Neutral Citation Number: [2019] EWHC 2235 (QB)

Case No: QB-2019-001126

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/08/2019

Before :

MR JUSTICE MARTIN SPENCER

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Between :

DBI Innovations (UK) Ltd	**Claimant**
- and -	
(1) The May Fair Avenue General Trading LLC	**Defendants**
(2) Moon City Star Property Investment LLC	
(3) Mr Negm Abdelnaby Ibrahim Nasr	
(4) City Star Trade Brokerage LLC	

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Mr Ali Sinai (instructed by **Montpelier Solicitors**) for the **Claimant**
Mr Tim Walker (instructed by **Tim Russell**) for the **Defendants**

Hearing dates: 20 June and 25 June 2019

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Approved Judgment

Mr Justice Martin Spencer:

Introduction

1. This matter comes before me on the return date after the granting of an ex-parte injunction by Stewart J on 28 March 2019 whereby he made a worldwide freezing order against the defendants upon the application of the claimant.

2. The guiding hand behind the claimant is Mr Robert Mofrad ("Mr Mofrad") and the guiding hand behind the first and second defendants is the third defendant, Mr Negm Nasr ("Mr Negm"). As I will explain in more detail later, Mr Mofrad and Mr Negm agreed to enter into business together in July 2017 in order to exploit a licence to use copyrighted/trademarked property associated with the late Muhammad Ali, and in particular branded perfumes. A joint venture agreement was entered into in November 2017. However, towards the end of 2018, the parties lost their mutual trust in each other and this has led to the breakdown of the joint venture agreement and the cessation of the defendants' involvement in the licenced property. The Defendants have, however, retained some 29,000 bottles of fragrance with a retail value exceeding $800,000.

Early History and the Watches Deal

3. The history of the parties' dealings is described by Mr Mofrad in a witness statement of 28 January 2019 made in relation to the dissolution of a company called 88 Technology Limited. This statement was, of course, drafted to represent Mr Mofrad's viewpoint but perhaps represents an accurate overview of the parties' dealings. Mr Mofrad describes how he is a French national (it is understood he is of Iranian origin) living and working in the United Kingdom and how he has a number of businesses in the UK and elsewhere which involve brand licensing and buying and selling luxury goods. He describes being introduced to Mr Negm in April 2017 and how they got on and felt that they could work together. Mr Mofrad travelled to Abu Dhabi, where Mr Negm is based, in May 2017 where they had a number of positive meetings. Their first trade deal related to a consignment of 2,000 luxury watches with the Lamborghini brand. They agreed that they would together purchase the branded watches for $300,000 with each party providing 50% of the capital and sharing in 50% of the profit. The watches were expected to retail for $600,000, giving a 100% profit before deduction of expenses. Mr Mofrad describes how he was asked to provide a business guarantee cheque in the sum of $300,000 as collateral in case the goods did not arrive. This would have represented Mr Negm's expected profit on the deal. On 20 July 2017, it appears that a loan agreement was entered into, although Mr Negm says that he did not sign the agreement, between the Claimant and the Second Defendant, Moon Star whereby Moon Star agreed to provide DBI with "a secured term loan facility of £149,000 against receipt of 1,000 watches brand Lamborghini." On the same date, DBI raised an invoice on Moon Star in the sum of $150,000 for 1,000 Lamborghini watches. For the Defendants, Mr Walker asks rhetorically: why are DBI invoicing Moon Star for these watches? This was, say the Defendants, the forerunner to yet more inappropriate invoicing by DBI, this time in respect of the

supply of bottles of fragrance to the First Defendant in April 2018: see paragraph 19 below.

4. Mr Mofrad's account of the circumstances surrounding the supply of the business guarantee cheque is puzzling. At paragraphs 11 and 12 of his statement, he describes how he had left a blank signed cheque with his then fiancée, now wife, who lived in Dubai. He says that Mr Negm visited his wife on 23 July 2017 and insisted on being given the business guarantee cheque. She contacted Mr Mofrad, who agreed to her giving Mr Negm the cheque, whereupon "my wife then prepared the cheque for Negm, however he asked her not to date it, so she left the date blank." The clear implication is that she filled in the amount: he did not state that she had given Mr Negm a blank cheque. However, in a further witness statement dated 6 June 2019, Mr Mofrad says at paragraph 48 that he agreed to provide a business guarantee cheque for $150,000, that his wife gave Mr Negm a blank signed cheque and that Mr Negm filled in the cheque at a later stage, doubling the amount to $300,000 with Mr Mofrad's authority or instruction. These two accounts are thus not consistent with each other.

5. On 25 July 2017, Mr Negm transferred his half of the purchase monies for the watches, $150,000 and Mr Mofrad says he gave no more thought to the business guarantee cheque at that stage.

6. Whilst waiting for the watches to come through, Mr Mofrad and Mr Negm decided to set up a business together in the UAE, to be called the May Fair Avenue General Trading LLC ("May Fair"). On 1 August 2017, they entered into a "Shareholders' Agreement" whereby they agreed that they would collaborate together on a project for the sale of Muhammad Ali fragrances and that Mr Mofrad would sell to Mr Negm 50% of the licensee agreement then held by DBI. On 1 February 2017, DBI had entered into a licence agreement with an organisation, Muhammad Ali Enterprises LLC, whereby DBI was granted a licence to use and exploit the Licensed Property, that is the trademarks associated with the late Muhammad Ali.

7. According to local UAE law, a sponsor was required for a company to be set up in the UAE and the third party was therefore a local Emirati. May Fair was incorporated on 17 September 2017 with the local sponsor a 51% shareholder Mr Negm a 25% shareholder and Mr Mofrad a 24% shareholder (amended on 26 October 2017 to give Mr Negm 21% and Mr Mofrad 28%). It was agreed that the profits of May Fair were to be shared in the proportions 40% each to Mr Mofrad and Mr Negm and 20% to the local shareholder. On the same date, 17 September 2017, the UAE authorities issued a commercial licence to May Fair to enable it to trade in the UAE (see exhibit RM4 to Mr Mofrad's statement of 28 January 2019). On 18 October 2017, May Fair was added to the licence held by DBI to trade in Mohammad Ali Products as a joint licensee.

The Joint Venture Agreement

8. On 15 November 2017 the claimant and May Fair entered into the Master Joint Business Venture Agreement ("the JVA") which set out their terms of agreement in respect of the joint exploitation of the licence granted by Muhammad Ali Enterprises. By clause 2.1, May Fair was to have the exclusive right to sell Muhammad Ali products within the territories. Under clause 5, DBI and Mr Mofrad were to have the

responsibility for the supervision and management of the JVA and the Business, and the main business activities would be generated by May Fair, with DBI making arrangements for its staff to work under May Fair's instructions to perform its obligations under the JVA. By clause 5.4 the first 3 months' salaries would be covered by the parties equally, and a formula was agreed for the payment of the salaries thereafter.

9. The financing of the joint venture agreement was provided for at clause 6 of the JVA which provides as follows:

> "6. Finance for the JVA
>
> 6.1 The parties to this agreement acknowledge that DBI has provided a detailed breakdown of its investment it has made in total $600,000 (six hundred thousand US dollars) prior to the execution of this agreement in Muhammad Ali, towards negotiating the licence agreement, royalty payments, development, operational costs, product, salaries and operational costs.
>
> 6.2 The parties to this agreement agree that JVA shall be financed by May Fair for a total of $550,000 (five hundred and fifty thousand US dollars) of which $170,000 (one hundred and seventy thousand US dollars) is invested and the outstanding investment stands at $380,000 (three hundred and eighty thousand US dollars), to be invested on execution of this agreement. May Fair undertakes to make the outstanding investment of $380,000 (three hundred and eighty thousand US dollars) in the JVA following three stages:
>
> (a) First payment of $100,000 (one hundred thousand US dollars) on or after the execution of this agreement;
> (b) Second payment of $50,000 (fifty thousand US dollars) on or before 10 January 2018;
> (c) Third payment of $230,000 (two hundred and thirty thousand US dollars) on or before 1 March 2018.
>
> …
>
> 6.4 The parties to this agreement agree that May Fair and DBI through the JVA shall make payments towards Royalty Payments in relation to the Licence Agreement for Muhammad Ali products based on the percentage (%) ratio of purchase and sales, as seen in the example: If the total sales of the JVA amount to a total net profit of $1,000,000 (one million US dollars) then this amount shall be divided into $800,000 (eight hundred thousand US dollars) for May Fair and $200,000 (two hundred thousand US dollars) for DBI. The Royalty Payments for that period shall be paid 80% by May Fair and 20% by DBI.
>
> 6.5 The parties agree that Robert Halefi Mofrad shall be paid a salary for an amount equal to 10% of the value of every purchase order generated by May Fair, for his appointment as the project director for the JVA."

10. Clause 11 provides for the Payment Policy, stating:

> "11.1 The Parties agree that their involvement, as detailed in clause 6.1 and 6.2, shall be recovered from the payments received for the distribution and sales of Muhammed Ali Products, in the following order:
>
> (a) First Priority: The parties agree that DBI will have exclusive rights over the sale of the first stock of 21,000 units of Muhammad Ali Products, and DBI shall retain all revenues generated from the sales of this stock to enable it [to] recover its investment made under clause 6.1;
> (b) In the event, from the first priority given under clause 11.1(a), DBI is unable to recover or is in receipt of excess amounts to that made under clause 6.1, the shortfall and excess amounts shall be shared equally by both parties.
> (c) Second Priority: Subject to full investment by May Fair, in total $550,000 as specified under clause 6.2, it shall have exclusive right over the sale of the second stock of 30,000 (Thirty Thousand) units of Muhammad Ali Products, and May Fair shall retain all revenue generated from the sales of this stock to enable it [to] recover its investment made under clause 6.1 [sic, clearly a misprint for 6.2];
> (d) In the event, form the second priority under clause 11.1(c), May Fair is unable to recover or is in receipt of excess amounts to that made under clause 6.1 [sic], the shortfall and excess amounts shall be shared equally by both parties.
> (e) Upon recovery of amounts by both parties under clause 6.1 and 6.2, May Fair and DBI shall have equal rights on amounts, revenue and profits generated from the JVA; …"

The Licence Agreement

11. Under the licence agreement with Muhammad Ali Enterprises of 1 February 2017, the licensee contracted to make certain minimum net sales as set out in paragraph 9 of the agreement. Paragraph 12 provided for guaranteed minimum royalties for each of the territories covered by the licence agreement. After the entering into of the JVA, the first defendant, May Fair, was added as a licensee on 20 November 2017. The licensee is defined as DBI and May Fair "jointly and severally".

12. Before Stewart J on the ex parte application, it was represented on behalf of the Claimant that, by virtue of clause 6.4 of the JVA, May Fair was entitled to 80% of the net profit, and was therefore liable to pay 80% of the Minimum Royalty payments. However, although this will be a matter for final determination at the trial, the more likely interpretation of the JVA is that the parties are entitled to share equally in the profits after their initial investments are recouped, and therefore they had equal liability for the Minimum Royalty payments. At paragraph 11 of the Particulars of Claim, whilst clause 6.4 of the JVA is cited in full, clause 11.1 is simply described as "DBI had first priority and exclusive rights over the sale of the first stock of 21,000

products." In my view, this is seriously incomplete and misleading, and no judge, reading the Particulars of Claim, would understand the way in which clause 11.1 operates to give the parties equal liability and rights to share in shortfall and profits respectively. If the liability for the Minimum Royalty Payments was indeed equal, the claim under paragraph 16 of the Particulars of Claim would be for $250,000, not $400,000.

13. In his second affidavit, Mr Negm says that May Fair made its $550,000 investment in accordance with clause 6.2 and in fact spent more than that, paying for various items of expenditure of the JVA such as manufacturing of the fragrances, the bottles, the related components, advertising etc. On 13 December 2017, DBI entered into a distribution agreement with a company called Elysa de Paris LLC ("Elysa"), which is incorporated and registered in Dubai, which provided for sale of licensed products in the UAE. The products in question were to be "Muhammad Ali – Legacy of a Legend Eau de Parfum" and on 16 December 2017 DBI invoiced Elysa for $430,540 in relation to 15,400 bottles of 100ml perfume. Mr Negm says that this was in accordance with DBI's right to exploit the first 21,000 units and Mr Mofrad told him that the balance of the 21,000 bottles would be sold in the UK. On behalf of May Fair, Mr Negm says that he arranged for 30,000 bottles of fragrance to be produced for May Fair to sell as its second priority stock under clause 11.1(c). The Sales Director of Elysa is Mr Farid Karegari ("Farid") and the General Manager of Elysa is Mr Khalid Khouri. Mr Farid Karegari has a brother, Mr Farzad Karegari ("Farzad"), who works for "Paris Gallery" in the UAE and who had done business with Mr Mofrad since 2015 when Mr Mofrad was marketing Tonino Lamborghini mobile phones in the UAE. It was apparently Farzad who introduced Mr Mofrad to Farid at Elysa.

Events of 2018

14. On 2 March 2018, Muhammad Ali Enterprises LLC assigned their rights under the licence to ABG International Inc ("ABG") and the licence agreement with DBI/May Fair was amended accordingly on 11 March 2018.

15. On 21 March 2018, DBI were invoiced for the first of the Guaranteed Minimum Royalty payments in the sum of $125,000, this being the payment due for the first quarter. Further invoices were rendered by Mohammad Ali Enterprises/ABG during 2018 and were paid by DBI. The following table shows the total invoices rendered and payments made:

Date of Invoice	Amount	Date Paid	Amount Paid
21.03.2018 (Q1)	$125,000	28.03.2018	$120,500
		?03.04.18	$4,500
20.06 2018 (Q2)	$125,000	10.07.2018	$84,375
(Payment by May Fair)		04.09.2018	$40,625
13.09.2018 (Q3)	$125,000	09.11.18	$62,500

		07.12.2018	$62,500
6.12.2018 (Q4)	$125,000	25.01.2018	$20,000
		25.01.2018	$105,000
Total	$500,000		$500,000

16. Within the documents disclosed by the Claimant, there is an email from Gerald Kong of ABG dated 3 April 2018 (page 182) querying why DBI had only paid $120,500 in respect of the first invoice for $125,000, but no reply is disclosed. I assume that on 3 April, the balance was paid by DBI. Although the payment on 4 September 2018 was by May Fair, they had invoiced DBI for $41,500 on 16 August 2018 in respect of the Royalty Payment and had been paid that sum on the same date, so the source of the payment was in fact DBI.

17. It is the Defendants' case that, under the JVA, they are only liable for 50% - $250,000 – and that $62,500 has been paid. Thus, in the exhibit to Mr Negm's second affidavit, he discloses an invoice dated 3 April 2018 from DBI to May Fair for $62,500 (see page 119B) for "50% of shares of royalties due to DBI in relation with the invoice for MA [Mohammad Ali] royalties paid in full." Further documents show the payment of this amount (in Dirham currency equivalent) on 7 April 2018. This payment was not referred to by Mr Mofrad in his first affidavit in support of the ex parte Freezing Order, but rather, at paragraphs 45 to 47, he stated that the Defendants had failed to make any contributions towards the Royalty Payments. In answer to Mr Negm's affidavit disclosing the payment of $62,500 on 7 April 2018, Mr Mofrad says in his witness statement of 6 June 2019 that the payment of $62,500 was

    > "paid to me as a deposit in connection with the purchase of Lamborghini watches. It did not relate to the business of the joint venture project in respect of which payment of royalties were due to ABG."

    This is implausible to such a degree as to be clearly untruthful. Firstly, it is inconsistent with what is on the face of the invoice itself. Secondly, the sum of $62,500 is consistent with being in respect of the royalty payment, being exactly 50% of the royalty payment. Thirdly, the date of the invoice is consistent with being in response to Mr Kong's email referred to in paragraph 16 above and the payment of the ABG royalty invoice. Fourthly, it is difficult to see how the payment could have been in respect of the Lamborghini watches when Mr Negm had paid his 50% for the watches back in July 2017.

18. The inevitable consequence is that, in my judgment, there was material non-disclosure by Mr Mofrad and, through him, the Claimant, of the payment by the First Defendant of a substantial part of the royalty payment said to be due. There is a further aspect to this. The invoice of 3 April 2018 from DBI to May Fair is strong support for May Fair's contention that its liability was only for 50% of the Royalty Payments, not 80%, that being DBI's own belief in April 2018. This invoice should therefore have been disclosed in relation to that dispute. Reduction of $250,000 by $62,500 brings the sum allegedly owing in respect of royalty payments to $187,500 which is under half the sum which was represented to Stewart J as being owed and this might well

have made a material difference to whether he would have been prepared to grant a Worldwide Freezing Order.

19. In his witness statement of 28 January 2019, Mr Mofrad says that he started to notice a change in Mr Negm over the course of 2018 and claims that he started to become concerned about some of Mr Negm's activity both in the UK and in the UAE. He says that in April 2018 Mr Negm requested a further business guarantee cheque as collateral for the trade deal in relation to the luxury fragrances. However, Mr Negm puts a different complexion on events in 2018. On 18 April 2018, DBI raised 2 invoices on May Fair for the supply of bottles of Mohammad Ali fragrances in the sums of $406,814.40 and $431,755.20 respectively, a total of $838,569.60. Mr Negm says that for DBI to have invoiced May Fair for these items was totally contrary to the letter and spirit of the JVA. These bottles were not part of DBI's first priority stock, but were part of May Fair's second priority stock. Eventually, DBI agreed to issue a credit note against the invoice, and this is exhibited to Mr Negm's second affidavit at page 118. The date of the credit note is 4 May 2018. Although it does not state as such on its face, there is no doubt that the credit note is in relation to the 2 invoices of 18 April 2018 because it is in the exact amount of $838,569.90. However, although the invoices of 18 April 2018 were exhibited to Mr Mofrad's affidavit of 27 March 2019 in support of the injunction, the credit note was not. Clearly, it should have been.

20. Mr Mofrad compounds the matter by relying on the invoices to support his claim for salary. Under paragraph 6.5 of the JVA, he was entitled to be paid by the parties to the JVA (DBI and May Fair) 10% of "every purchase order generated by May Fair". At paragraph 119 of his affidavit in support of the injunction, Mr Mofrad says that May Fair is liable to pay 5% as its share under clause 6.5, and he then states:

> "120. I note that May Fair placed 2 purchase orders to the value of $838,596.60 (see attached invoices at pages 330-331).
> 121. On my calculation, the total amount outstanding in connection with my salary is therefore $83,859.66, and therefore the Claimant is claiming half of that amount."

The invoices at pages 330-331 are the ones from DBI to May Fair of 18 April 2018 referred to in paragraph 19 above. Quite apart from these not being purchase orders from May Fair at all, it was clearly quite wrong of Mr Mofrad to rely on those invoices to support a claim for $41,929.83 in relation to salary (see paragraph 17 of the Particulars of Claim) without drawing to the court's attention that the invoices had been cancelled by the issue of the credit note of 4 May 2018. This amounts to further material non-disclosure to Stewart J.

21. As Mr Walker for the Defendants submits, it is difficult to understand how Mr Mofrad could ever have understood that he could legitimately invoice May Fair for the 30,000 bottles of fragrance when these were part of May Fair's priority stock and when it was inconsistent with the JVA for DBI to be invoicing May Fair at all. This drove a cart and horse through the JVA and must have caused Mr Negm to harbour severe doubts about Mr Mofrad's understanding of how the JVA was to work and his commitment to his and DBI's obligations under the JVA. As Mr Walker submitted,

May Fair was a licensee of ABG and there would only be a qualifying sale when May Fair made a sale of the Licensed Products to a Third Party, not a purchase of stock from DBI.

22. The relationship between Mr Mofrad and Mr Negm was also damaged by the effective failure of the deal in relation to the Lamborghini watches. Although it is unnecessary to go into the detail of this deal and its outcome, Mr Negm says that it was a further factor in the breakdown of trust between the parties. Mr Walker aptly described it as "polluting" the JVA.

23. In September 2018, Mr Mofrad says that he and Mr Negm started to discuss the possibility of Mr Mofrad buying out Mr Negm from the joint trading company, May Fair. He says:

> "I was keen to do this because I did not feel I could trust him and we no longer had a good working relationship. When we started discussing how much I would need to pay him, Negm grossly overvalued his share in the company at $1,000,000."

In an undated letter sent by Mr Negm to Mr Mofrad at about that time, Mr Negm claimed that the $1,000,000 represents everything he had spent and invested into the business. He said:

> "The selling process would include every stock I have personally such as the goods which is more than 29,000 bottles of perfume those kept in the free zone store in Jabel Ali port, Dubai."

24. In early November 2018, Mr Mofrad says that he consulted a lawyer in Dubai because of concern over the undated cheque for $300,000 that Mr Negm still possessed and was advised that he would face potentially serious consequences in UAE if the cheque was not honoured. Mr Mofrad describes how Mr Negm attempted to cash the cheque on 15 November 2018 but it was not honoured. It was after this that, as it seems to me, the relationship between Mr Mofrad and Mr Negm became overtly hostile. Thus, on the one hand, Mr Mofrad "tipped off" the Home Office about his concerns in relation to Mr Negm's British "entrepreneur" visa. At the same time, Mr Negm obtained a criminal conviction against Mr Mofrad in an UAE court for dishonouring the cheque.

25. The mistrust between the parties also related to lack of information from DBI to May Fair in respect of the stock which DBI had obtained and sold as part of its "first priority". Mr Walker says that evidence in relation to this was conspicuous by its absence. Clearly it makes a difference: if DBI had recouped its initial investment through the sale of 21,000 units, then it needed to account to May Fair for the sale of any further units, if there were any (although there shouldn't have been, given that May Fair had the exclusive right to sell under the JVA). In December 2018, Mr Negm made enquiry of ABG in order to see if he could ascertain what sales, if any, DBI had achieved over and above the 21,000 units of first priority stock. On 19 December 2018, Ms Katie Jones of ABG emailed Mr Negm and stated: "To date DBI has reported sales of 29,000 units totalling $725,000 in sales and $65,250 in earned royalties." On this basis, Mr Walker submits that DBI should have accounted to May Fair for its 50% share in the 8,000 excess over the first 21,000, but had not done so.

Again, this is something which should have been disclosed to Stewart J when the injunction was obtained.

Events of 2019

26. On 21 January 2019, Montpelier Solicitors, instructed by Mr Mofrad/DBI, sent a Letter of Claim to Mr Negm alleging failure to remit payments due to DBI in respect of May Fair's share of the contributions towards the minimum royalty payments and also outstanding salary due to Mr Mofrad. The amounts outstanding were said to be: $259,375 in respect of royalty payments, $83,856.96 in relation to outstanding salary and $30,800 in respect of Muhammad Ali sports bags, a total of $374,031.96. The letter further stated:

> "In the circumstances, our client has no option but to terminate the 15 November 2017 joint venture agreement with immediate effect."

27. On 29 January 2019, ABG sent to both Mr Mofrad and Mr Negm a letter constituting notice of breach of the licence agreement and notice of the effect of termination of the licence agreement. The following day, 30 January 2019, ABG entered into a new licence agreement with DBI. On 6 February 2019, ABG sent to May Fair a demand for immediate written assurance that May Fair would comply with the terms of the licence agreement and sought a detailed inventory of the remaining licensed products.

28. Despite the above, it is alleged by Mr Mofrad that, on 11 February 2019, Mr Negm, acting through May Fair, wrote to Elysa holding itself out as the official licensee of the Muhammad Ali trademark stating that Mr Mofrad was no longer part of May Fair, and any new purchase of Muhammad Ali fragrances would be invoiced by a company called Moon City Star Property Investment LLC ("Moon City") which was holding all the stock for new purchases. On the same day, 11 February 2019, an invoice was raised in the name of City Star, a group of companies owned by Mr Negm, addressed to Elysa for the sale of licenced products amounting to AED 1,271,655 (equivalent to approximately £265,585). The invoice required Elysa to make payment to Moon City and charged AED 55.05 per bottle.

29. On 28 March 2019, DBI issued its claim against May Fair, Moon City and Mr Negm, claiming an injunction preventing the defendants from trading in the licensed products and for an account of the first priority stock sold and due to DBI under clause 11.1 of the MJVBA, together with damages. The damages claimed reiterated the amounts which had been claimed by Montpelier in their letter of 21 January 2019 including the 80% share of the guaranteed minimum royalty payment ($400,000), Mr Mofrad's salary, the value of the Muhammad Ali sports bags provided by DBI to May Fair and allegedly sold by May Fair and return of licenced products stored by a company called Triburg on behalf of May Fair in the UAE. The Particulars of Claim alleged fraud against May Fair and, through them, Mr Negm.

30. At the same time, DBI made its application for a worldwide freezing order against Mr Negm and the other defendants. The application was supported by an affidavit from Mr Mofrad dated 27 March 2019. Attached to Mr Mofrad's affidavit in support of the injunction is an exhibit, RM1, containing over 400 pages of documents and exhibits.

Amongst those documents there is a notice signed by Mr Negm dated 11 February 2019 to Elysa headed "**OFFICIAL NOTICE**", p.303, giving Elysa notice that Mr Mofrad is no longer part of May Fair and no longer has the right to trade in the Muhammad Ali trademark and stating:

> "We inform you that any new purchase of goods of Muhammad Ali fragrance will be invoiced by our affiliate company Moon City Star Property Investment LLC … who now holds all the stock for any new purchase."

The notice further states that any non-compliance will result in freezing of the inventory in Triburg Freight Services LLC and "An applicable royalty fee will apply to be paid to our affiliate company."
There is then a copy of an email from the email address "negmnasr77@gmail.com" sent at 11:42 on 13 February 2019, pp.301/2, to "info@elysadeparis.ae" and "farid@elysadeparis.ae" enclosing the official notice. There is then an email purportedly coming from "farid@elysadeparis.ae" sent on 14 February 2019, p.301, at 06:26am to Mr Mofrad in the following terms:

> "Dear Mr Robert, as discussed please find the ridiculous request we received from Negm which leaves us all speechless. I hope below will help you and you can relief us all from such unusual profile and strange person to deal with. On one hand you tell us he has been terminated on the other his letter says complete opposite! From this point, I please ask you to not involve me further and make sure we do not get any further threats or abusive behaviour from him as we wish to avoid unnecessary problems especially from such dangerous person."

31. It is apparent that these documents would potentially have played an important part in the obtaining by the claimant of its injunction from Stewart J in that they tended to show that, despite the termination of the licence agreement in January 2019 and the termination of the JVA and the letter from ABG to May Fair of 6 February 2019 giving notice of termination of the licence to trade in Muhammad Ali branded goods, May Fair were sending to DBI's distributor, Elysa, a notice that they, May Fair, remained the official licensee of Muhammad Ali goods. There was correspondence between Elysa and Mr Mofrad showing that Elysa were communicating with Mr Mofrad about the notice received from May Fair contrary to the information which Elysa had received from Mr Mofrad. However, the Defendants say that these documents are bogus, forgeries manufactured by Mr Mofrad at a time shortly after the licence agreement and JVA had been terminated and designed to bolster an intended application to the court for an injunction. I deal with this in paragraphs 35 et seq below.

32. The terms of the freezing order dated 28 March 2019 were to prohibit the defendants from disposing of assets up to a value of $550,000, the prohibition applying to all the respondents' assets located in and outside the jurisdiction and naming in particular certain bank accounts held in the UAE. The injunction further required the respondents to provide information within 48 hours of service of the order. The main allegation in support of the injunction related to May Fair's alleged failure to pay its share of the guaranteed minimum royalty payments in the sum of $400,000. In a skeleton argument in support of the injunction, the following was stated:

> "46. Nasr's conduct is a paradigm example of someone who poses a risk of dissipation. Apart from general evasiveness, refusals to respond or nonsensical threats and claims, there is solid evidence which shows that Nasr (and May Fair through him) have no regard for their contractual obligations and are actively taking steps, in breach of MJVBA and of the licence to dissipate assets by holding May Fair out as an 'official licensee' and diverting licenced products, customers and sales revenue to Moon City."

In support of this, the 'Official Notice' of 11 February 2019 was cited: see paragraph 46 (iv) of the skeleton argument.

33. On 3 April 2019, Mr Negm swore his first affidavit in compliance with the order of Stewart J and stating that the purpose was to list his assets and to indicate that he would seek from the claimant consent to the variation of the amounts allowed to be spent by him by way legitimate personal and legal expenditure (the restraint of £250 per week being unrealistic).

34. On 12 May 2019, Mr Negm swore a further affidavit setting out his full case in relation to the history of the matter. In that affidavit Mr Negm indicated that not only had May Fair made payments towards the royalty payments (see paragraph 54) but in addition had funded the costs of the joint venture and was entitled to one half of those costs from DBI which could be set off against any monies owed in respect of royalty payments made by DBI.

The forged documents and fake email addresses

35. At paragraph 65 of his affidavit Mr Negm asserts that Mr Mofrad has falsified documents purporting to come from Elysa. He refers to a letter dated 6 January 2019 at page 273 of RM1 which he says is a forgery; he refers to the "Official Notice" dated 11 February 2019 sent by Mr Mofrad to Elysa attaching an invoice of the same date sent to Elysa by the City Star group of companies (pages 429 and 430 of RM1). Mr Negm denies those documents originated from City Star Group or Moon City Star or him. He then refers to the documents at pages 301 and 302 of RM1, i.e. the emails referred to at paragraph 30 above. He says:

> "At pages 301 and 302 of RM1, Mofrad exhibits an email purporting to be from Elysa de Paris to Mofrad dated 14 February 2019 and purporting to forward an email from me from an email address 'negmnasr77@gmail.com' purporting to forward the Official Notice to Elysa de Paris at two email addresses, 'info@elysadeparis.ae' and 'farid@elysadeparis.ae'. The email address 'negmnasr77@gmail.com' is not mine. I do not have such an email address. At pages 142 to 146 of NAIN2 is a letter from Farid Karegari at Elysa de Paris. In it he confirms that Elysa de Paris emails use the web domain '.com' and not '.ae' and that the above emails have nothing to do with Elysa de Paris."

Mr Negm seeks discharge of the injunction on the basis that the claimant had not been frank with the court on 28 March 2019, for four reasons:

(1) The joint venture expenditure and the royalty payments had been isolated and there had been a failure to explain how May Fair had contributed directly to the royalty payments or to the joint venture generally with a consequent failure to establish that May Fair owed DBI anything under the MJVBA;

(2) There had been a failure to explain about 29,000 units sold by DBI or why DBI had not accounted to May Fair for the proceeds of sale beyond the first 21,000 units;

(3) The court had been misled as to the cheque that bounced in the UAE which was not the cheque provided as security for the 30,000 bottles of perfume but for the Lamborghini watches;

(4) Most significantly, the claimant had relied on forged documents.

36. On 10 May 2019 a defence and counterclaim was served denying the claim and asserting that May Fair had spent just under $1,000,000 on the joint venture whereby it was denied that any money was owed to DBI and seeking an account of the respective contributions of May Fair and DBI to the expenses of the joint venture.

37. The claimant served a reply and defence to counterclaim on 6 June 2019 together with a further witness statement from Mr Mofrad, also dated 6 June 2019. At paragraphs 29 – 35, Mr Mofrad dealt with the allegations of forgery arising from the emails of 13/14 February 2019. He said that on receipt of the email of 13 February 2019 he forwarded this to his representatives whereupon it was exhibited in his first affidavit. He said:

> "I did not think that my earlier exchanges with Mr Farid were relevant as I considered that Elysa's requests were reasonable. I did not doubt the veracity of these documents as they had emerged following my email correspondence with Mr Farid and, importantly the management. For the avoidance of doubt, I confirm I did not notice or pay any attention to the email address from which Mr Farid had corresponded. I simply replied to the addresses from which he had corresponded."

He stated he had undertaken a further analysis of the 14 February 2019 email and produced as an exhibit the metadata for that email. He said he had made enquiries of the Registrar of the .ae domain who had confirmed that the domain was registered with them and were hosted by a UAE server. He said:

> "I understand that such registration can only be completed from within the UAE and once appropriate due diligence on the identity of the applicant has been undertaken."

He then states:

> "34. I confirm that my investigations have not revealed anything suspicious or any fact which would suggest that the emails sent by Mr Farid from his farid@elysadeparis.ae email account did not originate from Mr Farid. In any event the fact that the 13th and 14th February 2019 emails were sent from an

> .ae account server is a matter which I only noticed once this was pointed out in Mr Negm's affidavit. As far as I can elicit the domain is registered to Elysa de Paris and I cannot comment any further as to why Mr Farid chose to use this account.
> 35. As for the Official Notice and invoice attached to the 14 February 2019 email, I cannot comment on this other than to say that I received these from Elysa de Paris and I did not have any involvement whatsoever in the creation of these documents. I did not forge these documents."

38. Immediately prior to the first hearing of the return date on 20 June 2019, the defendants served an affidavit from their solicitor, Timothy Russell, dated 19 June 2019 to deal with paragraphs 24 and 25 of Mr Mofrad's witness statement of 6 June 2019 where he claimed to have received the email of 13 February 2019 (in fact mistakenly stating 13 February 2018) i.e. the email from Farid from the email address farid@elysadeparis.ae. Mr Russell exhibits a report from the Telecommunications Regulatory Authority of UAE dated 16 June 2019 in response to a complaint made to it by Elysa. This report shows that the domain name "elysadeparis.ae" was created at 06:27 hours on 12 February 2019, the registrant being Negm Nasr whose email address is stated as negmnasr77@gmail.com. Some 21 minutes later, at 06:48 hours the name of the registrant was changed to Khalid Khouri of Elysa de Paris with an email address of apskhouri@gmail.com. The registrant details were further updated on 1 April 2019 at 07:08 when the registrant name was changed to Elysa de Paris with an email address of info@elysadeparis.ae.

39. In addition, Mr Russell exhibits emails between 8 February 2019 and 2 May 2019. The email of 8 February 2019 is from Mr Mofrad to Farid at the email address farid@elysadeparis.com, copying in Farzad at farzadkaregari@yahoo.com. This was an email giving details of the fragrances delivered by DBI to Elysa. The next email is dated 21 February 2019 and is from Farid at elysadeparis.com to Mr Mofrad and again copying in Farzad at farzadkaregari@yahoo.com. This contests the accuracy of the email of 8 February 2019. These emails show Mr Mofrad and Farid writing to each other at perfectly genuine and legitimate email addresses.

40. However, on 29 March 2019, the day after the injunction was obtained from Stewart J, Mr Mofrad sent an email to Farid and Farzad in which he copied in Mr Khouri not only at the known email address but also at a new email address: "apskhouri@gmail.com". This elicited a response from Farid on 3 April as follows:

> "Kindly clarify what is this email address 'khalidkhouriapskhouri@gmail.com' because this email address does not exist in our company!"

This was followed up by a further email on 9 April to Farid reiterating that the email address apskhouri@gmail.com does not exist at Elysa. In a reply from Mr Albert Green of DBI, dated 10 April 2019, Mr Green states:

> "P.S. in regards with the cited email this seems to be a glitch from our corporate server in which we are investigating internally, and we will revert back to you."

In a further email dated 2 May 2019, Mr Green gave a further explanation:

> "P.S. in regards with the site of the email after further checking internally in our server, there seemed to be a confusion related to the email of 25.06.2018 where documents of your companies have been exchanged with us indicating Mr Khalid Khouri as General Manger on trade license. Back then it was internally communicated the email is khourisaps which was wrongfully mixed up with the apskhouri and registered as Khalid as indicated in the document provided. Therefore when I used our corporate CEO email to send your company an email all registered webmail address on server came up (I do apologise I do not know who is who). We have since advised internally and erased from the server the wrong email address."

Mr Walker for the defendants submits that the addition of the email address apskhouri@gmail.com to the email of 29 March 2019 indicates that this address is internal to Mr Mofrad: it has come from within his organisation, not from Elysa or anyone there. Thus, he submits that any earlier email which includes this "fake" email address is also likely to emanate from Mr Mofrad.

41. Mr Walker then refers to the exhibit to Mr Russell's affidavit at page 38 which shows that the email dated 13 February 2019 sent at 5:45pm coming from "farid@elysadeparis.ae" copied in Khalid Khouri at the email address "apskhouri@gmail.com" and this, says Mr Walker, is a "smoking gun" because it pinpoints Mr Mofrad as the originator of the "fake" elysadeparis.ae domain name. Thus, it is submitted that, within days of the cessation of the joint venture agreement and termination of the license by ABG, Mr Mofrad was masquerading as Mr Negm using a fake email address for Mr Negm (Mr Negm denies that the email negmnasr77@gmail.com is anything to do with him) and then re-registering the registrant as Khalid Khouri using the apskhouri@gmail.com email address which was unknown to Elysa or Mr Khouri.

42. On the basis that the personnel at Elysa deny that the .ae domain was ever anything with them and that the apskhouri@gmail.com email address is nothing to do with them, it seems to me that there are only two realistic candidates for the true identity of the person who registered the elysadeparis.ae domain name on 12 February 2019, Mr Mofrad and Mr Negm. I cannot resolve such an issue finally on an application of this nature, but, in my judgment, the evidence points strongly towards the culprit being Mr Mofrad rather than Mr Negm. If that is right, it means that Mr Mofrad has forged documents and then used those forgeries to bolster his application for an ex parte injunction.

43. Prior to the resumed hearing of the return date, on 25 June 2019, the claimant served a further witness statement from Mr Mofrad and a witness statement from Mr Albert Greenstein (i.e. the "Mr Green" mentioned above) in which they deny the allegation that either of them were responsible for the creation of the elysadeparis.ae domain name. They assert that Elysa and Farzad are "in cahoots with the defendants" and are not independent third parties trying to assist the court. Mr Mofrad refers to Farzad because the final document exhibited to Mr Russell's affidavit is an email of 19 June 2019 from Farzad to Mr Russell referring to a telephone call when Mr Mofrad rang him on 15 June 2019 or 16 June 2019 and asked Farzad to speak to Farid and

> "Tell him to send a letter addressed to him (Robert Mofrad) retracting the statement that Farid made on behalf of Elysa de Paris made on April 2018 where alleged communications between Farid and Negm Nasr were not genuine. Alternatively Robert Mofrad suggested that perhaps Farid could say that his email had been hacked and consequently the email and letter sent to Negm Nasr were fake. I was alarmed by this suggestion. … he promised to give Elysa de Paris additional products, credit notes and good gift to me. This offended me and I immediately told my brother Farid who was equally outraged."

At this stage of the proceedings, it does not seem to me to be likely that Elysa and the defendants are "in cahoots" and are conspiring to produce fake evidence against the claimant. Elysa were, after all, DBI's distributors pursuant to the distribution agreement dated 13 December 2017 in relation to the first priority stock of fragrances.

Legal Principles

44. The principles governing the grant of a worldwide freezing order ("WFO") are set out in volume 2 of the White Book paragraph 15-83 as follows:

> "The granting of a freezing injunction is a matter for the discretion of the judge hearing the application. In the exercise of this discretion, in the context of English proceedings the court may grant an application for a WFO where the following matters are established:
> (1) The claimant has a good arguable case;
> (2) The claimant has satisfied the court –
> a. That there are no assets or insufficient assets within the jurisdiction to satisfy his claim, and
> b. That there are assets without the jurisdiction;
> (3) There is a real risk of dissipation or secretion of those assets so as to render any judgment which the claimant may obtain nugatory.
>
> In addition, in exercising its discretion the court should consider whether undertakings or provisos, or a combination of both, should be requested or imposed for the purpose of protecting the defendant from oppression and for protecting the position of foreign third parties."

It is well established that WFOs are draconian orders and will only be made in exceptional cases. A claimant who seeks a WFO owes a duty to make full and frank disclosure to the court. In *Lloyds Bowmaker v Britannia Arrow Holdings* [1988] 1 WLR 1337, Glidewell LJ agreed that the authorities cited to him supported the following proposition advanced by counsel:

> "A party who seeks relief ex parte is under a duty to the court to make the fullest disclosure of all material facts. He must disclose any defence he has reason to anticipate may be advanced. If he does not comply, he will be deprived of the fruits of his order without consideration of the merits and irrespective of whether, he had made such disclosure, he would or would not have obtained the order. It matters not whether the non-disclosure is deliberate or innocent. The court may allow a limited latitude for a slip, but only where the parties seeking relief has corrected the error quickly."

45. For the claimant, Mr Sinai draws to the court's attention two authorities. In the first, *Brinks Mat Ltd v Elcombe* [1988] 1 WLR 1350, Slade LJ stated at page 1359 as follows:

> "The [duty of candour] is I think a thoroughly healthy one. It serves the important purposes of encouraging persons who are making ex parte applications to the court diligently to observe their duty to make full disclosure of all material facts and to deter them from any failure to observe this duty, whether through deliberate lack of candour or innocent lack of due care. Nevertheless, the nature of the principle, as I see it, is essentially penal and in its application the practical realities of any case before the court cannot be overlooked. By their very nature, ex parte applications usually precipitate the giving and taking of instructions and the preparation of the requisite drafts in some haste. Particularly, in heavy commercial cases, the border line between material facts and non-material facts may be a somewhat uncertain one. While in no way discounting the heavy duty of candour and care which falls on persons making ex parte applications, I do not think that the application of the principles should be carried to extreme lengths. In one or two other recent cases coming before this court, I've suspected signs of a growing tendency on the part of some litigants against whom ex parte injunctions have been granted or of their legal advisors, to rush to the R v Kensington Income Tax Commissioners [1917] 1 KB 486 principle as a "tabula in naufragio", alleging material non-disclosure on sometimes rather slender grounds, as representing substantially the only hope of obtaining the discharge of injunctions in cases where there is little hope of doing so on the substantive merits of the case or on the balance of convenience."

46. The second authority relied upon by Mr Sinai is *Kazakhstan Kagazy plc v Arip* [2014] EWCA Civ 381 where Longmore LJ endorsed the approach Lindblom J (as he then was) in *Crown Resources AG v Vinogradsky* about the right approach to be taken to the inevitably lengthy hearings which were then growing in relation to non-disclosure in respect of freezing and search and seizure orders. He said:

> "Issues of non-disclosure or abuse of process in relation to the operation of a freezing order ought to be capable of being dealt with quite concisely. Speaking in general terms, it is inappropriate to seek to set aside a freezing order for non-disclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself.
>
> Secondly, where facts are material in the broad sense in which that expression is used, there are degrees of relevance and it is important to preserve a due sense of proportion. The overriding objectives apply here as in any matter in which the court is required to exercise its discretion."

Longmore LJ continued:

> "I would add that the more complex the case, the more fertile is the ground for raising arguments about non-disclosure and the more important it is, in my view, that the judge should not lose sight of the wood for the trees.
> In applying the broad test of materiality, sensible limits have to be drawn. Otherwise there would be no limit to the points of prejudice which could be advanced under the guise of discretion."

Discussion

47. Whilst fully aware of the dangers of turning the return date for a freezing order into a "mini trial" where matters which will be in contention in the main action are summarily considered and adjudicated upon without hearing important oral evidence and on a somewhat superficial basis, it seems to me that this cannot provide a claimant who has obtained a freezing order ex parte with a "full stop" argument where a defendant seeks to defend himself and put a wholly different complexion on a case from that as it was presented to the judge when the freezing order was obtained. In some cases, the material which the defendant can put before the court presents such a different picture and presents the case in such a different light that the judge on the return date, in order to do justice to the defendant, must take a view about the alternative pictures presented and whether, had the original judge been presented with the material now presented, he or she would have made the original order.

48. Having considered in some detail the documentation produced in this case and having considered the helpful arguments of both Mr Walker and Mr Sinai, I have come to the firm conclusion that, had Stewart J been presented with the material with which I have been presented and had he considered the arguments and submissions which I have heard, he would not have granted the WFO in the first place. Although there seems to me to be strong evidence of forgery on the part of Mr Mofrad, I do not decide this application on that basis because this is not so clear cut that it would be right for me to make such a serious finding at this stage and without hearing oral evidence. However, quite apart from that, I do find that there has been material non-disclosure and a lack of candour which entitles the defendant to a discharge of this injunction. This includes:

    - A wholly implausible explanation for the payment by May Fair of $62,500, said to be in respect of watches when it is clear beyond peradventure that it was in respect of royalty payments: see paragraph 17 above;

    - The failure to disclose the credit note in relation to the invoices of 18 April 2018 and the consequent bogus claim for salary at paragraph 17 of the Particulars of Claim (see paragraph 19 above);

    - Misrepresentation in relation to the JVA and the failure to bring to the judge's attention the fact that it was strongly arguable that the liability for royalty payments on the part of May Fair was 50%, not 80%;

- A failure to account for the additional 8,000 units of stock sold (as revealed by ABG to Mr Negm) for which May Fair was entitled to credit in relation to half of the proceeds of sale;

- False invoicing for the 30,000 bottles of fragrance supplied to May Fair when this was fundamentally inconsistent with the terms and spirit of the JVA.

49. As claimed by the defendants, it is quite apparent that what is required in this case is an account of the liabilities and expenditure of each of the parties in relation to the JVA (and any other relevant business deals between them) so that who owes what to whom can be properly identified. It is by no means clear to me that this will result in a liability from the defendants to the claimant and therefore that there is a proper foundation for the granting of a freezing order.

50. The stumbling block in relation to the above seems to me to be the ca. 29,000 bottles of fragrance held to the order of Mr Negm, which are now in Egypt. With the termination of the joint licence from ABG, it appears that the defendants are no longer authorised to deal in Muhammad Ali products. The sole licensee is now DBI. In those circumstances, as I stated to the parties at the close of submissions, the sensible course would be for the bottles of fragrance to be returned by the defendants to the claimant, for the claimant to sell those bottles for the best possible price and for the proceeds of sale then to be held in an "escrow" account to abide the taking of the account between the parties and the payment of damages. On the one hand, Mr Sinai, on behalf of the claimant and Mr Mofrad, indicated that, subject to taking instructions, he could see no difficulty in such a course being taken. Equally, Mr Walker on behalf of the defendants indicated that he could see the sense and expediency of such a course. I therefore indicated that, subject to Mr Negm giving an undertaking to the court to return the 29,000 bottles of fragrance to the claimant and subject to the claimant/Mr Mofrad giving an undertaking to the court to preserve the proceeds of sale of the fragrances in an account set up for that purpose by the claimant's solicitors, I would order the discharge of the injunction.

51. It is appropriate that the costs of the application before me and the application before Stewart J should be reserved to the trial judge.