

JERSEY / JUDGMENT

# Al Tamimi -v- Al Chamaa [2017]

## JRC 176 (25 October 2017)

[2017] JRC 176

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### judgment

the commissioner: 1. On 20 th September, 2017, the Court granted the parties cited an interim anti-suit injunction against the plaintiff, and we now set out our reasons. 2. The plaintiff and the defendant are resident in Dubai and were divorced on 6 th January, 2015. On 2 nd July, 2015, the plaintiff, who is senior partner in a law firm with offices across the Middle East, brought proceedings against the defendant in Jersey claiming beneficial ownership of the parties cited, which are Jersey incorporated companies and which own real property in England. 3. The claim failed for the reasons set out in the Court's judgment of 23 rd February, 2017, ( Al Tamimi-v-Al Chamaa

[2017] JRC 033 ). The Court heard extensive evidence in relation to the parties cited, their corporate records and how they were financed. It was not in dispute that the shares in the parties cited were in the legal ownership of the defendant and that they had been funded by the plaintiff. The plaintiff's case was that the defendant held these shares as nominee for him, and that he had loaned the funds directly to the parties cited pursuant to two loan agreements dated 9 th July, 2014, which were expressed as being governed by Jersey law with the parties submitting to the non-exclusive jurisdiction of the courts of Jersey. The validity of these loan agreements was expressly at issue in the pleadings filed by the parties. 4. In short, the Court found that the defendant did not hold the shares as nominee for the plaintiff (paragraph 82), declined to strike down the company documents that showed the loan accounts were due to the defendant (paragraph 84) and accepted the defendant's explanation that the funding had been by way of gift by the plaintiff to her (paragraph 106). 5. There have been multiple proceedings instituted by the plaintiff. On 29 th May, 2015, he issued a winding-up petition against the second party cited before the English High Court on the basis of the same loan agreement. On 2 nd July, 2015, he issued these proceedings in Jersey by way of order of justice. On 25 th May, 2016, he withdrew the winding-up petition, with the Registrar, as we understand it, ordering that it was an abuse of process in the light of the Jersey proceedings. On 24 th July, 2016, he issued proceedings against the parties cited in Dubai. These proceedings were served on the administrators of the parties cited in Jersey but, it would appear, were sent on to the plaintiff's chief

executive officer, who is Ms Rachel Wunsch and who gave evidence in the Jersey proceedings on behalf of the plaintiff. The hearing of the Jersey proceedings took place between 10 th and 18 th October, 2016, and during those proceedings on 13 th October, 2016, and, as we shall see unbeknownst to the Jersey Court, the plaintiff obtained a default judgment against the parties cited in the courts of Dubai. On 15 th February, 2017, the judgment in the Jersey proceedings was issued in draft. On 27 th February, 2017, the plaintiff sought to enforce the default judgments he had obtained against the parties cited in Dubai in England. On 16 th July, 2017, the parties cited had the default judgment obtained in Dubai set aside. 6. The defendant says she was unaware of the proceedings in Dubai, something the plaintiff has doubted in his witness statement filed in the Dubai proceedings, but what is not in dispute is that neither the plaintiff nor Ms Wunsch made any reference to the proceedings in Dubai in the hearing before this Court, and indeed the fact that he had obtained a default judgment in the course of those proceedings. The Bailiff regarded this failure to disclose the Dubai proceedings as material, making this observation in his costs judgment of 7 th April, 2017:- "I do not take the view that the commencement of the [Dubai] proceedings by itself is enough or the commencement of the winding-up proceedings in the UK is enough. The non-disclosure of the [Dubai] proceedings I do, however, regard as material and this is regardless of whether Ms Wunsch knew that she had no status as a director at the time she executed the loan documentation. I think the non-disclosure is particularly material. It would undoubtedly have been capable of being used, the underlying material could have been used in cross examination both of the plaintiff and of Ms Wunsch, and the underlying [Dubai] proceedings would have needed explanation and the explanation as to the reason for those proceedings given the underlying dispute about the share ownership could have been relevant. Advocate Gardner has given an explanation, which was that it was obviously innocent, the plaintiff just wanted his money back, and so it might have been but the Jurats would not accept that from submission. They would accept that if they did from an assessment of the way in which Ms Wunsch and the plaintiff gave evidence and they were deprived of that opportunity because of the non-disclosure. So I do regard that as being material by itself but when you add the criticism of the witness presentation, which is a fair criticism to make, although as I say it is not enough by itself, I think in the round it is right that there should be some order for indemnity costs. There should be some penalty in the indemnity costs order is the right way of looking at that. I do take the view that Ms Wunsch by receiving an email which says 'we will send you the original documentation' must have known that the documentation had not gone to Ms Al Chamaa the defendant."

7. Notwithstanding the setting aside of the default judgment obtained in Dubai, the plaintiff is maintaining those proceedings. As a consequence, the parties cited have challenged the jurisdiction of the courts of Dubai over them. Strict rules apparently apply in Dubai over the timetable of such challenges and the parties cited filed their evidence on 6 th September, 2017. The plaintiff was due to file his evidence by 22 nd September, 2017. We were told that the hearing would take place on 22 nd November, 2017, although it could be earlier than that. 8. Faced with proceedings in Dubai over an issue the parties cited say

was determined in the Jersey proceedings, they issued a summons before this Court seeking anti-suit injunctions. A date-fix took place on 4 th August, 2017, attended by Advocate Gardner, acting for the plaintiff and who represented the plaintiff at the Jersey proceedings. The 20 th September, 2017, was fixed for the hearing of the application. No indication was given that there would be any challenge to the jurisdiction of this Court over the plaintiff to make the orders sought. 9. On 18 th September, 2017, two days before the hearing, Advocate Holden of Carey Olsen, gave notice that his firm had been instructed by the plaintiff in place of Bedell Cristin and he appeared at the hearing. He was not in a position to address the Court on the merits of the application for an anti-suit injunction, but he did give notice that the plaintiff challenged the Court's jurisdiction. By reference to Rule 6/7(3)(a) of the Royal Court Rules 2004 , he asked for the case to be placed on the pending list. Implicit in his position was an application for an adjournment so that he could obtain full instructions and address the Court on the merits. 10. Advocate Holden was not in a position to explain the precise basis of the challenge to jurisdiction, but indicated that it would be focused upon the difference in the two sets of proceedings, the Jersey proceedings being between the plaintiff and the defendant over the beneficial ownership of the parties cited and the Dubai proceedings being between the plaintiff and the parties cited over the loan agreements. Advocate Holden gave no explanation for the late change of representation and the late response on behalf of the plaintiff to an application he would have known about from at least 4 th August, 2017. 11. The Court proceeded to hear from Advocate Blakeley as to the merits of the application for an anti-suit injunction. The application was supported by a detailed affidavit from Ms Laurie Craig of McGuire Woods London LLP, English solicitors, who act for the parties cited and for the defendant. Advocate Blakeley submitted that anti-suit injunctions were granted in two categories of case: (i) where it is vexatious or oppressive or interferes with the due processes of the Court for a party to bring or continue a claim in a foreign jurisdiction; (ii) where the applicant has a legal or equitable right, normally a contractual jurisdiction clause, which may be exclusive or non-exclusive, to be sued in a particular jurisdiction. 12. Advocate Blakeley referred the Court to the summary contained in the White Book 2017 Edition , paragraphs 3019

- 3023, two extracts from Fentiman, International Commercial Litigation (2nd edition ) at 2.240 and 13.56/7 and the cases of Starr Reefers Pool Inc v JFC Group Co Ltd .

[2012] EWCA Civ 14 , Henderson v Henderson , [1843] 6 QB 288,11 QB 1015 Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd

[2013] 3 WLR and D.S. V. Silon-Und Vervalktungs-Gesellschaft M. B. H. v Owners of the Sennar & 13 Others

[1985] WLR. 13. In essence, under the first category, Advocate Blakeley argued that the plaintiff had invoked the jurisdiction of this Court by bringing proceedings against the defendant in which the subject Jersey companies were made parties cited, proceedings which involved the Court in hearing extensive evidence as to the beneficial ownership of the parties cited,

an exercise which required consideration as to how the parties cited were funded. The plaintiff is now attempting to resile from or undermine the judgment of this Court, the result of which was not to his liking, by continuing with the proceedings in Dubai on the basis of loans which the Jersey Court have found were due by the company to the defendant, and not the plaintiff. 14. Advocate Blakeley submitted that the second category was satisfied because the two loan agreements upon which the plaintiff relies are subject to the non-exclusive jurisdiction of the Jersey courts, and quoting from Fentiman at paragraph 240: "Third, once proceedings have begun in the designated court, neither party is entitled to sue elsewhere without satisfying the same conditions imposed on a party seeking to avoid an exclusive jurisdiction agreement. Once the named court is seized, the agreement becomes in effect exclusive. The explanation is that while the parties to a non-exclusive agreement may contemplate proceedings either in the designated court or elsewhere, it is assumed that they do not contemplate parallel proceedings once the designated court is seized. This characterization has the effect of modifying the enquiry, and in particular the threshold for avoiding the agreement. It may also be significant by supplying the basis for an action in damages for breach of contract, insofar as the claimant's obligation to sue only in the designated court will have become absolute." Decision 15. The summons seeking an anti-suit injunction had been issued under the proceedings in which Mr Al Tamimi is the plaintiff. There might be an issue as to whether it was right for them to have been so brought, as opposed to being brought by way of fresh proceedings, but to the extent that the application is properly ancillary to the proceedings commenced by the plaintiff, it is difficult to see how he can challenge the jurisdiction he himself invoked. 16. In any event, the Court considered it just that the plaintiff should be able to develop and put his arguments over jurisdiction in full, a procedure which under Rule 6/7(5) requires him to apply by summons supported by affidavit, a process that will inevitably involve delay whilst the parties cited continue to incur costs in Dubai. 17. Advocate Blakeley pressed for a final anti-suit injunction to be granted now, but acknowledging that the plaintiff had not been able to address the Court on the merits, sought to address that by the plaintiff being given liberty to apply to have the injunction set aside. The Court took the view that a final injunction should only be granted after giving the plaintiff an opportunity of being heard on the merits. However, the *prima facie* case presented by the parties cited was sufficiently strong both on jurisdiction and on the merits and the conduct of the plaintiff was of sufficient concern to justify the grant of an interim anti-suit injunction, so that no further steps can be taken by the plaintiff in Dubai pending full argument before this Court. That being the case, it is inappropriate for us to go any further into the merits of the application in this judgment. Accordingly, the Court:- (i) Granted the parties cited an interim injunction restraining the plaintiff from: - (a) continuing with proceedings with court number CF1-028-2016 in the Court of First Instance in the Dubai Financial District Centre Courts (the 'DIFC Proceedings') and (b) instigating any proceedings which subject matter is the same or substantially the same as the DIFC Proceedings in any jurisdiction other than Jersey. Save that nothing in the interim injunction shall prevent the plaintiff from defending the

jurisdictional challenge brought by the parties cited in the DIFC. (ii) Adjourned the summons for a date to be fixed to be heard after or if possible at the same time as any challenge to the jurisdiction of this Court, if made. (iii) If the plaintiff wishes to challenge the jurisdiction of this Court, ordered him to make his application by summons pursuant to Rule 6/7(5) of the Royal Court Rules within 14 days. If the summons is issued within that time, the parties will attend upon the Bailiff's Judicial Secretary for a date to be fixed for it to be heard. 18. Left costs over. Authorities Al Tamimi-v-Al Chamaa

[2017] JRC 033 . Royal Court Rules 2004. White Book 2017 Edition. Fentiman, International Commercial Litigation 2nd edition. Starr Reefers Pool Inc v JFC Group Co Ltd .

[2012] EWCA Civ 14 . Henderson v Henderson, [1843] 6 QB 288,11 QB 1015. Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd [2013] 3 WLR. D,S. V. Silon-Und Vervalktungs-Gesellschaft M. B. H. v Owners of the Sennar & 13 Others [1985] WLR. Page Last Updated: 27 Nov 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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