



Neutral Citation Number: [2024] EWHC 1973 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 30 July 2024

Before :

MR JUSTICE RAJAH

Case No: BL-2020-001098

INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF UMBRELLA CARE LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

Umbrella Care Limited
(In Liquidation)

Applicant

- and -

Khalid Usman Raja

Respondent

Claim No. BR-2023-000289

IN BANKRUPTCY
IN THE MATTER OF USMAN KHALID RAJA (A BANKRUPT)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

Louise Mary Brittain And Jake Beake
(As Joint Trustees In Bankruptcy Of Usman Khalid Raja (A Bankrupt))

Applicants

-and-

Usman Khalid Raja (A Bankrupt)

Respondent

Christopher Brockman (instructed by **Wedlake Bell LLP**) for the **Applicant**
Richard Wilson KC, LL.D (by **direct access**) for the **Respondent**

Hearing date: 5 June 2024

APPROVED JUDGMENT

Mr Justice Rajah :

Introduction:

1. This is my judgment on an application by the liquidators of Umbrella Care Limited (“UCL”) and an application by Louise Brittain and John Beake, as trustees in bankruptcy of the Second Defendant, Usman Khalid Raja (“**the Joint Trustees**”), for the continuation of an injunction restraining the Mr Raja from leaving the country and authorising the continued retention of his passport by UCL’s solicitors.
2. The injunction has been in place since 29 July 2020 and so Mr Raja has been unable to leave the country for approximately 4 years.

The UCL proceedings

3. In 2020, UCL, through its liquidators, issued proceedings against a number of defendants, including Mr Raja. That claim alleged that Mr Raja had participated in large scale labour fraud against UCL, using companies owned or controlled by him. It alleged that Mr Raja had misapplied and misappropriated monies which were received from customers of UCL and which should have been used to pay VAT, PAYE and NIC to HMRC. The total amount extracted from UCL was approximately £36 million. On 21 January 2022, Edwin Johnson J granted summary judgment against Mr Raja for breach of his duties as a director of the UCL. Following a trial in November 2022 to assess damages, Mr Raja was

ordered to pay UCL the sum of £27,810,675 by way of damages and interest (having taken into account sums which had already been recovered by the date of the order).

4. UCL first obtained freezing and proprietary orders from Miles J on 29 July 2020 (“**the 29 July 2020 Order**”). That order contained a penal notice and paragraph 12 required Mr Raja and his wife to provide, amongst other information, disclosure of all their assets over £1,000 in value and the whereabouts of UCL’s monies. Paragraph 21 to 23 imposed an injunction prohibiting their departure from the jurisdiction, and required the surrender of their passports, until they had complied with their disclosure obligations under paragraph 12. Paragraphs 21 to 23 are in the following terms:

“21. If the First and Second Respondents are at any time present in the jurisdiction, they shall be restrained from leaving England and Wales until they have complied with his or her obligations under paragraphs 12(1), (2) and (3) of this Order.

22. Until they have complied with paragraphs 12(1), (2) and (3) of this Order, the First and Second Defendants and any other person served with this Order must not:

- (a) make any application for;*
- (b) obtain or seek to obtain; and/or*
- (c) knowingly cause, permit, encourage or support any steps being taken to apply for or obtain any passport, identity card, ticket, travel warrant or other document which would enable the First and Second Defendants to leave England and Wales.*

23. Forthwith upon service of this Order on them, the First and Second Defendants must identify and inform the Claimant’s solicitors of the whereabouts of all their passports and, as soon as practicable, they must deliver all their passports up, or cause them to be delivered up, to the Claimant’s solicitors who shall hold them in safe custody pending compliance by the First and Second Defendants with the provisions of paragraphs 12(1), (2) and (3) of this Order or any further order of the Court. “

5. Mr Raja and his wife delivered up their passports as the order required on 29 July 2020. Mr Raja filed an affidavit purporting to give the disclosure required by the Order, but he failed to give full disclosure of all of his assets or the whereabouts of the funds caught by the proprietary injunction.
6. On 12 August 2020 Trower J continued the freezing injunction and the injunction restraining travel out of the jurisdiction in broadly the same terms as the 29 July 2020 order until Mr Raja had complied with the 29 July 2020 Order.

Paragraph 23 was varied to say:

“23. The Claimant’s solicitors shall hold the First and Second Respondents passports, delivered to them on 29 July 2020, in safe custody pending compliance by the First and Second Respondents with the provisions of paragraphs 12(1), (2), (3) and 13 of the Order of Mr Justice Miles dated 29 July 2020 (as varied by this Order) or any further order of the Court.”

7. On 25 August 2020 Falk J continued the freezing injunction and the restrictions on travel and authorised the continued retention of Mr Raja’s and his wife’s passport, until compliance with the 29 July 2020 Order.
8. Following UCL’s successful application for summary judgment, a further freezing and proprietary order was made by Edwin Johnson J on 21 January 2022 (“**the 21 January 2022 Order**”). Paragraphs 13 and 14 required Mr Raja and his wife, amongst other things, to disclose all their assets over £1000. Paragraphs 21 to 23 continued the restrictions on travel, and the continued retention of Mr Raja’s and his wife’s passport, until compliance with paragraphs 13 and 14 of the 21 January 2022 Order.

9. Again Mr Raja filed an affidavit purportedly complying with the 21 January 2022 Order but failed to disclose all of his assets over £1000. UCL maintains that there has been a wholesale and continuing failure by Mr Raja to comply with any of the orders requiring him to provide information as to his assets or the whereabouts of UCL's money.

10. On 15 July 2022 Mr Raja applied by application notice for the return of both passports to enable him and his family to travel to Pakistan. The application was based on a number of grounds including a lie that his mother-in-law was on her death bed, and then had died, in Pakistan. Between 6 July 2022 and the hearing on 6 September 2022 before Meade J, Mr Raja made four witness statements in support of that application. The application for the return of Mr Raja's passports was refused by Meade J on 6 September 2022. His wife's passport was returned to her in November 2022 (although it does not seem that the other restrictions on her travelling out of the jurisdiction in the 21 January 2022 Order were formally varied in relation to her).

11. Following the quantification of the damages and interest to be paid by Mr Raja in the sum of £27,810,675, a further post judgment freezing Order was made by Edwin Johnson J on 24 January 2023. The Order declared that paragraphs 13 and 14 of the 21 January 2022 Order remained in full force and effect and continued the travel and passport restrictions in relation to Mr Raja until compliance by him with the 21 January 2022 Order. The Order provided that those restrictions would cease to have effect on 24 July 2023 unless an application was made by UCL to continue the restrictions.

12. On 18 July 2023 UCL issued the application which is now before me to continue the travel and passport restrictions until further order of the Court. As at that date the total judgment sum remained outstanding.
13. On 20 July 2023 I found Mr Raja in contempt of Court for his false statements on oath that his mother-in-law had died. I also found that he was in contempt for failure to disclose bank accounts in the Isle of Man and failure to disclose bank accounts in Pakistan. I sentenced him to 18 months imprisonment. In my sentencing remarks I said at paragraph 5:

“I have no doubt that this defendant’s objective was to regain the passports for his family so that he could abscond the jurisdiction to Pakistan, where he had undisclosed assets”.

On 18 April 2024 Mr Raja was released from prison.

The bankruptcy proceedings

14. Mr Raja was made bankrupt on UCL’s petition on 17 May 2023. There is a history of non-cooperation in the bankruptcy.
15. UCL had presented a petition for Mr Raja’s bankruptcy on 6 April 2023 and on 25 April 2023, Ian Defty and Louise Brittain were appointed Interim Receivers. The Order appointing them conferred powers to enter upon various business and residential properties occupied or used by Mr Raja and to access and image his electronic devices. A significant number of phones, computers, tablets and other electronic devices were seized but Mr Raja refused to provide any information to enable them to be accessed.

16. He was arrested and brought to Court for examination on 8 June 2023 before Chief ICC Judge Briggs. He was remanded in custody overnight and brought again before the Court for examination on 9 June, this time before ICC Judge Mullen. He provided passwords which did not work and then claimed to be unable to recall his passwords. Findings were made by ICC Judge Mullen that Mr Raja was lying and not cooperating.

17. He was remanded in custody and brought before Richard Smith J on 14 and 15 June 2023 who described his evidence as “*untruthful*” and “*entirely lacking in candour*”. Nevertheless, the Judge considered further detention to be disproportionate and an unacceptable encroachment on Mr Raja’s liberty. Mr Raja was released but made subject to stringent restrictions on his use of electronic devices, emails and cloud-based platforms.

18. The Joint Trustees say that Mr Raja has failed to engage at all, even at the most mundane level of providing details of his income and expenditure. They say that analysis of his bank accounts shows numerous payments in and out which require explanation. Mr Raja has failed (the Joint Trustees say refused) to meet with the Joint Trustees while in prison and has not responded at all to a written request for information dated 24 October 2023. The Joint Trustees believe that Mr Raja has more undisclosed assets. The Joint Trustees say there are indications that Mr Raja has interests in businesses and properties in the UK which have not been disclosed.

19. On 5 June 2024 I made an Order that Mr Raja attend before an Insolvency and Companies Court judge for further examination about these matters on a date to be fixed.

The proceedings in Pakistan

20. Among the funds misappropriated from UCL which have not been recovered is a sum of £975,189 which was transferred at Mr Raja's direction to an account in Pakistan. Mr Raja says the money was sent to Shabnam Sharfaraz who he says is his aunt. Notwithstanding the Myles J order and subsequent Orders, he has never disclosed any details of the account or accounts into which this sum was paid. UCL has commenced proceedings in Pakistan against Mr Raja and Ms Sharfaraz to recover the sum of £975,189.

21. The Joint Trustees believe they have identified land in Pakistan belonging to Mr Raja. They have commenced proceedings for recognition of the bankruptcy order and have obtained an interim order to hold the ring. However, they have been advised that it is not possible to register the interim order against the title to the properties concerned and that "*if Mr Raja returned to Pakistan he would be able to dispose of any properties owned by him if he ignored the court order*".

Law

22. Section 37(1) Supreme Court Act 1981 provides:

"The High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the court to be just and convenient to do so."

23. The jurisdiction to grant an injunction restraining a party to English proceedings from leaving the country and authorising the delivery up and retention of that party's passport is to be found in section 37 Supreme Court Act 1981; see *Bayer v Winter* [1986] 1 WLR 497. These are usually referred to as "passport orders", although the delivery up of a passport is ordinarily merely consequential on an injunction restraining a party from leaving the jurisdiction.

24. The relevant principles in relation to the making of passport orders were set out by Lord Justice Floyd in *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 1108 ("**Pugachev**"), at [36]–[37]:

"36. *There is no dispute that the applicable legal principles are accurately summarised in the case of Young v Young [2012] EWHC 138 (Fam), a case concerning the impounding of a husband's passport in support of financial provision applications.*

37. *Mostyn J cited the Council Directive 2004/38/EC, of 29 April 2004 on the right of free movement as encapsulating what restrictions on such rights would be proportionate and permissible, including that:*

"The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society."

25.1 At paragraph 26 of his Judgment, Mostyn J set out what he regarded as the applicable principles as follows:

"26. *Pulling the threads together, it seems to me that the principles applicable to the disposal of this application are:*

i) *The power to impound a passport pending the disposal of a financial remedy claim exists in principle in aid of all the court's procedures leading to the disposal of the proceedings.*

- ii) *But it involves a restriction of a subject's liberty and so should be exercised with caution. The authorities emphasise the short-term nature of the restraint. The law favours liberty.*
- iii) *A good cause of action for a substantive award must be established.*
- iv) *The Applicant must establish that there is probable cause for believing that the Respondent is about to quit the jurisdiction unless he is restrained.*
- v) *The Applicant must further establish that the absence of the Respondent from the jurisdiction will materially prejudice her in the prosecution of her action.*
- vi) *Provided that the principles in (i) – (v) are carefully observed a passport impounding order will represent a proportionate public policy based restraint on freedom of movement founded on the personal conduct of the Respondent.”*

25. The Court of Appeal explained that there is “probable cause” if there is a real risk that the relevant party will abscond. At para 45 Floyd LJ said:

“45. *By analogy with the test applied when a freezing order is applied for, I would hold as a minimum that there must be evidence from which it can be reasonably inferred that the party to be subject to the order will leave the jurisdiction and not return.*

Lord Justice Bean at paragraph 67 said:

“I, too, would apply the analogy of applications for freezing injunctions. If the evidence, viewed objectively, demonstrates a real risk that the defendant will leave this country in order to frustrate the court's processes, that is sufficient to give the court jurisdiction, provided that the restriction is proportionate in all the circumstances of the case.”

26. *Pugachev*, and *Young v Young* to which it refers, were cases in which the passport orders were sought before Judgment. As Wilson J said in *B v B* [1998] 1 WLR 329 they are also available after Judgment to a party wishing to enforce the Judgment:

“It is possible to restrain a party from leaving the jurisdiction and to make a consequential order for the surrender of his or her passport. The jurisdiction exists where the other party has established a right to interlocutory relief, such as an Anton Piller order, which would otherwise be rendered nugatory. It exists where a hearing is shortly to take place, the efficacy of which would be frustrated by his absence. In my view it exists in principle in aid of all the court's procedures leading to the disposal of the proceedings. I consider that the jurisdiction is also available in some circumstances after judgment. To be specific, it can be invoked to aid the court's established procedures for enforcement of the judgment.”

27. Like freezing orders, passport orders can be made post judgment to aid the court's enforcement procedures. I note that if there is a substantive award to enforce, Mostyn J's principle (iii) falls away. As for his principle (v) it must be read as requiring the applicant to establish that the applicant's ability to enforce the Judgment through the Court's established procedures will be materially prejudiced by the respondent's absence from the jurisdiction.

28. What is clearly not acceptable is the making of a passport order as a means of coercing payment of a judgment debt. It would not be acceptable, for example, to order the retention of a passport and to require the payment of the Judgment debt as a ransom for the return of the passport; see *B v B* where Wilson J declined to make such an order.

29. So far as the Joint Trustees' application is concerned the provisions of the Insolvency Act 1986 supply an additional jurisdiction. Section 363 Insolvency Act places every bankruptcy under the general control of the Court. Section 363(2) requires an undischarged bankrupt, or a discharged bankrupt whose estate is still being administered to do all such things as he may be directed to do by the Court. The Court has repeatedly emphasised the breadth of the

jurisdiction under section 363. In *Donaldson v. O'Sullivan* [2008] BPIR 1288

Lloyd LJ, reviewed some of those cases and concluded at paragraph 41 that:

“All of those cases seem to me to support the thesis that bankruptcy is a court-controlled process in relation to which the court has wide powers, exercisable for the purpose of the insolvency process as a whole, which are not limited to those conferred expressly by the relevant legislation.”

30. I am satisfied that section 363 also confers jurisdiction for a court controlling a bankruptcy to direct a bankrupt not to leave the country and consequently, to hand over his or her passport, if it is satisfied that there is a real risk of the bankrupt leaving the jurisdiction unless restrained, and the absence of the bankrupt would materially prejudice some desirable part of the insolvency process.

31. That there is such a jurisdiction under the court's general control of a bankruptcy is reinforced by *Hickling v Baker*. Section 364 gives the Court the power to arrest and detain a bankrupt in the circumstances specified in section 364 (2) - which identify situations where there is a risk of absconding, hiding assets or avoiding examination. I observe that those include the circumstances in which a passport order might be appropriate, but there is no express provision in the Insolvency Act 1986 for a passport order to be made. In *Hickling v Baker* [2007] 1WLR 2386 the Court of Appeal overturned an order committing Mr Baker to prison pending an examination made on the basis he was about to abscond to Spain. In doing so Lloyd LJ said that if he had been brought to Court immediately after his arrest, the Court would have almost certainly have required the deposit of his passport. It was taken for granted that there was such

a jurisdiction to make a less restrictive order than arrest and detention pursuant to section 364.

Discussion

32. Mr Raja is a fraudster who has misappropriated millions of pounds. He clearly has no intention of cooperating in the return of those funds. He is flouting the Court's orders and has been imprisoned for contempt. He is simply waiting for the time when he is allowed to leave the country and can be reunited with his ill-gotten gains abroad.

33. Mr Wilson KC submits that the continuation of a passport order after 4 years is wrong in principle and a breach of Mr Raja's Article 8 rights, as is an indefinite continuation. He submits that it is also wrong to retain Mr Raja's passport until UCL and the Joint Trustees get answers to their questions which they like, rather than the ones which Mr Raja has chosen to give.

34. From the analysis of the law above it is clear that it is not wrong in principle to continue a passport order after 4 years or any other specific period of time. The longer the restriction is in place, the more exceptional the circumstances will have to be to justify its continuation - the law favours liberty. Nevertheless, provided there is some significant court process, including an insolvency process, which would be materially prejudiced if the defendant were to abscond, it is likely to be a legitimate interference with the defendant's Article 8 rights to continue a passport order.

35. UCL has apparently exhausted its remedies within this jurisdiction. It maintains that Mr Raja has failed to comply with the orders for disclosure of assets made against him. There is, however, no further Court process in this jurisdiction to require Mr Raja's compliance with the terms of paragraphs 13 and 14 of the 21 January 2022 order. Mr Raja has purported to comply, and while that compliance has been shown to be false, he has been found guilty of contempt and served a sentence of imprisonment. UCL's application is for the passport order to be continued indefinitely pending compliance by Mr Raja with the terms of paragraphs 13 and 14 of the 21 January 2022 order. That is wrong in principle because, whatever duration of the order is proposed, there is no Court process which such an order is made in aid of. The continuation of the order now would cross the line between that which is permissible and that which is not. It would simply be holding Mr Raja's passport as a ransom for the provision of information Mr Raja has been ordered to give but does not wish to give. As tempting as it may be to make that order, it would be wrong to do so.

36. The Joint Trustees, on the other hand, are in a different position. There is an issue as to whether Mr Raja has been inadvertently discharged as a bankrupt, but on any view the Joint Trustees continue to administer his estate in bankruptcy. The insolvency process continues and I have made an order for a further examination of Mr Raja. When that is concluded there may yet be further enquiries and investigations by the Joint Trustees which require Mr Raja's presence in the jurisdiction if they are to progress. So long as there is a significant purpose to be served in the insolvency process which will be

materially prejudiced by Mr Raja fleeing the jurisdiction there are grounds for keeping him here. It may well be that he will not cooperate. I do not regard the prospect of his non-cooperation as a basis for saying that there is no material prejudice to the insolvency process by his absconding. It would be wrong for the Court to countenance a submission that there is no point making an order because the Defendant has no intention of obeying it. While he is in the jurisdiction, orders can be made against him and there remains the possibility of further contempt proceedings.

37. UCL and the Joint Trustees have commenced proceedings in Pakistan. I do not rule out the possibility of a passport order being made in an appropriate case in support of some Court process outside the jurisdiction, but I am not prepared to consider such an order in this case and at this stage on the basis of the evidence before me. The evidence boils down to an assertion by the Applicants' lawyer in Pakistan that "*if Mr Raja returned to Pakistan he would be able to dispose of any properties owned by him if he ignored the court order*". There is no evidence that his presence in Pakistan is necessary to flout the orders made in Pakistan and that it cannot, as Mr Wilson says, be done by him from London. The Pakistan proceedings are likely to last for years, and Mr Raja is entitled to defend himself in the UCL proceedings in Pakistan where he is a defendant. These are all considerations which mitigate against a passport order being made on the basis of proceedings in Pakistan.

Conclusion

38. I will continue the passport order pending the completion of the administration of Mr Raja's estate in bankruptcy by the Joint Trustees, or one year, whichever is the sooner. The passport order will then come to an end unless an application is made for a continuation before then. Mr Raja will, of course, be at liberty to apply for its earlier discharge.