

**TRANSCRIPT OF PROCEEDINGS**

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Case Numbers. BL-2018-000544  
BL-2019-000304  
BL-2018-002541

**NEUTRAL CITATION NUMBER:[2020] EWHC 1091 (Ch)**

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

7 Rolls Buildings  
Fetter Lane  
London EC4 1NL

**Before THE HONOURABLE MR JUSTICE ZACAROLI**

**BETWEEN:-**

**TONSTATE GROUP LIMITED & OTHERS (Claimants)**

- v -

**EDWARD WOJAKOVSKI & OTHERS (Defendants)**

**MR A FULTON appeared on behalf of the Claimants  
MR M HAQUE QC appeared on behalf of the Defendants**

**APPROVED JUDGMENT  
2<sup>nd</sup> MARCH 2020, 14.02-15.55**

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MR JUSTICE ZACAROLI:

1. This is an application by Mr Wojakovski for disclosure of a variety of categories of documents relating to the business of THHL. It is acknowledged that there is no litigation basis for the disclosure of the information sought (although that is the only basis on which the application has been put in the application notice). Mr Wojakovski clearly has certain rights as a director, and possibly as the ultimate shareholder of this part of the group, for information to be provided by the company, but I have been provided with no assistance as to the parameters of a valid request by a director or shareholder for disclosure.

2. I am reluctant to shut out what may be a valid request for disclosure on a procedural basis, but given the way this application has been put forward, and without any assistance as to the law as I have noted, I am simply not in a position to adjudicate on the application.

3. I am accordingly not prepared to make any order on this application at this stage. The company, through Mr Fulton, has indicated that it is quite prepared to give Mr Wojakovski that to which he is properly entitled, and the fact that I make no order today does not shut Mr Wojakovski out from making an application on proper grounds.

(There followed further proceedings – please see separate transcript)

MR JUSTICE ZACAROLI:

4. I have, in my judgment dated 18 February 2020, determined that Mr Wojakovski should give security for the costs of the sixth and seventh respondents of defending the petition. The amount of security is agreed at £135,244.90. It is also agreed that the security should be provided by a payment of that sum into court once Mr Wojakovski's solicitors Candey have confirmed that the sums are not tainted, i.e. that they are not the subject of proprietary claims by the claimants in the main action. The timing of the provision of security and the form of the order are however not agreed. As to timing, Mrs Robinson contended that the usual order, that is 14 days from the date of this order, should be made, particularly since Mr Wojakovski has already had over two weeks since

judgment was handed down, during which time he has known that he will have to provide security. Mr Wojakovski on the other hand seeks until the end of March (which would be approximately 28 days, because he is at the same time trying to raise large sums of money to satisfy the judgment sum in the main action. In circumstances where the petition as against Mrs Robinson is effectively stayed so that she is not required to do anything and thus will not be incurring any further costs over the next few months, I do not see any significant prejudice to her in permitting Mr Wojakovski an additional two weeks or so above the time that would normally be allowed. I will therefore order that the security be provided by the end of March.

5. As to the form of the order, Mrs Robinson seeks an order that if the security is not provided then the claim will automatically stand as struck out and there shall be judgment in favour of the sixth and seventh respondents. Mr Wojakovski resists that. He points to the fact that the petition is stayed, so the sixth and seventh respondents are not exposed to any further legal costs. I do not think that is a material factor in this case. The fact is that the sixth and seventh respondents and Mrs Robinson in particular have a substantial claim hanging over them, having already incurred a significant amount of costs. Security is ordered in respect of those past costs only. The purpose and effect of security in such a case is that if Mr Wojakovski wishes to retain the benefit of the action and to continue to impose the burden of the claim hanging over Mrs Robinson then he must provide the security ordered.

6. Mr Wojakovski also relies on the fact that in due course he hopes to realise substantial value from the companies in which he has an interest. In the case of THH, he undoubtedly has an interest albeit of uncertain value. In the case of TGL, he has a potential interest depending on the outcome of the shares claim. I do not find either of these points persuasive. In reality this would result in security being substantially further delayed and I have already agreed to Mr Wojakovski's request that he have until the end of the month to provide it.

7. Nevertheless, I do not think it is appropriate to make the order on unless terms now. As I say the purpose of an order for security is to give the claimant a choice whether to continue with the action – in this case, to maintain the threat of the action hanging over

the respondents or to withdraw. As noted by Waller LJ in *Radu v Houston* [2006] EWCA Civ 1575 at paragraph 18, the choice is meant to be a real choice and the sanction of an unless order ought not to be imposed until the claimant has been given a real opportunity to raise the money.

8. That is not to say that failure to comply with the order would not result in the action being struck out. It is just that that question is to be addressed if and when Mr Wojakovski, having been given the opportunity, has failed to do so and in light of the explanations he may give then for failing to do so. Accordingly, the order that I will make is that Mr Wojakovski is required to provide the security ordered in the agreed sum by 31 March 2020 and that the sixth and seventh respondents are given liberty to apply to strike out the claim in the event of default with the terms of that order.

(There followed further proceedings – please see separate transcript)

MR JUSTICE ZACAROLI:

9. It is common ground that the claimants are entitled to a substantial proportion of their costs of the first hearing of the case management conference to include the costs of all applications made at it. The figures suggested by the defendant is 85 per cent. The claimants are not content with that. It seems to me, however, that it is a reasonably accurate assessment of the balance of the winners and losers on that occasion. I have therefore ordered 85 per cent of the costs to be paid by the defendant to the claimants.

10. The remaining 15 per cent of the costs relating to that hearing will be costs in the case. The costs of today are also costs in the case. What remains is the question of summary assessment. I am being asked to deal with this on a very rough and ready basis. It seems to me that the overall figure is £96,000 that is not in itself an excessive figure taking into account all of the matters that were raised for determination at the hearing. Taking that rough and ready approach I think that the claimants' approach is nearer the mark and I propose to order that the costs be assessed at 75 per cent of the sum claimed.

(There followed further proceedings – please see separate transcript)

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*We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.*