companies' books became apparent, Mr Selinger asked Mr Terrill to make a statutory declaration setting out what he understood of the business of the Companies and the transactions which they had entered into. Mr Selinger was concerned about three particular transactions on which Mr Terrill's views were sought.
6. In that statutory declaration Mr Terrill is at pains to emphasise that he himself acted upon the instructions of another participator in the business of the Companies, a Mr Williams. But this of

course would not provide Mr Terrill with any defence, either under Caymanian law or English law, if he was himself in breach of any duties that he owed to the companies.

7. He acknowledges in the statutory declaration that he was a director of various Centaur entities but says in reality Buttonwood, of which he was also a director, controlled the operation of the Centaur entities as agent for those companies. He makes clear that during his involvement with Buttonwood and with Centaur there was no real distinction between Buttonwood and Centaur in the operation of the companies' affairs. I shall have cause to refer to this statutory declaration hereafter, but that is a sufficient indication of the general tone that it adopts.

8. Mr Selinger was not satisfied with the explanations which Mr Terrill had tendered in his statutory declaration, and on 20th June 2014 proceedings were commenced in the BVI against Mr Terrill. These proceedings referred to the transactions to which Mr Selinger had required an answer to be given in the statutory declaration. They related to a loan facility entered into between Centaur Litigation Limited and another company called Argentum Investment Management Limited ("AIM"), to a waiver of the debt which arose under that facility, to a share purchase agreement and to other dealings. These proceedings were informally served on Mr Terrill and a response was invited. The response received was that he did not have enough time to answer in detail the questions posed by the proceedings. The proceedings have not subsequently been served, nor, so far as the evidence discloses, has Mr Terrill provided a detailed response to the claims which were raised in them.

9. Mr Selinger then procured that provisional liquidators be appointed over the three Centaur companies on 27th June 2014. These provisional liquidators wrote to Mr Terrill asking him to co-operate with them in relation to the issues that had arisen. Thereafter, once they had conducted some preliminary investigations they made clear that it was their opinion that Mr Terrill had, as a director of various Centaur or Buttonwood entities, committed serious breaches of his duties as an officer of those entities, and had personally profited from a number of

transactions at the expense of investors. Specific reference was made to a payment of some 15 million Hong Kong dollars which Mr Terrill had obtained the benefit of in about December 2013. Mr Terrill was warned that legal steps would be taken to pursue recovery of the funds.

10. So far as the evidence discloses, Mr Terrill did not provide the joint provisional liquidators with a detailed response to the issues they had raised.

11. The provisional liquidators were in due course appointed joint official liquidators by the Grand Court of the Cayman Islands. They pursued their investigations into Mr Terrill's dealings with the property of the various companies. They were, however, unable to take matters further with Mr Terrill because he failed to answer emails which they sent to his last known email address and they did not know of his physical whereabouts.

12. However, on 14th August 2015 Mr Terrill was arrested in England in connection with a crime entirely unrelated to the Centaur and Buttonwood companies. An official concerned in the underlying criminal offence contacted the joint official liquidators. He was able to provide them with the present whereabouts of Mr Terrill and that led the joint official liquidators to take up again their proposed action against Mr Terrill. Between August and the end of October 2015 they took legal advice, they obtained the sanction of the creditors committees and they obtained the authority of the Grand Court of Cayman to pursue Mr Terrill.

13. That has led to the two applications now before me; the first, to deal with a request from the Grand Court under section 426 of the Insolvency Act 1986 that this court render assistance to the joint official liquidators; and, the second, an application by the companies for a worldwide freezing order against Mr Terrill. The basis of this latter application is the transactions which Mr Terrill was asked by Mr Selinger to explain, which was the subject of the provisional liquidators' request for information or which was the subject of the BVI proceedings.

14. In summary, and I accept that any summary is liable to minor inaccuracy, but in summary the transactions are: First, on 5th September 2012, Centaur Litigation Limited entered into an

agreement with AIM for the provision of a revolving credit facility. The amount of the facility was £6 million to be made available by Centaur to AIM. Some later documents signed by Mr Terrill relating to this transaction say that there were in fact two revolving facility agreements, one with Centaur Litigation SPC and one with Centaur Litigation Limited, but the only documents which have at present emerged are the single facility agreement to which I have referred. Mr Terrill says in his statutory declaration that he signed this revolving facility as a director of Centaur Litigation Limited.

15. All of the facility was drawn down but none of it was paid to the borrower, AIM. Instead it was paid to an associated company, Argentum Administration Limited. The facility drawdown was funded as to three drawdowns by Centaur Litigation Limited, which was the counterparty to the facility agreement, but the other payment was drawn upon other Centaur companies who were not party to the agreement. No part of the monies advanced have been repaid, nor has any interest been paid.

16. In his statutory declaration, Mr Terrill says that he was directed by his coparticipator, Mr Williams, to sign this agreement and he believes that the drawdown was for AIM's reasonable operating requirements. But a different explanation was given by the solicitors acting for another participator, Mr McGaw, in a letter dated 16th April 2014. It is a feature of this case that transactions recorded in documents are often contradicted by other later documents or by other accounts in correspondence or by the terms of Mr Terrill's statutory declaration, which, coupled with the absence of any accounts and a commingling of company monies and, indeed, other monies within the group, makes it impossible to understand what really occurred. But one can say that prima facie there was no commercial reason why Centaur Litigation, which operated a litigation funding business on behalf of retail investors, should be making a commercial loan to AIM.

17. What is more extraordinary is that subsequently the entirety of this debt due from AIM was purportedly forgiven. On 10th July 2013, Mr Terrill, signing for and on behalf of Centaur Litigation Limited, confirmed that no monies were owed pursuant to the revolving credit agreement, and no money would be due or payable by AIM. This "waiver" appears to have been part of a share purchase and sale transaction to which Centaur Litigation Limited was not a party, but part of the consideration for which was a forgiveness of the indebtedness arising under the revolving credit facility.
18. There is, I should record, another and separate debt forgiveness letter dated 2nd October 2013, again signed by Mr Terrill, which cannot be reconciled with his letter of 10th July 2013. That only adds to the confusion; as does the assertion by a director of AIM, in a letter dated 14th February 2014 to the directors of Buttonwood Legal Capital Limited, that AIM never received the £6 million monies advanced, has no knowledge what happened to those funds, and asserts that they were under the control of Mr Williams and Mr Terrill.
19. What can be said about this transaction is that prima facie there seems no commercial reason why Centaur Litigation Limited should forego £6 million plus interest, which it was then owed, in order to facilitate some share transaction in which it was not involved. That loan and forgiveness is the first transaction which is of concern to the joint liquidators.
20. The second transaction relates to a share purchase agreement entered into between Buttonwood Statutory Limited, a company in the ownership of Mr Terrill, and Mr McGaw. This is dated 10th July 2013 and relates to a proposed sale for £5 million in cash (plus other non cash consideration) of shares in AIM (the borrower under the revolving credit facility agreement). The cash element price of £5 million was not in fact paid by Buttonwood Statutory Limited, the buyer, but appears to have been paid in two tranches, one of £4 million and one of £1 million, by the Companies. On its face, this would not appear to be a proper transaction for there is no

reason why the Companies should pay the purchase price of shares to be acquired by Buttonwood Statutory Limited.

21. In his statutory declaration, Mr Terrill explained that the commercial origin of the transaction was that Mr Williams had suggested that there was a good commercial and strategic reason why the Buttonwood and Centaur companies should seek to acquire AIM in order to avoid a third party gaining control of Centaur's investment manager and of the fund into which part of Centaur's money was invested. But what that good commercial or strategic reason was is not apparent because, as Mr Terrill explains in his statutory declaration, he did not have any valuation of AIM. The only document bearing upon this transaction which the joint official liquidators have discovered and which deals with the worth of AIM is a presentation (apparently to investors) which refers to some untested “models” having been reviewed; see paragraph 10 of the Business case dated 30th May 2013. But a purchase at £5 million plus, unsupported by a valuation and founded at best upon unverified and untested models, is itself difficult to reconcile with Mr Terrill's own estimate of the value of AIM which he recorded in an email exchange in early January 2013 where he described AIM as "a floundering rudderless ship going down for the third time", saying that it would be better to be claiming salvage rights rather than negotiating an equity position, i.e. the acquisition of shares.
22. At first sight, it does appear that this transaction was not one that was for the benefit of the Companies. Why should the Companies pay for the acquisition of shares by a Buttonwood company? Why should any transaction at £5 million plus non cash consideration proceed without a valuation? Why should it proceed at best on untested model calculations? And what had happened to so radically alter Mr Terrill's view between January 2013 and the date of the transaction itself in July 2013?
23. What is suggested is that, if one follows the money, one follows it to entities in the sole ownership and control of Mr Terrill; and it is the view of the joint official liquidators that this

transaction was principally a device to misappropriate Centaur money and apply it for the personal benefit of Mr Terrill.

24. The third transaction is more self-contained. By an agreement dated 22nd August 2013 made between Buttonwood Statutory Limited, Mr Terrill's company, and Centaur Litigation SPC, Centaur agreed to buy some shares in Buttonwood Legal Capital Limited, a BVI company in which Mr Terrill was again interested. It is suggested that this agreement itself was a sham insofar as Buttonwood Statutory Limited was not itself at the time the owner of the shares which are purportedly sold, but that sham allegation has not featured in the application as presented to me. Attention has instead focused on payments made relating to that August 2013 agreement.
25. On 6th December 2013 Mr Terrill wrote to the Centaur and Buttonwood administration company (which is called the "Hong Kong Trust Company") asking for a transfer to be made from Centaur Litigation SPC to "Buttonwood", (the company is not specified) in the sum of £1.209 million or approximately 15 million Hong Kong dollars. The actual explanation given for the payment was "to cover ongoing obligations that we have in regard to the funds' activities" but in the payment request there are also references to the share purchase agreement and an amendment to it.
26. The payment was duly made by Centaur to Buttonwood Legal Capital Limited. Thereafter there are three payments totalling 15 million Hong Kong dollars from Buttonwood Legal Capital Limited to Mr Terrill. So he received the money paid by the Companies.
27. There are indications in the volume of documentation that Mr Terrill may personally have had a beneficial interest in some of the shares in the Centaur Group; and it may be that the receipt relates to Mr Terrill's entitlement to part of the purchase monies. But it is clear that it would not have been in the interests of Centaur Litigation SPC (whose human agent was Mr Terrill) to pay Mr Terrill any money for the acquisition of the shares under the SPA. That the nature of the payment had to be concealed is strongly suggested by the description which Mr Terrill gave in

his demand for payment. The joint official liquidators consider that, upon analysing all of the documents, this was in truth another misappropriation of Centaur money by Mr Terrill.

28. It is their desire to pursue Mr Terrill for misappropriations arising out of those transactions which prompted the application to the Cayman court, and the Cayman court's Letter of Request to the English court to render assistance. The application is made of course under section 426 of the Insolvency Act 1986, subsection (4) of which says that an English insolvency court "shall assist" the courts having corresponding jurisdiction in any relevant country or territory, Cayman being a relevant territory. The request is made under section 426(5) of the Act which undoubtedly confers a discretion on the court. There is a strong imperative to grant the request since the fact that the Cayman court has acceded to the joint official liquidators' application for the Letter of Request is itself a significant factor, though not a determinative one.
29. This seems to me a plain case in which the English court should assist the Grand Court of the Cayman and also its joint official liquidators by recognising, at this stage, their representation of the Centaur companies and their proper standing to seek the present interim relief.
30. I therefore propose to grant the order under section 426 as sought.
31. This brings me to the substantive application for a freezing order. What is sought is a worldwide freezing order in the sum of £13.25 million (being the sum total of the monies eventually passing to Mr Terrill under the three transactions which I have outlined according to the opinion of the joint official liquidators).
32. To grant a freezing order I must of course be satisfied as to a number of matters. First, that the joint official liquidators have a good arguable case. This case has to be adjudged according to Cayman law but, in that regard, there is in evidence a letter from Cayman attorneys, Messrs Harney's, which says that there is no Cayman Islands case law of relevance in relation to the fiduciary duties to which de facto directors of Cayman Islands companies are subject. Absent local law, the Grand Court of the Cayman Islands routinely looks for guidance from other

common law jurisdictions, in particular the courts of England and Wales, decisions at appellate level being regarded as authoritative. Accordingly, the matter stands effectively to be judged according to English law.

33. It must therefore be established that Mr Terrill owed the fiduciary duties which are set out in the draft Particulars of Claim. The content of the duties is not contentious. But what might be contentious is whether Mr Terrill owed such duties because he was not himself a director de jure of any of the claimant companies. He was a director of the corporate director of the claimant companies.

34. It is acknowledged that of itself that of course would not suffice. What will have to be demonstrated is that Mr Terrill was a de facto director. That is to say, that he was part of the corporate governing structure of the claimant companies, and assumed a role in those companies which imposed on him the fiduciary duties of a director.

35. In that connection, I am satisfied that there are a sufficient number of instances demonstrable from the documents themselves where Mr Terrill held himself out as a director of Centaur companies. I am also satisfied that Mr Terrill described himself, as I have recited, as a director of the Centaur entities. Further, the impression that I have gained from the evidence is that indeed Mr Terrill was part of the corporate governing structure of the Centaur companies. This of course is a provisional view formed after hearing one side of the evidence only, but bearing in mind that Mr Terrill in his statutory declaration indicated that he took operational rather than strategic decisions. Nonetheless, I am satisfied that there is a good arguable case, which is all that needs to be shown at this stage, that Mr Terrill was a de facto director.

36. As I have indicated, the duties owed by a de facto director so far as bearing upon the transactions cannot really be the subject of contention.

37. As to whether on the facts relevant breach of duty may be established, my recitation of the transactions will have shown that I regard it at this stage, and having heard only the joint official

liquidators' account, to be well arguable that the transactions in which Mr Terrill was involved are transactions from which he personally benefited and were, in any event, transactions that could only have been entered into in breach of duty. I am therefore satisfied that there is a good arguable case.

38. I am satisfied that there are assets upon which an injunction can bite. Although extremely little is known about Mr Terrill, from information provided by the National Crime Agency it does appear that Mr Terrill has bank accounts, a houseboat and several classic cars in the jurisdiction to which an injunction might properly attach. It also appears from that material that he has assets outside the jurisdiction. Before his arrival in England, he appears to have been based in Hong Kong or Thailand and many of his bank accounts relate to those two jurisdictions. I am therefore satisfied that a freezing order, and in particular a worldwide freezing order, is warranted.

39. I must, thirdly, be satisfied that the ends of justice are likely to be defeated if I do not grant an injunction. In this connection I have been reminded that mere allegations of dishonesty are not of themselves sufficient to warrant the grant of freezing relief, see Thane v Tomlinson [2003] EWCA Civ 1272. But, as subsequent cases have clarified see Jarvis Field Press v Chelton [2003] EWHC 2674 (Civ) , that decision is not a decision that allegations of dishonesty are irrelevant, but is a reminder that there must be a connection established between properly founded allegations of dishonesty and the grant of the relief sought.

40. I am satisfied in the present case that the dealings of which Mr Terrill stands accused, and in relation to which there appears to be a good arguable case, indicate a willingness to conceal transactions beneficial to himself. I am satisfied that he has had in the past sufficient opportunity to give a full and detailed response to the questions about his conduct which have been raised, an opportunity which he has not taken. These properly found the inference that he would be prepared to evade not only findings of liability, but also enforcement of any judgment against him.

41. I would, accordingly, be minded to grant relief in the form which has been discussed with counsel, but I should deal with two matters which might stand in the way.

42. The first is the question of delay. These transactions, as I have indicated, appear to have been identified in June 2014, if not earlier, by Mr Selinger in connection with the BVI proceedings. But the delay of well over a year in commencing proceedings in England and Wales has been accounted for under two principal heads. First, the whereabouts of Mr Terrill was not known until such time as the NCA provided information that he was in England and Wales. The second is that the joint official liquidators were obliged to seek legal advice, to seek the permission of the creditors committees, and to seek the assistance of the Cayman court (in which connection their application was adjourned through no fault of theirs). I am satisfied that there is no ground for withholding relief otherwise available on the grounds of delay.

43. The second objection might be that the proceedings are brought by three insolvent companies acting by their joint liquidators. Accordingly, a cross-undertaking in damages will be given by three insolvent companies. Although the companies are insolvent, they are not without assets because one or more of them will be entitled to the sum of £5 million which stands to the credit of the companies' combined bank accounts. But, nonetheless, the companies are insolvent. If the joint liquidators are right, this is in part in consequence of the activities of Mr Terrill. But, of course, the joint liquidators might be wrong and the undertaking is to protect Mr Terrill in the event that they are wrong.

44. It is not possible to call upon the numerous retail investors to stand behind the application for an injunction as might be the case if there were one or two substantial creditors. In such circumstances as was pointed out in MezProm v Pugachev [2015] EWCA Civ 139 at paragraph 68: "It is sometimes the case that an undertaking will not even be demanded where an applicant has no personal interest in the litigation, is bringing the action on behalf of others, and where there are no large creditors who can be expected to provide an indemnity."

(Citing DPR Futures Limited [1989] 1 Weekly Law Reports 778).

45. In the instant case, whilst an undertaking is offered on behalf of the insolvent companies which might place Mr Terrill at risk, he has I think only himself to blame for that, even if the joint official liquidators fail to bring home their present claims. The fact is that the papers of the companies are in disarray, there is no clear accounting information, and the affairs of the companies have not been segregated one from another. This situation of confusion has been brought about by their corporate director whose human agent was Mr Terrill.
46. In the circumstances, I am not dissuaded from granting an injunction because it can only be supported by a cross-undertaking from an insolvent company. I propose to grant the relief sought.
47. As a footnote, I would observe that it is not possible, because of the state of the papers to which I have referred, to identify what company might properly claim what sum from Mr Terrill. In the circumstances, the form of order must reflect that situation.