Neutral Citation Number: [2022] EWHC 1810 (Ch)

Case No: BL-2022-000913

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

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

Date: Monday, 11 July 2022

Before:

His Honour Judge Hodge QC
Sitting as a Judge of the High Court

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Between:

(1) Harrington & Charles Trading Company Limited & 7 Ors

Claimants

- and -

(1) Jatin Rajnikant Mehta & 4 Ors

Defendants

- -
- -

Mr Ian Wilson QC, Mr Philip Hinks and **Mr James McWilliams** (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimants**
Mr Andrew Hunter QC and **Mr Luka Krsljanin** (instructed by **Jones Day**) for the **First, Second and Fourth Defendants**
Mr William Willson and **Mr Paul Adams** (**Mr Justin Higgo QC** with them) (instructed by **Howard Kennedy LLP**) for the **Third Defendant**
The Fifth Defendant did not appear and was not represented

Hearing dates: **8th and 11th July 2022**

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APPROVED JUDGMENT

Monday, 11 July 2022

HIS HONOUR JUDGE HODGE QC:

1. This is my extemporary judgment on the adjourned return day of a number of applications in this claim, which is brought by Harrington & Charles Trading Company Limited (in liquidation) and five other English and Welsh corporate entities (including one LLP), all of which are in liquidation, together with their joint liquidators, Mr Colin Diss and Mr Nicholas Wood. There are four effective defendants, formerly Indian nationals, who are all now nationals of St Kitts and Nevis. The first defendant is Mr Jatin Rajnikant Mehta. The second defendant is his wife, Mrs Sonia Mehta. The third and fourth defendants, Mr Vishal Jatin Mehta and Mr Suraj Jatin Mehta, are their sons. There is a fifth defendant, Mr Haytham Salman Ali Abu Obidah but his present whereabouts are unknown and he is therefore yet to be served with any proceedings. He plays no part as a respondent to the present applications; and if I refer to the respondents collectively, it will be to the first to fourth defendants.

2. The claimants are represented by Mr Ian Wilson QC leading Mr Philip Hinks and Mr James McWilliams, instructed by Eversheds Sutherland (International) LLP. The first, second and fourth defendants are represented by Mr Andrew Hunter QC, leading Mr Luka Krsljanin, instructed by Jones Day. The third defendant is represented by Mr William Willson, leading Mr Paul Adams, with Mr Justin Higgo QC who, although a signatory to the skeleton argument, did not appear at this hearing. They are represented by Howard Kennedy LLP.

3. Procedurally, this litigation starts with worldwide freezing orders and orders for the disclosure of assets and preventing any of the four defendants leaving the jurisdiction and requiring them to surrender their passports in support. Those orders were made at a without-notice hearing by Mr Justice Edwin Johnson on 27 May 2022. Mr Justice Edwin Johnson's ex temporary judgment bears the neutral citation number [2022] EWHC 1361 (Ch) although, when I accessed the websites this morning, that judgment did not

appear on the BAILII website and I was unable to gain effective access to The National Archives website.

4. As explained in the claimants' skeleton argument, in summary the claimants' case is that all five defendants have been complicit in a US$1 billion fraud, whereby the proceeds of banking facilities advanced to what are said to be two of the first defendant's former companies, Winsome Diamonds and Jewellery Limited (**Winsome**) and Forever Precious Diamonds & Jewellery limited (**Forever Precious**) were misappropriated, laundered and concealed through multiple layers of corporate entities in or about the year 2013, with the vast majority of the proceeds (on the claimants' case) ending up, insofar as it is currently possible to trace them, in other entities owned and/or controlled by the Mehta family. Notably these include a United Arab Emirates company called Al Noora FZE (**Al Noora**), which is said to have received over US$650 million, and a British Virgin Islands company called Marengo Investment Group Limited (**Marengo**), which is said to have received US$163 million. Both Al Noora and Marengo were subsequently dissolved and the monies they received have gone missing. Further particulars of the sums are set out at paragraph 13 of the claimants' skeleton argument.

5. This Part 7 claim was issued on 31 May 2022, and applications under the Insolvency Act have been issued by the liquidators in relation to each of the corporate entities who are claimants in the Part 7 claim. Those proceedings were originally issued in the Business and Property Courts in Manchester but they have since been transferred to London.

6. The evidence in support of the without-notice application for freezing orders was contained within two affidavits sworn by one of the joint liquidators, Mr Colin Diss (who is the seventh claimant), on 26 and 27 May 2022. Exhibit CD1 comprises some 2,700-odd pages of supporting evidence, set out in five lever-arch files. There are a further six lever-arch files of documents relevant to the present application.

7. The original return date of the without-notice freezing injunction was 10 June 2022. On that day, the effective hearing of the application for the continuation of the freezing relief was, by consent, stood over by Tribunal Judge Nicholas Aleksander, sitting as a Deputy High Court judge, to a two-day hearing in a window between 5 and 7 October 2022, with the freezing orders continuing in the meantime. The restraints on leaving the jurisdiction and the passport surrender orders were continued to today.

8. I am satisfied, as is (I think) common ground, that even a three-day hearing is likely to be inadequate for the effective return date of the freezing injunctions. That is because there are applications by the defendants to set aside the freezing orders on the grounds of a want of full and frank disclosure and fair presentation of the evidence. There are also challenges by the defendants to the jurisdiction of the English and Welsh courts to entertain these proceedings. In addition, the claimants are likely to seek to extend or (subject to the outcome of this judgment) continue the freezing relief on additional juridical bases to those accepted by Mr Justice Edwin Johnson for the grant of freezing relief. Although the freezing injunctions were originally granted as personal freezing injunctions, the claimants now seek to support the further disclosure they seek on the basis of proprietary claims, and also relief on a ***Norwich Pharmacal*** basis.

9. However, in advance of the full effective hearing of the application for continuation of the freezing relief in early October, last Friday (8 July), which was the first day of this hearing, was set aside initially to hear applications by the claimants requiring the respondents to disclose where the monies said to represent the proceeds of the fraud have gone, and also to consider whether the passport orders should be further extended, initially to Friday 29 July 2022, in aid of the further disclosure the claimants now seek. The claimants now seek orders requiring the respondents to disclose where the money went on

three alternative bases. The first is that they are entitled to such further disclosure as a result of the existing disclosure order because substantial assets remain unaccounted for. Secondly, it is said that the claimants are entitled to this information in support of a proprietary and tracing claim. Thirdly, it is said that they are entitled to this information on a *Norwich Pharmacal* basis.

10. A preliminary procedural objection is raised to the latter basis for further disclosure on the footing that there is no Part 8 claim form seeking *Norwich Pharmacal* relief. The *Chancery Guide* recommends the issue of a Part 8 claim form where *Norwich Pharmacal* is sought. That is clearly a sensible and appropriate course in a case where there are no extant proceedings on foot against the respondent to the application for *Norwich Pharmacal* relief because there needs to be some form of originating process to set proceedings in train. However, in a case, such as the present, where there are existing proceedings on foot, I can see no reason why *Norwich Pharmacal* relief should not be sought by way of application notice.

11. Objection is also taken on the footing that the application for *Norwich Pharmacal* relief is sought by way of late amendment to the original application notice, for which permission has not yet been given, and which was only made in an application notice issued last Monday 4 July, and served at a time when the time for the defendants to serve their evidence in response to the application in support of Friday's hearing had already passed. Mr Ian Wilson, for the claimants, has pointed out that reference had been made to a *Norwich Pharmacal* application as early as a letter from the claimants' solicitors dated 20 June 2022. Mr Wilson submits that the *Norwich Pharmacal* application is a response to the defendants' own evidence and case, and arises out of their argument that they are not themselves wrongdoers. Mr Wilson points out that, on that basis, if they are not the wrongdoers, then they should be required to provide disclosure to identify the true wrongdoers and enable them to be pursued. It is said that the defendants cannot deny, on the evidence, that they have become mixed up in this fraud. Mr Wilson also

submits that putting the application for further disclosure on a *Norwich Pharmacal* basis is simply changing the legal and juridical basis for the relief sought, and does not affect the evidence that would have been required in response to such an application had it been made earlier. That is disputed by the defendants on the footing that they would have wished to adduce evidence as to other ways in which it might have been possible for the claimants to pursue the wrongdoers, and on the issue of delay, and because it is not (or should not be) appropriate for respondents to applications for relief to have to address bases for relief that are merely ventilated in correspondence but do not form any part of the actual application made to the court.

12. For reasons that will become apparent, I do not find it necessary to rule finally upon those arguments.

13. There is also an application issued by the claimants, again on 4 July, seeking orders requiring the respondents to provide proper information as to the source of funds being used for living and legal expenses, as is said to be required by the without-notice order.

14. Thirdly, and in addition to the claimants' application for the extension of the passport order relief, the third defendant has issued an application for the return of his passport. That was to enable him to fly out on a holiday that had been booked before the hearing before Mr Justice Edwin Johnson, and thus, inevitably, before any notice of these proceedings, which was scheduled to leave London Heathrow for California, USA this morning. Because of the urgency resulting from that imminent flight departure, I delivered a short extemporary judgment ([2022] EWHC 1811 (Ch)) late on the afternoon of Friday 8 July, in which I ordered the return of the third defendant's passport to enable him to take that family holiday. This morning I was told by Mr William Willson that because this hearing had unexpectedly extended into today (Monday 11 July), the third defendant had put his outward flight, and consequently his return flight, back by two days. In the event, it was unnecessary for me to deliver that extemporary

ruling on Friday afternoon, although the third defendant naturally wishes to know whether he is going to be able to take his family on holiday to California for two weeks as planned. He is presently rescheduled to leave this Wednesday (13 July) and to return on 29 July.

15. The defendants invite the court to note that the application by the claimants for further disclosure in fact pre-dated the disclosure that has been given by the defendants. The application notice was issued on 6 June, and the defendants only swore their disclosure affidavits and, in the case of the third defendant, made his disclosure affirmation, on 10 June 2022.

16. The evidence on the present applications is contained within the following witness statements: For the first, second and fourth defendants, there is a witness statement of Mr Daniel James Travers, a solicitor and partner in Jones Day, dated 24 June 2022. For the third defendant there is the witness statement of Ms Fiona Hinds, a solicitor and partner in Howard Kennedy LLP, of the same date. For the claimants, there is responsive witness evidence in the form of the first witness statement of Mr James Alexander Southworth, a solicitor and partner in Eversheds Sutherland (International) LLP, dated 1 July 2022. So far, on the substantive application for the continuation of the freezing relief, there are witness statements, all dated 6 July 2022, from Mr Travers, Ms Hinds and the third defendant. The court has received extensive skeleton arguments. That, for the claimants, extends to 25 pages. That for the first, second and fourth defendants extends to 41 pages, and the skeleton argument for the third defendant covers 44 pages (including an annex).

17. The claimants have provided an overview of the disclosure application at section B of their skeleton argument. It is the claimants' case that their investigations have established that companies owned and/or controlled by the Mehta family have received approximately US$850 million from the proceeds of the alleged fraud. However, the family has so far only disclosed assets worth approximately US$146

million. Of that, a substantial sum - in the order of (I think) $90 million - is represented by monies owed by a third party individual. That, say the claimants, begs the obvious question of what has become of the remainder, and the bulk, of the proceeds of the alleged fraud. By their disclosure application, the claimants seek the provision of affidavits or affirmations stating, to the best of the defendants' knowledge and belief, the current whereabouts of specified sums comprising the proceeds of the fraud that were received by the respondents' companies, together with the identities of the recipients of those monies.

18. As I have said, the claimants maintain an entitlement to this information on three alternative jurisdictional bases, of which the first is that such disclosure is ancillary to the existing worldwide freezing order. That information is said to be required now. It is necessary to police the worldwide freezing order by identifying further assets belonging to the Mehta family which are properly subject to that order. In addition, it is said that such information is required to identify the traceable proceeds of assets in respect of which proprietary claims are made, so that steps can be taken to preserve those assets. Such disclosure is also said to be necessary to identify other persons who received the proceeds of the fraud after they were paid on by the respondents' companies so that claims may be made, and injunctive relief sought, against those persons.

19. I have been referred to observations in authorities emphasising the importance of asset disclosure in rendering freezing orders effective. The claimants contend that it is no answer to the present application for further disclosure of assets pursuant to the existing freezing order that those orders were made on a without-notice basis and have been continued by consent pending a return date presently listed for hearing in early October. In support of that submission, I was taken to observations of Lord Justice Jackson, delivering the leading judgment in the Court of Appeal, in the case of *Malofeev v VTB Capital Plc* [2011] EWCA (Civ) 1252 at paragraph 39. There Lord Justice Jackson accepted the submission

that the fact that there is a pending challenge to jurisdiction is not a ground for suspending the operation of a disclosure of assets order. An order for such disclosure normally accompanies a worldwide freezing order, and is usually necessary to give that order teeth. The fact that the court will be asked on a future date to say that the worldwide freezing order should not have been made is not normally a ground for suspending the disclosure order in the interim.

20. I pointed out to Mr Ian Wilson that this is not a case where it is sought to suspend disclosure pending the effective return date of the application to continue the freezing orders on an inter partes basis. Disclosure has already been given, and what is being sought is further disclosure because it is said that the disclosure already given is incomplete.

21. In response to that, I was taken to the case of the *Public Institution for Social Security v Al Rajaan* [2020] EWHC 1498 (Comm), a decision of Mr Justice Jacobs. There, at paragraph 25, Mr Justice Jacobs recognised that one circumstance in which a court may be prepared to order further disclosure is where there is an obvious discrepancy between assets which were at one time held by a defendant and the current assets disclosed in response to the disclosure order in a freezing injunction, and where there is a real possibility that there are further assets to which the freezing order may apply.

22. The defendants accept that, in principle, an application for an order for further disclosure may be entertained where the information provided pursuant to the original order is *"demonstrably unsatisfactory"*. However, in such circumstances the court will consider: (1) whether it is necessary for further information to be given, bearing in mind, in particular, that the claimant already has the protection of a freezing injunction; (2) whether the need for further information is urgent, such that it cannot await disclosure in the ordinary course; (3) whether it is proportionate to grant the order sought, bearing in mind, in particular, that an order requiring a respondent to explain what has happened to

particular monies may be onerous; and (4) whether it is otherwise just and convenient to grant the order sought.

23. The defendants also point out that a court will undoubtedly be concerned to ensure that it is not drawn into improperly prejudging, or pre-empting the merits of, the substantive case, in particular where, as in the present case, part of the substantive relief sought is an account of what has happened to certain monies. The fact that granting the interim relief sought would in effect give the claimants the substantive relief it seeks without a trial is a relevant matter to be considered. I did not understand the claimants to dispute any of those propositions.

24. The defendants point to the context of the case in which Mr Justice Jacobs's observations were made. That was a case in which the judge had already decided, at an earlier hearing, that the claimant had established an arguable proprietary claim which could not be dismissed as being a weak one. The judge had already decided that there was a serious issue to be tried in relation to that proprietary claim. That is not the case in the present case. At paragraph 38 of his judgment in ***Al Rajaan***, Mr Justice Jacobs had said that the current state of the evidence was that there was much material to explain and support a figure of US$513 million, and no positive case or evidence to the contrary by the defendant. At paragraph 43, Mr Justice Jacobs expressed himself satisfied that there was indeed a significant, and unexplained, difference between the evidence as to current assets and the evidence as to amounts received, even taking into account expenditure on the scale alleged by the defendant. In principle therefore, and subject to discretionary considerations, that seemed to Mr Justice Jacobs to justify the court being willing, in principle, to consider making further orders which would enable further assets to be identified, particularly in a case where the claimant had an arguable proprietary claim, and where a tracing remedy was therefore potentially available. In the event, Mr Justice Jacobs was not persuaded

by the general arguments on the defendant's behalf to the effect that no further disclosure should be required.

25. In the present case, Mr Hunter QC, for the first, second, and fourth defendants, took me through the evidence as to what had happened to the proceeds of the fraud. The bulk of those proceeds had been paid over to Al Noora in a sum of some US$650 million. Mr Hunter took me through the evidence that, he said, tended to cast doubt upon the defendants having any interest in that company. The evidence tended to show that the owner of that company was in fact the fifth defendant, the absent Mr Obidah. However, in his reply, Mr Ian Wilson took me to other evidence that tended to show that there was credible evidence that, in fact, whilst Mr Obidah may have been the paper owner of Al Noora, the true and actual owner was the first defendant.

26. I am satisfied, on the evidence, that there is credible material which leads the court to conclude that the asset disclosure from the defendants to date may indeed be substantially deficient. Even apart from the Al Noora proceeds, there is another US$51 million, or thereabouts, of money that is unaccounted for. I do not accept Mr Hunter's submission, advanced without any supporting evidence, that that sum should be disregarded in the context of the much larger sums with which this case is concerned, and that it can be treated and explained simply as the result of unspecified, unsuccessful business dealings on the part of members of the Mehta family.

27. I am satisfied, on the evidence, that the claimants have established credible evidence of an obvious discrepancy between assets which were at one time held by defendants 1 to 4 and the current assets that they have disclosed in response to the disclosure order, and that there is a real possibility that there may be further assets to which the existing freezing order may apply.

28. I then turn to the discretionary considerations to which the court must have regard in deciding whether it is just and convenient to order the further disclosure sought by the claimants. On this I accept the submissions of Mr Ian Wilson that the limited nature of the further disclosure that the claimants are seeking will not be unduly onerous. It is not intended to require them to make further active enquiries, but simply to set out what they already know, if anything, about the whereabouts of these assets.

29. I acknowledge that there has been considerable delay in seeking to pursue claims against the first to fourth - and indeed the fifth – defendants; but that is because the whereabouts of the known defendants has only recently come to light; and I am satisfied that the claimants have proceeded with reasonable dispatch as soon as their whereabouts in this jurisdiction was known.

30. I have considered the other factors identified by both Mr Hunter, for the first, second, and fourth defendants, and Mr William Willson for the third defendant. I recognise that the claimants already have the protection of freezing relief; but I am satisfied, given the apparent substantial discrepancy over the assets, that in order properly to police that freezing injunction, the further disclosure should be given.

31. I recognise that there has been considerable delay in the prosecution of any proceeding for the recovery of these sums; but I am not satisfied, in the circumstances of this case, where the defendants, on the claimants' case, have taken steps to seek to secrete monies, that the claimants can safely wait from taking further proceedings to secure any monies that may continue to be available for enforcement until after an effective return date, which may not be as early as the first week of October, and where there may, in any event, be a further appeal.

32. I am satisfied, in all the circumstances, that it is just and convenient to grant the further disclosure sought. I am satisfied that this will not prove to be unduly onerous to any of the defendants. In those

circumstances, since I am satisfied that there is the necessary jurisdiction to make the order in support of the existing disclosure granted in support of the freezing orders which are continuing, it is unnecessary for me to consider the claimants' two alternative bases for seeking such further disclosure. I am also satisfied that it is undesirable for me to express any preliminary opinion on the merits of those arguments.

33. Both Mr Hunter and Mr William Willson have advanced powerful arguments to the effect that the claimants' proprietary claims are seriously flawed and do not withstand analysis. Those arguments are supported by the reservations expressed by Mr Justice Edwin Johnson, in his extemporary judgment, as to the potential availability of proprietary injunctive and tracing relief, and also the fact that no such relief was granted by him at the without-notice hearing. The entire basis for the proprietary relief claim is founded upon a proposition stated at paragraph 44-052 of the current (20th) edition of *Lewin on Trusts*. That statement itself is founded on a single, first instance decision of Mr Peter Leaver QC, sitting as a judge of the Chancery Division, in *Bracken Partners Limited v Gutteridge* [2003] EWHC 1064 (Ch), and reported at [2003] WTLR 1241. Mr William Willson has pointed out that that case appears never previously to have been followed. There are difficult issues to be considered; and it is not appropriate that I should consider them when it is unnecessary to do so. Those are matters that can be thrashed out, if it is thought appropriate, on the effective return day of the freezing orders.

34. It is equally undesirable that I should express any view on the *Norwich Pharmacal* application. In particular, there would appear to be some tension between two authorities, apparently decided only five days apart. One is the decision of Mr Michael Green QC, sitting as a deputy judge of the Chancery Division, in *CPOD SA v De Holanda* [2020] EWHC 1247 (Ch), where it appears to have been accepted that *Norwich Pharmacal* relief should really be a remedy of last resort, when the claimant needs a missing piece of the jigsaw in order to bring its claim: see paragraph 39. There appears to be some

tension between that and the views of Mr Justice Andrew Baker, expressed only some five days earlier, in the case of *Burford Capital Limited v London Stock Exchange Group plc* [2020] EWHC 1183 (Com) where, at paragraph 40, Mr Justice Andrew Baker stated that: *"... the supposed precondition of necessity 'does not require the remedy to be one of last resort, but the need to order disclosure will be found to exist only where it is a necessary and proportionate response in all of the circumstances'."* Again, it would not be appropriate for me to proceed to consider whether to grant relief on a *Norwich Pharmacal* basis if it is strictly unnecessary for me to do so.

35. Having decided that I should order the further disclosure sought in support of the existing disclosure provisions in the freezing order granted by Mr Justice Edwin Johnson, it seems to me also to be just and convenient to extend the passport order for a period of 14 days until after such further disclosure is given, subject, in the case of the third defendant, to the release I have already ordered to enable him to go on holiday.

36. Mr Ian Wilson accepts that the passport jurisdiction is an exceptional one; but, in the present case, there will be no interference with the liberties of the first, second and fourth defendants. I accept Mr Ian Wilson's submission that I have to have regard to the circumstances of this particular case. Here all three of those defendants have been without their passports since 2018 because they have, since then, been retained by the Home Office in connection with an unparticularised series of immigration applications. Those defendants could ask for the return of their passports. They have indicated, through their counsel, that they are unlikely to do so because they wish to have their pending immigration applications fully considered and determined. In those circumstances, it seems to me that requiring them to be retained until after the further disclosure is given, and then for a further period of 14 days to enable such disclosure to be assimilated and evaluated, is not unduly intrusive in all the circumstances of the case, and that it is just and convenient to order such limited restraint. In practice, there will be no

restraints on their liberty; and, if circumstances change on an urgent basis, then application can be made on the footing of a material change of circumstances since today's judgment.

37. So far as the third defendant is concerned, his passport should remain with him until he returns from his rescheduled holiday in the United States; but it should then be handed over to his solicitors, and by them to the claimants' solicitors, to be retained until 14 days after he has given the further disclosure that I am presently ordering.

38. I am so far not satisfied that the matters that have already been disclosed as to the source of funding the defendants' legal costs would warrant any further disclosure of the sources of that funding; but I have not heard full submissions on the most recent developments in that regard, based upon the contents of the letter which I do not think I have even seen; and therefore I would welcome any further submissions if that is to remain an active issue.

39. I am conscious also that there may be issues outstanding in relation to the mechanism for securing the release of funds for both living and legal expenses.

40. I have, inevitably, not heard any submissions in relation to costs; but, subject to such submissions, my preliminary view is that the costs of these applications should all be reserved. There are a number of reasons for that. The first is that it seems to me, on a preliminary basis, that it would be inappropriate for any costs orders to be made in advance of the determination of the question whether freezing relief was justified at all, and, in particular, the determination of the defendants' applications to have the freezing relief set aside on jurisdictional grounds and/or on the grounds of want of full disclosure and a fair presentation of the case.

41. Secondly, it seems to me that it would be premature to deal with costs until one knows whether any useful material has come to light as a result of the further disclosure orders which I am making. Thirdly, I have not determined two of the three bases for the relief that was being advanced by the claimants. It may be that those heads of relief will be renewed at the effective hearing of the freezing injunctions. If renewed, and if unsuccessful, there may be issues as to whether, since time and effort have been taken up on those issues at this hearing, this is a case in which the claimants, although they have secured the relief they are seeking, have only been partially successful.

42. So, for all those reasons, my preliminary view is that I should simply reserve the costs to the effective return date, whenever that is, of these injunction applications.

43. That concludes this extemporary judgment.