



Neutral Citation Number: [2023] EWHC 1419 (Comm)

Case No: CL-2023-000141

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT**

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

Date: 14/06/2023

**Before :**

**MR JUSTICE BRIGHT**

-----  
**Between :**

**Horizon Maritime Services Ltd**

**Claimant**

**- and -**

**CNS Marine Nigeria Limited**

**Defendant**

-----  
-----

Mr Andrew Dinsmore (instructed by HFW LLP) for the Claimant  
The Defendant did not attend

Hearing date: 9 June 2023

-----  
**Approved Judgment**

This judgment was handed down remotely at 10.30am on 14 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

**Mr Justice Bright:**

1. This judgment relates to two applications, arising out of four LMAA Arbitration Awards against the Defendant (together, the “**Awards**”):
  - i) A first award dated 3 March 2021.
  - ii) A second award dated 29 June 2021 (and corrected on 21 August 2021).
  - iii) A third award dated 21 August 2021.
  - iv) An award on costs dated 22 December 2021.
2. The Awards total USD1,810,044.23 plus GBP 143,015.50 plus interest.
3. I heard and determined both applications at a hearing conducted remotely on 9 June 2023. In the course of the hearing, I summarised my reasons and indicated that I would later provide a written judgment. I now do so.

**The claim against the Defendant**

4. The Claimant issued proceedings under the Arbitration Act 1996 (“**the 1996 Act**”), seeking two heads of relief:
  - i) Permission to enforce the Awards in the same manner as judgments of this Court, pursuant to Sections 66(1) and/or 101(2) of the 1996 Act.
  - ii) That the Defendant be required to disclose its worldwide assets in excess of US\$10,000, by an affidavit, pursuant to s. 37(1) of the Senior Courts Act 1981.

5. Having considered the evidence of Mr Nicholas Kazaz, I am satisfied that this is an appropriate case for the Awards to be enforced as if they were judgments pursuant to s. 66(1) of the 1996 Act.
6. This Court is, in general, keen to support arbitration proceedings. One of the advantages of s. 66(1) is that the claimant who has succeeded in arbitration can then seek the assistance of the Court in finding assets against which to enforce. Permission under s. 66(1) of the 1996 Act and an order for disclosure under s. 37(1) of the Senior Courts Act 1981 therefore are often raised and addressed together.
7. As Field J noted in *Cruz City I Mauritius Holdings v Unitech Ltd* [2013] EWHC 1323 (Comm), at [31], such orders assist in enforcement. The ability of this Court to grant a disclosure order, if permission is given under s. 66(1) of the 1996 Act, therefore demonstrates precisely the kind of legitimate benefit that justifies granting permission under s. 66(1): *Nomihold Securities Inc v Mobile Telesystems Finance SA* [2011] EWHC 2143 (Comm), per Burton J at [42] to [45]; *West Tankers v Allianz SpA (The Front Comor)* [2012] EWCA Civ 27, [2012] 1 Lloyd's Rep 398, per Toulson LJ at [38]; cf. *Fonu v Demirel* [2007] EWCA Civ 799, [2007] 1 WLR 2508, per Sir Anthony Clarke MR at [27].
8. I therefore grant permission under s. 66(1) of the 1996 Act, and also order that the Defendant provide disclosure of any worldwide assets in excess of US\$10,000, by an affidavit, pursuant to s. 37(1) of the Senior Courts Act 1981.

**Service of the order out of the jurisdiction on Mr Ademalola, Mr Magrin, Mr Lorieri and Mr Olawale**

9. The Order referred to above is one that the Claimant already has permission to serve out of the jurisdiction on the Defendant, such permission having been granted by Foxton J on 14 March 2023.
10. By an application notice dated 23 May 2023 the Claimant seeks permission to serve it on the following individuals, the first three of whom are said to be directors of the Defendant and the last its company secretary:
  - 1.1. Mr Sola Barry Adedamola (also known as Mr Barry Adesola Adedamola or Mr Barry Adedamola), who is thought to be resident in Nigeria but also travels to the US and UK.
  - 1.2. Mr Adolfo Magrin, who is thought to be resident in Nigeria, Italy and/or Switzerland.
  - 1.3. Mr Dino Lorieri who is thought to be resident in Nigeria and/or Italy.
  - 1.4. Mr Kelani Sarheed Olawale (also known as Mr Wale Kelani) who is thought to be resident in Nigeria
11. It became apparent in the course of Mr Dinsmore's submissions that the Claimant's primary position is that it does not need permission to serve the Order out of the jurisdiction on these individuals. This is essentially because they are not parties to the proceedings, and the Order is not addressed to them personally. There is, therefore, at present no lis or matter in issue between the Claimant and these individuals; and personal service on them will not initiate proceedings.
12. My understanding is that the Claimant proposes to use agents in Nigeria and Italy (and, possibly, Switzerland) to hand copies of the Order to each named

individual, or to leave it with them having told them what it is; or at least to hand-deliver it to what are believed to be their residential addresses.

13. This will not be service in the context of proceedings against those individuals, and it therefore will not be an interference in the administration of justice within any of the relevant foreign countries; which is one of the reasons why this Court is normally circumspect about permitting service overseas.
14. If successful, it will, however, be effective as personal service for the purposes of CPR 81.4(2)(c). This means mean that, if any individual acts inconsistently with the Order, following such personal service, he might – always depending on the circumstances – be susceptible to a contempt application.
15. If the Claimant were then to seek to bring a contempt application, that contempt application would constitute a claim or matter in issue between the Claimant and the relevant individual(s). Furthermore, initiating such a contempt application would require it to be served formally under CPR Part 6, and the Claimant at that stage therefore would require permission to serve out of the jurisdiction (which, presumably, it would seek under CPR PD6B para. 3.1(24) – the contempt gateway).
16. If it in fact proves impossible to achieve personal service on any of the relevant individuals, this Court has power to dispense with personal service, albeit it is unlikely to do so unless satisfied to a high standard that such individual(s) have been made fully aware of the Order and its effect: *MBR Acres v Maher* [2022] EWHC 1123 (QB), [2023] Q.B 186, per Nicklin J at [117]; *Business Mortgage Finance 4 plc v Hussain* [2022] EWCA Civ 1264, [2023] 1 W.L.R. 396, per

Nugee LJ at [79]; *ADM International SARL v Grain House International SA* [2023] EWHC 135 (Comm), per Cockerill J at [104].

17. In these circumstances I am not persuaded that it is necessary for me to grant permission for the Order to be served out of the jurisdiction on the relevant individuals. Nor is it clear to me what power I might have to do so.
18. If it does indeed prove to be impossible to effect personal service, the Claimant will be able to come back to Court and make a fresh application. However, this may well be a different application from the one made by its application notice dated 23 May 2023, in that it is likely to be an application that personal service be dispensed with.