Neutral Citation No. [2024] EWHC 907 (Comm)

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

No. CL-2023-000818

Rolls Building
Fetter Lane
London EC4A 1NL

Friday, 22 March 2024

Before:

MR JUSTICE ANDREW BAKER

B E T W E E N :

SUB 20 LTD — Claimant

- and -

(1) ROYALTON INVESTMENT LTD
(2) TYCOON CORPORATION INC
(3) FRANGI, JAMES GERASSIMOS
(4) MANTRA SEA HERMES LTD
(5) SERENITY WAVES INC — Defendants

MR J ROBINSON (instructed by Hill Dickinson LLP) appeared on behalf of the Claimant.

THE DEFENDANTS did not appear and were not represented.

JUDGMENT
(Approved Transcript)

MR JUSTICE ANDREW BAKER:

1 This is an application for summary judgment to recover an unpaid debt, accrued interest, and a range of fees, expenses and legal costs due by contract, if the debt itself is properly due. If the application is well founded in every respect, then there will be a contractual debt in, amongst others, the amount of the legal costs that have been incurred in these proceedings to pursue that debt, so that there will not need to be separately any decision made as a matter of the court's discretion in relation to legal costs.

2 The claimant, Sub 20 Ltd, extended loan funding to the first defendant, Royalton Investment Ltd, for the purposes of its involvement including through associated owning companies in the motor yacht business interests of the third defendant, James Gurassimos Frangi. The primary governing document is a memorandum of loan terms, dated 14 January 2021.

3 The obligations of Royalton as principal debtor are guaranteed by the other defendants, who are Mr Frangi himself; the second defendant, Tycoon Corporation Inc, a Marshall Islands company associated with Royalton; Mantra Sea Hermes Ltd, the fourth defendant named, a Marshall Islands company and until recently the owner of the motor yacht, "Mantra"; and Serenity Waves Inc, the fifth named defendant, a company incorporated in the Seychelles and the owner of the motor yacht, "Berlin", previously called "The Dream Goddess".

4 The funding arrangements pursuant to the memorandum of loan terms were for lending of principal sums up to $35m; and on the evidence before the court the principal loan debt extended and unpaid today is $26,768,000.00.

5 The memorandum of loan terms as a loan agreement was entered into between Sub 20 and the first to third defendants, that is Royalton, Tycoon and Mr Frangi – Royalton as borrower and the other two as guarantors.

6 There was at the same time as that original loan agreement a first side letter which has a passing relevance in that its terms include provisions justifying some of the costs and

expenses claimed as a liability of the borrower and the guarantors, but otherwise does not affect the substance of the matter.

7 By a second side letter in May 2021, Mr Frangi acknowledged the occurrence of events of default under the lending arrangements, which at that date remained uncured; and in consideration of the loan continuing after and notwithstanding those defaults, it was agreed that additional security would be provided in the form of a first priority mortgage over the Berlin, a first priority mortgage over the Mantra, and a second priority mortgage over the motor yacht, "Chakra".

8 Pursuant to that stage of the development of the lending relationship the fourth and fifth defendants, Mantra and Serenity, in their capacities as owners of the Mantra and the Berlin, also provided, dated 11 June 2021, deeds of covenant rendering them guarantors alongside Tycoon and Mr Frangi. In the event, according to the evidence, the promised second priority mortgage security over the Chakra was not provided.

9 It is plain on the evidence that the loan is in a total state of default. Indeed Mr Frangi accepted as much by a letter dated 17 July 2023, for himself and as authorised representative of Royalton and Tycoon, writing that the loan was then currently in default because full payment of all outstanding principal interest and fees due had been required on or before 25 February 2022, as indeed it was on the contractual documents, and that default then remained uncured. That same letter acknowledged the ongoing liability as guarantor of Mr Frangi himself personally and Tycoon as a corporate guarantor.

10 There was a promise at that stage that sale proceeds of the Chakra and the "Serenity" (another motor yacht said to be owned by an affiliate of Royalton), if sold, would be provided to Sub 20 to reduce the loan. That has not occurred. As a result, formal demand was made to seek to collect all sums outstanding, that is to say the principal sum I have already mentioned, interest at the original loan rate of 5% up to 25 February 2022, and the post-maturity default rate by contract thereafter up to the date of that letter, together with a

calculated figure representing the fees, costs and expenses then incurred. None of the defendants has made repayment of any part of the sums demanded.

11 As related in the evidence, Sub 20 has had a participation in proceedings relating to the Mantra, which was initially arrested last year by a third party creditor. Sub 20 at one point added its own arrest of the yacht to those proceedings but subsequently withdrew that separate arrest and maintained an intervention in the third party creditor's arrest. The Mantra has recently been sold at judicial auction for only $104,000.

12 There is reference in the most recent email exchanges to what may be a further balance of funds in court where the Mantra was arrested of $67,000, so, it may be that the total fund available is $171,000 rather than $104,000. Mr Frangi had at one point asserted that the court ordered sale had generated a sale price of $920,000, but very recently, that is to say, by an email last night (his time, in the early hours this morning London time) he has explained that the reference to $920,000 was a reference to what he said is an option arrangement he has been given by the auction buyer of the Mantra to buy her for that amount as part of one of the various suggested business plans that Mr Frangi has from time to time in recent months asserted that he has, by which it might be possible that he will generate amongst others cash flow and/or profits from which to start to make repayments towards the loan.

13 In those circumstances, and subject to matters I shall mention briefly in a moment, in my judgment Mr Robinson is entirely correct in his skeleton argument to have submitted that the loan agreement and the deeds of covenant together with the two side letters are perfectly plain in terms, such that Royalton as principal obligor and the four co-defendants, each as a guarantor and indemnifier in their own right, had *prima facie* a liability for all of the sums claimed, in relation to which Mr Robinson and I have worked through the detail of the amounts involved as part of discussing the form of order that he is proposing that the court is in a position to make if it grants a summary judgment.

14 It is not a case that requires any substantial review of the law relating to summary judgment. As Mr Robinson reminds the court, for example, from *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15], the courts have always looked for some realistic prospect of success, meaning a defence that as a matter of fact, to the extent it depends on the proof of facts, and as a matter of legal analysis, has something more than a fanciful prospect of success.

15 In the absence of the defendants participating in this application, Mr Robinson has reminded himself and the court of his duty on behalf of the claimant to assist the court by presenting the application fairly in the sense described, for example, in *Hirbodan Management Company & Anor v Cummins Power Generation Limited* [2021] EWHC 3315 (Comm) at para.15. There, Mr Rainey QC sitting as a Deputy Judge of this court summarised the duty as being:

1. a duty to bring to the attention of the non-participating parties (here the defendants) what had happened and was happening in the litigation – and I am satisfied that that has been done;
2. a duty to present the case fairly, not meaning by that that the party making the application has the duty of full and frank disclosure after reasonable enquiries that would apply on a without notice hearing, but simply an obligation to present the facts and arguments fairly, drawing to the attention of the court to the extent this has occurred points that have been or realistically it might be thought could or would be made by the non-participating party against the application made or in favour of any cross claim or application that the non-participating party could reasonably be expected to have made if they had appeared.

16 In relation to that latter duty, Mr Robinson has, most fairly, in a substantial section of his skeleton argument headed “The purported defence” done justice, or it might be said, rather more than justice, to that which has been said by Mr Frangi, by Leonidas Kyrris, a

gentleman working with or for Mr Frangi, and/or Quinn Emanuel Solicitors representing the defendants in relation to these matters, to the extent that it might be possible to try to distil from their communications coherent points that it might be said (or it might have been said) were arguable defences to the claim.

17 So far as Quinn Emanuel are concerned, that essentially referred to a letter of theirs dated 28 December 2023 addressed to Allam Holding Group, a holding company or group with which Sub 20 is associated, asserting in general terms that Royalton and its associated companies' financial difficulties are in some sense the product of acts or omissions of the Allam Holding Group or its associated companies, that no doubt intended to include Sub 20.

18 However, in particularising that apparent grievance or concern on Mr Frangi's side of the relationship at paragraph 5 of their letter, Quinn Emanuel do no more than refer to a number of business plans or proposals they were instructed had been put forward but had not been regarded as acceptable to the Allam Holding Group or, one infers in particular, to Sub 20 as the lender to Mr Frangi's operation. Whatever commercial grievance Mr Frangi may feel that he has, that those were good and sensible plans in his apparent view, that a lender might reasonably have chosen to back, either with further funding or with refraining from seeking to call in existing funding, there is no arguable basis for any proposition that Sub 20 as a lender under these contractual arrangements owed Royalton or any of the guarantors any species of obligation to endorse, accept or act on those plans rather than insist, if they preferred, on their contractual rights to full payment of their loan.

19 As regards other, with respect, more rambling correspondence, from Mr Frangi or Mr Kyris, as Mr Robinson accurately summarises, that correspondence involved either, again, proposals or complaints about a failure to agree to proposals of various sorts that Mr Frangi was asserting would see some at least of the loan repaid but which did not amount to and would not have involved the realisation of immediate substantial cash, let alone full payment of the debt. Again, as regards all of those, even if they had been, contrary to the

assessment in that regard of Sub 20 as it happens, reasonable and likely to be profitable ideas, there is no arguable basis for asserting as a matter of law that Sub 20 as lender under these contractual arrangements had any obligation to accept them rather than insist on payment of its loan and other debts owed to it in full, leaving Mr Frangi – if so advised and if the plans were as splendid as he was presenting them – to pursue them if he could with other potential funders.

20 Further, the correspondence to which I have referred proposes in a number of respects, not so much grievances that business plans of Mr Frangi that he asserted would have success in seeing the loan repaid or partially repaid had not been progressed, but rather complaints against Sub 20 that it did not do more to secure some sort of recovery from its security. As regards that in particular, there is what appears to be a wildly optimistic suggestion, but a suggestion asserted nonetheless, that if only Sub 20 had itself invested in the purchase of the Mantra out of auction, there would have been a means to turn that relatively immediately into a profit of the order of $10m net that would have gone to reduce the loan amount.

21 Quite apart from the fact that it should probably go without saying that if anything like that were credibly possible, it is astonishing that at auction the Mantra sold for only $104,000 and that there was no higher bidder, in any event, as a matter of law, Sub 20 as lender and mortgagee owed no obligation to deal with the Mantra any differently than it did. It is trite law that where a mortgagee does choose to exercise some power under its security, in particular a power to sell, it must get a fair and proper price at the time when it chooses to sell and cannot sell at unreasonable under-values, but owes no duty to its borrower to exercise those security rights or as to when it chooses to do so, if it does so.

22 Likewise, and finally, there is a suggestion made that funds either raised or that might yet be raised from a sale of the Chakra and/or the Serenity that, as I indicated, had been promised to Sub 20 by way of part payment of the loan if they arose, would not now be used in that way because, so it is asserted, Sub 20 has in some way shown itself to have ill intentions

when supposedly it should be a trustee; and it would seem an allegation is intended that Sub 20 might in some way do something untoward with those proceeds. But there is no arguable basis for any suggestion that Sub 20 holds any of its security rights on trust for Royalton as borrower or any of the guarantors, or that if substantial sums were realised by sale of Chakra and Serenity and were remitted to Sub 20 towards discharging the indebtedness owed to it, either:

(a) those sums would actually come anywhere near discharging that indebtedness in full; or

(b) if by any chance they were so substantial as to discharge and more the indebtedness in full, Sub 20 would do otherwise than account properly back to its borrower for any surplus over and above full payment of the loan and other dues.

23 In those circumstances and expressing gratitude for a very helpfully structured and clearly expressed skeleton argument that has enabled me to deal with the application this afternoon efficiently, there is no real prospect of a successful defence of this claim. There is no shadow of an arguable defence to what I said at the outset was a claim to collect on a debt. It is a claim to collect on an evidently and admittedly well overdue debt, and final judgment should now be given pursuant to Part 24 as a summary judgment for the full amounts claimed.

24 I am satisfied by the evidence I have received, and in relation to fees, expenses and legal costs the very helpful further explanations Mr Robinson gave me in his brief oral submissions this afternoon as to where in the contractual documents there is a contractual entitlement to the various heads of claim, that the following figures have been correctly calculated and are due and owing:

1. the principal debt of $26,768,000;
2. contractual interest to date in the total sum of $5,999,791.61; and

3. a range of fees, expenses and legal costs (both original transaction-related costs that are due under the terms of the various contractual documents, and non-litigation costs that have been incurred by reason of the loan defaults and in efforts to enforce the loan, and also legal costs that have been incurred in this claim) in aggregate amounts to date of US$56,774.25 and £595,847.67.

25 By contract, as Mr Robinson has said, there is a joint and several liability to post-judgment interest which will continue to accrue at the rate of 8% on each and all of those sums from today, until, and thereafter except to the extent of, any payment; and all of those various liabilities are in every respect joint and several liabilities of both Royalton, as originally the principal borrower, and each of the four co-defendants as guarantors, and along the lines of the wording Mr Robinson has proposed, the order that will be drawn up on this judgment will make that clear both by stating that the liabilities are joint and several, and by stating expressly for the avoidance of doubt, that satisfaction of any part of any of those debts by any one of the defendants discharges *pro tanto* that element of the liability of the others.
