



Neutral Citation Number: [2024] EWHC 2043 (Ch)

Case No: BL-2021-001939

BL-2021-002082

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

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

Date: Wednesday, 31st July 2024

Before:

MR. JUSTICE RAJAH

Between:

BARCLAYS BANK PLC

**Claimant/
Applicant in**

- and -

(1) SCOTT DYLAN
(2) DAVID SAMUEL ANTROBUS
(3) JACK MASON

**Defendants/
Respondents**

MR. ANTHONY PETO KC and MR. JAMES KNOTT (instructed by **Eversheds Sutherland (International) LLP**) appeared for the **Claimant**

MR. IAN BRIDGE and MS. GURPRIT MATTU (instructed by **Direct Access**) appeared for the **First Defendant**

MR. JOHN MCKENDRICK KC and MR. ANSON CHEUNG (instructed by **Direct Access**) appeared for the **Second Defendant**

MR. JAMES COUNSELL KC and MR. MICHAEL UBEROI (instructed by **Janes Solicitors**) appeared for the **Third Defendant**.

Approved Judgment

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
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MR. JUSTICE RAJAH:

1. A “passport order” is an order which does three things. Firstly there is an injunction which restrains the respondent from leaving the jurisdiction. Secondly there is an order requiring the respondent to deliver up all passports and travel documents into safe custody, usually the solicitors for the applicant. Thirdly, while the order is in force, no application may be made by the respondent for any other travel document. The principles in relation to the grant of such a passport order were recently reviewed by me in a case called *Umbrella Care Ltd (In Liquidation) v Raja* [2024] EWHC 1973 (Ch). In *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 1108 (“*Pugachev*”) the relevant principles in relation to the making of passport orders were set out by Lord Justice Floyd by reference to the judgment of Mostyn J in *Young v Young* [2012] EWHC 138 (Fam). Reading from paragraph 26 of the Mostyn J judgment in *Young v Young* he said this:

“...the principles applicable to the disposal of this application are: (i) The power to impound a passport pending the disposal of a financial remedy claim exists in principle in aid of all the court's procedures leading to the disposal of the proceedings. (ii) But it involves a restriction of a subject's liberty and so should be exercised with caution. The authorities emphasise the short-term nature of the restraint. The law favours liberty. (iii) A good cause of action for a substantive award must be established. (iv) The Applicant must establish that there is probable cause for believing that the Respondent is about to quit the jurisdiction unless he is restrained. (v) The Applicant must further establish that the absence of the Respondent from the jurisdiction will materially prejudice her in the prosecution of her action. (vi) Provided that the principles in (i) – (v) are carefully observed a passport impounding order will represent a proportionate public policy based restraint on freedom of movement founded on the personal conduct of the Respondent.”

2. In *Pugachev* the Court of Appeal explained that there is probable cause for believing a respondent is about to quit the jurisdiction if there is a “real risk” that the relevant party will abscond, applying a similar test to that which one applies in freezing injunctions, provided that is proportionate in all the circumstances. *Pugachev* and *Young v Young* were cases in which the passport orders were sought before judgment but they are also available after judgment to a party wishing to enforce the judgment. In a case called *B v B* [1998] 1 WLR 329 Wilson J said this:

“It is possible to restrain a party from leaving the jurisdiction and to make a consequential order for the surrender of his or her passport. The jurisdiction exists where the other party has established a right to interlocutory relief, such as an Anton Piller order, which would otherwise be rendered nugatory. It exists where a hearing is shortly to take place, the efficacy of which would be frustrated by his absence. In my view it exists in principle in aid of all the court's procedures leading to the disposal of the proceedings. I consider that the jurisdiction is also available in some circumstances after judgment. To be

specific, it can be invoked to aid the court's established procedures for enforcement of the judgment."

3. In *Umbrella Care Ltd (In Liquidation) v Raja*, having reviewed these authorities, I went on to say:

"Like freezing orders, passport orders can be made post judgment to aid the court's enforcement procedures. I note that if there is a substantive award to enforce, Mostyn J's principle (iii) falls away. As for his principle (v) it must be read as requiring the applicant to establish that the applicant's ability to enforce the Judgment through the Court's established procedures will be materially prejudiced by the respondent's absence from the jurisdiction."

4. In this case there is no question that the absence of Mr. Mason from a sentencing hearing would materially prejudice that hearing, and the efficacy of that sentencing hearing would be frustrated. Mr Mason has been found to have committed a serious contempt and a custodial sentence is likely. His absence from the sentencing hearing would render ineffective the sanctions which the court might impose. A bench warrant could be issued in respect of his non-attendance, and that would hang over him and prevent his return to the country, but the sentencing hearing itself would be frustrated.
5. The key issue in this case is whether or not there is a real risk that Mr Mason will abscond.
6. He has no assets within the jurisdiction although he grew up in this country and was once based here. He is now, and has been since 2019, the CEO of a group of companies which were based in the UK although, as I have just explained in the judgment handed down, they were transferred out of this country and into the ownership of BVI entities in 2022, so they are no longer in that sense UK based companies. That happened in March 2022. By October 2022, Mr. Mason had relocated to Spain. So after October of 2022 his connection with the United Kingdom has become very tenuous - he has relatives here who he visits from time to time.
7. In the judgment which I have just handed down, I found that the group of companies were deliberately moved out of the jurisdiction by Mr Mason and the other Respondents notwithstanding, and in deliberate breach of, freezing orders prohibiting that movement. This is consistent with Mr Mason arranging his affairs with a view to not complying with any further orders which might be made by way of enforcement in the underlying proceedings and putting assets out of the reach of Barclays for the purposes of enforcement. The brazenness of the approach which was taken by all of these respondents in the flouting of the freezing injunction suggests that they had never had any intention of facing the music – whether by allowing the assets which have been removed from the jurisdiction to return to this jurisdiction or by complying with further orders which are made. The move to Barcelona is also consistent with such an intention.
8. That is sufficient for me to conclude that there is a real risk that Mr Mason will not return for a sentencing hearing. I am satisfied that the conditions for the making of a passport order are satisfied.

9. I am going to make a passport order of the kind which I have described. He is to be restrained from leaving the jurisdiction until the sentencing hearing. He is to hand over his passport and all other passports and all other travel documents to the solicitors for Barclays, Eversheds, and they will hold it to the order of this court and until the sentencing hearing or further order. And he will not apply in the meantime for any further travel documents.

JUDGMENT ON PERMISSION TO APPEAL PASSPORT ORDER

10. I understand why you ask, Mr. Counsell, but unless you can identify an error of law, it does not seem to me there is a realistic prospect of succeeding on an appeal and therefore I will refuse the application for permission to appeal.
