Neutral Citation Number: [2024] EWHC 3524 (Ch)

Case No: BL-2020-001050

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Rolls Building
7 Rolls Building, Fetter Lane
London, EC4A 1NL

Thursday, 5 December 2024

BEFORE:

MR JUSTICE RICHARD SMITH

BETWEEN:

LOUDMILA BOURLAKOVA & ORS

Claimant

- and -

OLEG BOURLAKOV & ORS

Defendants

MR D CAPLAN appeared on behalf of the Claimants
MR G DUNNING KC appeared on behalf of the Twelfth Defendant

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

MR JUSTICE RICHARD SMITH:

Background

1. Yesterday, I heard an application by the Claimants pursuant to CPR Part 18 for D12, Edelweiss Investments Inc. (**Edelweiss**), to provide the information responsive to the Claimants' Request for Information dated 10 June 2024 (**RFI**). I now give my related ruling.
2. The background to this matter is well known to the parties and to the Court. I therefore merely say here that the claim relates to an alleged fraudulent scheme said to have been perpetrated against the Claimants by the First Defendant, Oleg Bourlakov, until his death in 2021, the husband of the First Claimant, Loudmila Bourlakova. That scheme is alleged to have been undertaken by Mr Bourlakov in conjunction with the other Defendants, including D7, Nikolai Kazakov, and D6, Semen Anufriev, and is said to have involved the misappropriation of assets from the Claimants or from structures in which the Claimants had an interest, placing them in structures owned or controlled by Mr Bourlakov, either directly or through nominees, including Mr Kazakov and his wife, Mrs Kazakova, also a Defendant (D8).
3. On 13 October 2023, I gave permission to the Claimants to re-amend their Particulars of Claim (**PoC**) to join Veronica Bourlakova, Loudmila's and Oleg's daughter, as an additional Claimant to bring claims, including in respect of their alleged ownership of Edelweiss, a Panamanian company, and the alleged misappropriation of its assets. Notwithstanding the objections taken by the other Defendants, including Edelweiss, I concluded on the basis of the evidence before me that the proposed new claims had a real prospect of success, and I allowed the related amendments and joinder.
4. Veronica claims that she has been the holder of Edelweiss' shares from 2014, having held the original bearer share certificate since then. However, ownership of that

company was said to have been misappropriated when her bearer certificate was purportedly cancelled and replaced by shares in favour of a Panamanian foundation called Merenguito, those shares later transferred to D14, Hemaren Stiftung, in May 2018. These events are said to have been orchestrated by Mr Bourlakov, with the assistance of the Kazakovs, as a result of which, Mr Kazakov is said to stand in the position of *de facto* controller of Edelweiss and, therefore, its assets.

5. Most relevantly for today's purposes, it is said by the Claimants (PoC at [146(a)]) that, at the time Edelweiss was misappropriated, it had net assets worth $700 million, likely to have since increased to $1 billion. However, they also say (PoC at [146A]), that they do not know what assets are still retained by Edelweiss and, therefore, the full extent of the sums misappropriated from Edelweiss since its transfer to Hemaren, albeit they identify transactions of which they are aware and conclude that it is likely that a substantial part of Edelweiss' assets have been successfully misappropriated. The Claimants seek declaratory relief in respect of the ownership of Edelweiss. They also seek damages, including in respect of such of Edelweiss' assets as may indeed have been misappropriated.

6. As to Edelweiss' response to that part of the PoC, in relation to paragraph 146(a), Edelweiss pleaded in its Defence dated 24 November 2023 that it would refer to and rely on the books and records of the company, including bank and investment statements and a particular loan document. Otherwise, no admissions were made, albeit it was said that Edelweiss plainly held valuable assets.

7. As to paragraph 146(A), Edelweiss pleaded that, with respect to the current assets of Edelweiss, and any payments or transfers out, it would respond to any application for directions, or comply with any orders or disclosure, as and when made. It did not admit any alleged misappropriation from Edelweiss. The various transactions

identified by the Claimants were also said to have taken place before the appointment of the current directors. No admissions were otherwise made.

8. The Claimants say that Edelweiss' pleading is threadbare, comprising a bare non-admission of misappropriation and, in relation to current assets and payments out, a plea that Edelweiss will respond to any applications or orders. In that regard, the Claimants referred me to CPR, Part 16.5, the related notes to the White Book (at [16.5.2]), and *SPI North Ltd v Swiss Post International (UK) Ltd* [2019] 1WLR 2865 (at [2-3] and [48]), saying that the relevant information responsive to the Claimants' pleading was plainly within Edelweiss' knowledge (or at least readily available to it from the relevant bank statements), which it has not denied; it therefore had a positive duty to respond to the allegations, but it failed to do so.

9. Although the reasons for its production were not entirely clear yesterday, I should also say that, on 8 March 2024, Barclay Research Group produced a report on behalf of Edelweiss in the context of the Claimants' outstanding application for interim relief, to restrain the disposal of Edelweiss' assets. The report identified the collective valuation of certain asset portfolios held under Edelweiss' name and outflows from those portfolios. The report indicates that the value of the portfolios as at February 2024 was $843 million, an increase of $98 million since December 2022, with outflows over the period July 2020 to February 2024 of some $65 million.

10. The RFI was served on 10 June 2024 and sought information concerning transfers out from Edelweiss for the period before that covered by the Barclay Research report, starting when steps were said to have been taken in earnest to divest Veronica of her interest in Edelweiss ie: the period from April 2018 until July 2020 (when the Barclay report kicks in). The RFI is framed in the following terms:-

"For the period between and including 27 April 2018 (the date of the letter by which Mrs Kazakova accepted her appointment as protector of Merenguito) and 19 July 2020 (the day before the start of the period addressed by Mr Philip Allister in his expert report dated 8 March 2024):-

(1) Identify each transaction by which an asset with a value of more than USD 50,000 was transferred from Edelweiss to any other person;

(2) For each such transaction, give full particulars of:

(a) The type of asset transferred;

(b) To whom the asset was transferred;

(c) When the asset was transferred;

(d) The value of the asset when it was transferred;

(e) The basis for the transfer (for example, whether by way of sale, distribution, gift, or otherwise);

(f) Any assets or proceeds received by Edelweiss or any other person for the transfer of the asset;

(g) What became of such assets or proceeds, providing the same details sought in this request."

11. It is fair to say that, like so many matters arising in this case, the history of the RFI is quite a convoluted one. Edelweiss' initial reaction to the request was to decline the information on 26 June 2024, causing the Claimants to issue this application on 3 July 2024. On 7 August 2024, there was a tentative indication from D12's solicitors that the information might be provided, albeit its position appeared to harden again on 16 August 2024. However, on 4 September 2024, Edelweiss then indicated that it would provide a report relating to the payments made from Edelweiss. The letter itself is worth quoting quite fully, including the following:

> "Nonetheless, we have made clear that our client is giving careful thought to the RFI Request and accordingly, is prepared to provide your clients with a report by a reputable forensic accountancy firm ("the Report"), to reduce time spent on this matter. The Report would offer your clients further insight into the different categories of payments made out by Edelweiss. We consider this to be a proportionate and reasonable response, which is balanced with our client's concerns surrounding confidential information (as described in Our Letter). The provision of the Report would provide the relevant information sought by your client and also negates the need for your application to be listed, which would only incur avoidable costs and take up the Court's time unnecessarily.
>
> For the avoidance of doubt, the Report, once produced, will be provided to your clients subject to conditions concerning and restricting its use and disclosure to third parties. We shall be in touch closer to the time in respect of those details. We are in the process of obtaining the Report and whilst we will endeavour to serve this in advance of the current date for the WFO hearing in October, at this stage we are unable to confirm the expected date for service, given the delay caused primarily in obtaining relevant historic documentation from the banks, and the holiday period."

12. On 21 October 2024, Edelweiss' new solicitors confirmed that the report was being finalised and would be served before the pre-CMC before me on 14 November 2024.

13. On 12 November 2024, however, Edelweiss reversed its position, making clear that the report would not be served and that no answer would be provided to the RFI. The Claimants infer, and invite me to infer, that the "volte face" (as they describe it) was as a result of someone reviewing the report and realising it would be damaging to the Defendants' case.

14. At the pre-CMC on 14 November 2024, Mr Dunning attempted to persuade me that I need not list the hearing today on the basis of the substantive arguments he made succinctly then. However, I was of the view that, if the RFI was being resisted, those arguments needed to be aired at a hearing properly convened for that purpose. Having heard the arguments yesterday, articulated again very clearly on both sides, I remained satisfied that was the appropriate course.

CPR, Part 18

15. Turning to CPR, Part 18, CPR18.1(1) provides that:-

"The court may at any time order a party to:-

(a) clarify any matter which is in dispute with the proceedings; or

(b) give additional information in relation to any such matter, whether or not the matter is contained or referred to in the statement of the case."

16. CPR, PD 18 provides at paragraph 1.2 that:

> "A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet."

17. As the notes to the White Books say, in most instances, whether or not a matter is "in dispute" will be apparent from a reading of the parties' statements of the case and, therefore, the disputed matter will be "contained or referred to in a statement of case." However, in terms, r.18.1 gives the Court power to order a party to clarify, or give additional information in relation to, any disputed matter even though the matter is not contained or referred to in a statement or case. Nonetheless, a request for further information or clarification should be concise and strictly confined "to matters which are reasonably necessary and proportionate" to enable a party seeking clarification or information "to prepare his own case or to understand the case he has to meet." It should not be treated as an opportunity to attempt pre-emptive cross-examination on paper.

18. Edelweiss also notes that in *His Royal Highness Prince Khaled bin Abdulaziz Al Saud v Gibbs* [2022] 1 WLR 3082, the Court stated that it will not usually be necessary or proportionate (or in accordance with the overriding objective) to order a party to expand on a compliant but concise statement of case by providing further detailed information (see [51]). Nor will it often be necessary or proportionate (or in accordance with the overriding objective) to provide at any earlier stage information

that will be provided in disclosure or in the witness evidence (see [42]). Mr Caplan, in turn, observed that this authority is often relied on by those seeking to resist information requests but, not only did the Court make clear that the application of the Rule and the Practice Direction will depend upon the facts of each the case (see [43]) but, on the facts of that case, where information was ordered, its scope was far more extensive than anything sought on this application by the Claimants, the Court there even requiring relevant statements of accounts, certificates and documents of title to be exhibited to the response.

19. In terms of discretion, when considering whether to make an order, the Court must have regard to (a) the likely benefit which will result if the information is given (b) the likely cost of giving it and (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with an order. These considerations, though not stated in r.18.1, are consistent with the overriding objective, and which the Court is obliged to give effect to when exercising any power under the CPR. Edelweiss also notes that the fact that a cross-application for summary judgment is before the Court is an important factor in the exercise of its discretion (see again *Prince Khalid* at [52]).

Discussion

20. As to the first jurisdictional requirement in Part 18, I am satisfied that the RFI will clarify, or provide additional information in relation to, a number of *matters in dispute in these proceedings*. It clearly informs the Claimants' pleaded cases as to the alleged misappropriation of assets from Edelweiss, the extent of that misappropriation, the value of Edelweiss' assets, and the quantum of any related damages claims. In this regard, Mr Dunning fairly accepted that a party could still be ordered to provide information relating to a matter in dispute in the relevant

proceedings even if the related claim for relief in those proceedings was not directed to that party. I agree that that must be right. I also accept that information as to transfers from Edelweiss in the period 2018 to 2020 will inform the Claimants' pleaded case as to the existence or otherwise of the alleged partnership between Mr Bourlakov and Mr Kazakov. Finally, I am satisfied that the RFI informs a further matter in dispute in these proceedings even though not pleaded, namely the injunction application due to be heard next term. In my view, the information as to the transfer of assets from Edelweiss will inform the question of where the balance of convenience might lie in connection with any proprietary injunctive relief or the risk of dissipation in connection with any asset-freezing relief.

21. It is fair to say, I think, that there was more argument yesterday around the second threshold condition in the Practice Direction, namely the requirement for any request to be "concise and strictly confined to matters which are reasonably necessary and proportionate to enabling the requesting party to prepare his case or to understand the case he has to meet." Edelweiss emphasised the need for the Claimants to satisfy both limits of necessity and proportionality. Edelweiss also pointed to the express limiting or constraining language of the provision and, relatedly, what was said in *Prince Khaled* (at [34]) about "necessary" being a *stringent* test. That was consistent with the policy goal of avoiding litigation getting out of control and disproportionate expense being incurred, for example in seeking information about matters on which there would be disclosure or witness evidence in any event as, it is said, will happen in this case.

22. As to what is *reasonably necessary*, Edelweiss sought to dispel the Claimants' arguments that its case in the pleadings was unclear, saying this was a faulty basis to pray in aid necessity. There was no pleaded case or claim against Edelweiss with

respect to the alleged misappropriations and no related relief was claimed against Edelweiss in respect of transfers out of Edelweiss. The only claim against Edelweiss was the claim for declaratory relief with respect to the ownership of Edelweiss. As such, there was no requirement to plead to the particular allegations now in issue at all. Edelweiss does not do so, except to point out that any transfers pre-dated the tenure of the directors currently in place, such that they had no direct knowledge of them. It was a misconception that Edelweiss was bound to plead a positive case in those circumstances.

23. I was unable to accept that submission. It seems to me that CPR, Part 16.5 is clear as to what is expected, namely for defendants to deal with every allegation in the particulars of claim, stating which of the allegations are denied, which they are unable to admit or deny but they require the claimants to prove, and which allegations they admit. As the notes to the White Book say:-

> "In respect of each allegation in the particulars of claim there should be an admission, a denial or a requirement for proof (r.16.5(1)). Rule 16.5(1)(b) does not use the language of "non-admission" and the practice of pleading numerous non-admissions can only be justified when a defendant is truly unable to admit or deny an allegation and so requires the claimant to prove it. Rule 16.5(1) raises a positive duty for a defendant to admit or deny pleaded allegations where he or she is able to do so and so to prevent merely "a stonewalling defence full of indiscriminate non-admissions" (per Lord Justice Henderson in SPI North Ltd v Swiss Post International (UK) Ltd [2019] EWCA Civ 7 at [48], although the same case went on to confirm there is no general obligation upon a defendant to make reasonable enquiries of third parties at such an early stage of the litigation but instead plead the defence on

the basis of the knowledge and information the defendant has readily available to him: [49]).”

24. In this case, although the directors of Edelweiss may not have been in office for the entirety of the relevant period, without having to go outside Edelweiss to make inquiry of others, they had the information available to them from Edelweiss' own records to address the allegations being made concerning the relevant transfers of assets, any alleged misappropriation of assets and the value of the assets. Indeed, if any of the parties was well positioned to engage meaningfully with what the Claimants were alleging, that was Edelweiss, even if there were aspects, for example relating to the characterisation of any transfers, upon which it might have felt reluctant to proffer its view. However, even if I am wrong about Edelweiss' obligations in that regard, and without descending into some of the negative epithets that have been deployed, I would still be of the view that Edelweiss' pleaded position was unclear and ambiguous as to what it was saying with respect to the transfer of assets out of Edelweiss and any misappropriation thereof and that clarification was required. In circumstances in which Edelweiss was well placed to provide that clarity, and subject to the issue of proportionality (to which I shall come), I am therefore satisfied that the RFI was concise and strictly confined to matters reasonably necessary to enable the claimants to understand the case they had to meet.

25. Similarly, and subject to the same caveat, I am also satisfied that the RFI was reasonably necessary for the Claimants to prepare their own case, not only with respect to the alleged misappropriation of assets from Edelweiss, the extent of misappropriation, and therefore the amount of the claim, but also with respect to the partnership allegations.

26. In relation to the injunction, Edelweiss did take issue with the notion that the information was reasonably necessary to the questions of the balance of convenience or risk of dissipation as they might arise on the injunction application. The period covered by the request was 2018 to 2024. Events which occurred some four to six years ago, when Edelweiss was under the stewardship of other directors and Mr Bourlakov was still alive, could not meaningfully inform the position as of today or, indeed, in March next year. Although, as Mr Caplan fairly accepted, there may well be debate about the significance of such information in this context, I consider that its production is reasonably necessary for the Claimants to prepare their own case. In this regard, I was shown yesterday documentation falling within the period with which we are concerned, indicating that Mr Kazakov was representing himself in 2019 as the beneficial owner of Edelweiss and seeking to have its assets deployed in discharge of a loan agreement which, it is again suggested on the documentary evidence, was a forgery. To my mind, that is potentially significant evidence informing the objective assessment the Court is likely to undertake as to the risk of dissipation. Information as to the transfer out of Edelweiss' assets during the same period is likely to operate to the same end. As such, I accept that the information is reasonably necessary to the injunction application as well.

27. As to whether it is *reasonably proportionate* to require it to provide the information, Edelweiss' overarching point was that the RFI implicated 400 transactions with respect to individual transfers exceeding $50,000, about which seven questions were asked, with those questions then 'doubling up' again when it came to request 1(2)(g) which required the same repeat information about potential onward dispositions of assets or their proceeds. To the extent it was being suggested by the Claimants that all this information had been collated for the purpose of a further report foreshadowed

by Edelweiss back in September of this year, that was wrong, Berkeley Research not having provided the information corresponding to sub-paragraphs (d)-(g) of the request in its original report nor, indeed, for its later incomplete report relating to the earlier period.

28. Moreover, the Claimants' questions do not seek to discriminate between the different types of transfer implicated. Even though the Claimants' pleaded case concerned the misappropriation of assets, the request captures all transfers made in the ordinary course of business by the investment portfolio managers. These problems were compounded by the lack of personal knowledge of the directors of Edelweiss, concerning the transactions during a period when they were not in office. Finally, as their list of issues for disclosure indicated, the Claimants were seeking the same information through disclosure, albeit with the additional and accelerated requirement here for Edelweiss to examine the documents concerned and to distil information from them, the more efficient course being for the documents to be disclosed in the usual way and, if the Claimants do have any more focussed questions, it can answer them then.

29. I have to say that I found these complaints significantly overblown. Edelweiss has identified 400 transactions implicated. It knows the scope of the exercise required. That is fewer transactions than in the first Berkeley Research report. It spans a shorter period. Even without the benefit of the expert accounting work already undertaken, and notwithstanding the period of tenure of the current directors, I am satisfied that the information is readily available to Edelweiss. Although some interpretation may be required, and subject to a further point to which I will come, I do not consider that this would be an unduly onerous or disproportionate exercise, not least in a case of this substance and value and where the alleged misappropriation of Edelweiss' assets

is a central issue. Indeed, significant work has clearly already been done by Berkeley Research, not only in its first report, but also in its second undisclosed report.

30. Nor in my view does the fact that there may be disclosure on the same issues in due course render the provision of this information at this stage disproportionate, particularly in light of my conclusions as to the utility of the information for the injunction application. Indeed, it seems to me that provision of information now may well have the effect of making the disclosure exercise more focused and efficient than it might otherwise have been. There was in my view some force in Mr Dunning's point about the failure of the RFI to be more discriminating in the nature of the information sought. However, that submission was undercut by Edelweiss' approach, both in its own pleading, but more particularly in how Edelweiss has responded to the RFI, first refusing to provide the information, then saying it would provide a report, then saying at the eleventh hour that it would not provide a report after all. In those circumstances, there was simply no scope for the usual back and forth that the Court expects between the parties to sharpen the focus of an RFI before it comes to Court. The fault for that cannot be placed at the Claimants' door.

31. Accordingly, subject to the one point I have already alluded to and to which I will come, I am satisfied that the request is reasonably proportionate to enable the Claimants to prepare their case and to understand Edelweiss'. That one point is this, and it arises in relation to sub-paragraphs (f) and (g) of the RFI: first, in (f), I am not persuaded that this should extend to assets or proceeds received by "any other person" for the transfer of the asset. To my mind, the inclusion of those words does make the request too broad. Nor am I persuaded that (g) is reasonably proportionate, that request concerning "[w]hat became of such assets or proceeds, providing the same details sought in this request."

Discretion

32. Turning to the question of whether I should exercise my discretion for all of the information to be provided in that modified form, I was not persuaded by Edelweiss' arguments about delay. This seemed to add little. Edelweiss also emphasised in this context too the onerous nature of the exercise when Berkeley Research has not covered all the information sought, that the current directors have no personal knowledge of it and that the information could, and will be, provided in a more orderly fashion on disclosure in due course, without the need for Edelweiss to interrogate it first. As I have said, I am satisfied that the provision of this information at this stage would not be disproportionate and should not await the disclosure process. Likewise, given the importance of the misappropriation issue in these proceedings and that it is Edelweiss which holds the critical information, I did not consider compelling, the point that it is not itself the subject of related claims. I should add here too that the vacillating position Edelweiss has taken with respect to the agreement to provide a report and to retract that significantly undercuts its position on a number of these points, not least when it was Edelweiss which said that this was the reasonable and proportionate course.

33. Finally in relation to discretion, Edelweiss also says that the developments in the English and Panamanian proceedings militate against the grant of relief sought on this application. Those developments include the summary judgement application recently issued in these proceedings by Edelweiss on 12 November 2024 in respect of Veronica Bourlakova's claim that she is the owner of Edelweiss' shares. That application is premised on the English court not having subject matter jurisdiction as against Edelweiss, relying on decisions of the Panamanian courts that have apparently determined that the Claimants are not owners of the Edelweiss shares. According to

Edelweiss, it would be inappropriate to order the provision of information in circumstances in which the Claimants' sole claim against Edelweiss may be struck out when it is heard next term. Edelweiss will then no longer be a party. Although Mr Richard Salter KC, sitting as a Deputy High Court Judge, said in *Prince Khaled* that a cross-application for summary judgment can be an important factor in the exercise of the Court's discretion, I was not persuaded that it would be in this case. To the contrary, having found the information is reasonably necessary for the purpose of the injunction application, and the summary judgment application having since been issued and now listed to be heard together with the injunction, the pendency of that more recent application should not, in my view, act as an impediment to the provision of the information. For all these reasons, I was not persuaded that I should refuse to exercise my discretion.

34. Accordingly, with the amendments to the RFI I have indicated, I grant the Claimants' application.

35. Finally, there was a suggestion from the Claimants that I should exclude the evidence of Mr Weinberg, or at least his first statement, on the basis of its late service on this application. Given the conclusions I have reached, it is not necessary to rule on that issue. I have come to the view I have on this application and, in doing so, I have considered that evidence and taken it fully into account.

36. That concludes my ruling.

Order: Application granted with modification.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE
Email: civil@epiqglobal.co.uk