

Case No: CL-2018-000297; CL-2018-000404;
CL-2018-000590; CL-2019-000487;
CL-2020-000369

[2024] EWHC 2418 (Comm)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

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

Monday, 12 August 2024

BEFORE:

MASTER DAVISON

BETWEEN:

SKATTEFORVALTNINGEN
(THE DANISH CUSTOMS AND TAX ADMINISTRATION)

Claimant

- and -

SOLO CAPITAL PARTNERS LLP (IN ADMINISTRATION)
& OTHERS

Defendants

MR A BARNS-GRAHAM (instructed by Pinsent Masons LLP) appeared on behalf of the
Claimant

MS H SCHWIERING appeared in person

MR W PACKEISEN appeared in person

JUDGMENT

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1. THE MASTER: Not without some hesitation, and certainly not without sympathy for the personal situation of Mr Jain, and sympathy also for his other creditors, I am afraid it does seem to me that I should make the interim orders final. I will try to express my reasons for that conclusion as economically as I can.

2. All the formalities of service have been complied with in this case, with one wrinkle, which is that the co-owners of the property Links Cottage, Galsworthy Road in Kingston, who are respectively Mr Turner and Mr Wadhvani, have not been served within the strict provisions of the rules. That is because correspondence was returned from the address itself and it required their email addresses to effect service on them. That was not done until 6 August, but I am satisfied that they would have received those emails. Indeed, Mr Turner has responded to the email sent to him. Given that this is a case where the point of service is to notify them of the proceedings so as to enable them to take part if they wished to, and they have had that opportunity, I will make the order that Mr Barns-Graham invited me to make at the outset, which is effectively to declare that the steps taken to notify them are good service.

3. The question then is whether to make the orders final. There is what I might call a prior point, which is that, not for the first time, Mr Jain, the judgment debtor, provided at the very last minute some evidence to demonstrate that he is currently in Miami and currently attending a medical appointment. He had foreshadowed that at the end of July, after the last hearing was adjourned on medical grounds, again on the basis of medical evidence that was provided at the 11th hour. Having considered what he said then, I said that I would not vacate this hearing today and that it was up to him to make arrangements around it, and if he could not do that the hearing would have to go ahead on the basis of his written submissions. It does seem to me, from the very scant material Mr Jain has supplied, that he could have organised his affairs, including his medical appointments, so as to accommodate the hearing. He had six working days to do so, and he has not done so. To be fair to him, he did say in the email he sent on Friday that he was prepared for the case to go ahead on the basis of the written submissions that he had lodged, and that is the decision that I have taken - that the hearing should go ahead, because it has been outstanding for a long time, and certainly far too long for this category of enforcement proceedings.

4. I turn then to the main question, which is whether to make the orders final. As I said at the very outset of this hearing, **prima facie** the judgment creditor, SKAT, are entitled to take enforcement proceedings and are entitled to have their interim charging orders made final because they have a costs order in their favour against Mr Jain. So the focus of this hearing has been to examine the objections that have been put forward by Mr Jain and also by the other creditors, principally SMK and WuP, who have been ably represented by Ms Schwiering and Mr Packeisen.
5. I turn first to Mr Jain's objections. There are really three principal ones, and I will deal with those first. The first is that he says that if the interim charging orders in favour of SKAT are made final then DBS Bank, who are also a secured creditor in respect of the Loudoun Road property and the Cropthorne Court property (the first of which is Mr Jain's family home), will call in their loans. I am afraid I do not regard that as sufficiently evidenced or a sufficiently good reason to refuse to make the orders final. There is no evidence from DBS to that effect. Furthermore, they (as another creditor or secured creditor) had the opportunity to put in formal objections if they wished, and they have put in no such formal objection. Further, I agree with the points made by Mr Barns-Graham that for them to make that threat, certainly for them to carry it out, is on the face of it rather unlikely and implausible, because they are fully secured creditors and there would seem to be nothing in it for them were they to do what Mr Jain says they have threatened to do. Furthermore, they, like SKAT, would need to obtain an order for sale which requires proceedings in the Chancery Division, an entirely separate hearing dealing with all matters, including matters that would not be material today, before a forced sale of Mr Jain's house or other properties could take place.
6. Secondly, Mr Jain referred to there being other creditors, and I will postpone consideration of that to that part of this shortform judgment which deals with the objections of the other creditors, being SMK and WuP.
7. The third main objection Mr Jain has made is that he has offered a charge exclusively on 94 Hall Place, which has also been called the Mayne House property. That is an offer that has come late in the day. It is not, on the evidence before me, clear that a charge exclusively on 94 Hall Place would cover the judgment debt. But, further, it is

a principle of the law applicable to enforcement in this jurisdiction that a judgment creditor is *prima facie* entitled to take enforcement action over all the property that is available to it and is indeed entitled to take more than one type of enforcement action. So, for example, the judgment creditor can at the same time pursue charging orders and third party debt orders and other alternatives if they are open. That is a general principle. I see no reason in this case why SKAT should be deprived of the benefit of it.

8. Mr Jain had some subsidiary points. He, like the other creditors, has complained about the fact that the costs order has been made at all, and he has said that it is unfair to enforce it until the overall outcome of the proceedings is known. I am afraid those are not reasons to refuse to make the orders final. The order has been made by the Court of Appeal. It was not appealed and there has been no application to the Court of Appeal for a stay of enforcement of that order. Nor has there been any application in these proceedings that there should be a general stay pending the ultimate outcome. In the absence of any such appeal or application, I am afraid there is no reason not to allow enforcement action to go ahead.
9. Lastly, Mr Jain has referred to his deteriorating finances and to his medical condition. As I said at the outset, I have sympathy for this as I would have sympathy for any judgment debtor in that position. But I am afraid that is not a reason to refuse to make these orders final.
10. If I turn, then, to the objections of the other creditors, the fact that there are other creditors is not in itself a reason to refuse a charging order in favour of the only creditor who has actually applied for a charging order. It is not, contrary to something I think Mr Packeisen said, a question of balancing the creditors; it is for the other creditors or Mr Jain to demonstrate that other creditors would be unduly prejudiced by the making of a final order. That is the wording of section 1(5)(b) of the Charging Orders Act, which says this:

"In deciding whether to make a charging order the court shall consider all the circumstances of the case and, in particular, any evidence before it as to ...

(b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order."

That phrase, "unduly prejudiced", has been the subject of quite a bit of authority and learning.

11. The case that I have been referred to is the case of *British Arab Commercial Bank plc & Ors v Alghosaibi and Brothers Co & Ors* [2011] EWHC 2444 (Comm), a decision of Flaux J (as he then was). Without citing passages from the judgment, the nub of it is that in the absence of a statutory insolvency procedure, what is contemplated by the Act and by English law is a first-past-the-post regime. As I said earlier, it is permissible for a judgment creditor to apply for a charging order ahead of other creditors, and the only duty on that judgment creditor is to act fairly, because the general first-past-the-post rule can be displaced or qualified by sharp conduct on the part of the judgment creditor. Examples given in the *British Arab Commercial Bank* case were purporting to agree to forego immediate pursuit of a claim and then pursuing it, or undue haste in obtaining a preferred position, or unfair use of special knowledge. None of those situations or descriptions apply here. On the contrary, it seems to me that SKAT has been open and transparent about its intentions and, given the amount of time these proceedings have gone on for, I certainly do not think that they can be accused of undue haste.
12. The point put forward by Ms Schwiering for SMK and for the other creditors was that the costs order represents costs that Mr Jain was awarded by Baker J in the Commercial Court, but which costs order was then reversed on appeal. When it was reversed on appeal, Mr Jain no longer had the costs that had been paid to him by SKAT because he had expended those costs in trying to uphold Baker J's judgment in the Court of Appeal. It is obvious that that situation does not amount to any kind of sharp conduct upon the part of SKAT, and it does not seem to me to take this matter any further forward because the simple, hard fact is that Mr Jain lost in the Court of Appeal and the Court of Appeal made the order upon which SKAT have based their application for a charging order. That is something that SKAT are entitled to rely on.
13. Beyond that central point, the other creditors have pointed out that this charging order appeared to be disproportionate to SKAT's resources and to the quantum of the claim

and that to make the charging order would put Mr Jain into an invidious and difficult financial position. I am afraid both those things are irrelevant because charging orders and whether to make them final do at the end of the day come down to what is sometimes called black-letter law. A judgment creditor has the right to pursue a charging order, and unless I was satisfied that there were circumstances that gave rise to undue prejudice to other creditors, or something truly very unusual in the personal circumstances of Mr Jain, I am afraid I can only really exercise my discretion one way, and that is to make the orders final.

14. There is just one other thing to mention, which is that in his most recent email Mr Jain asked for what amounted to a 14-day stay of any order making the charging orders final. I cannot see any utility in that because no action can be taken on a final charging order without issuing Part 8 proceedings in the Chancery Division and obtaining an order for sale, and that is not at all a quick process, if indeed it is embarked upon by SKAT at all. SKAT might be prudent to await the overall outcome of the case before going down that route. At any rate, the immediate point is whether to order a 14-day stay, and that, I am afraid, I will not do.

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