

JERSEY / JUDGMENT

Crociani -v- BNP Paribas Jersey Trust Corp

Ltd [2016] JCA 231 (12 December 2016)

[2016] JCA 231

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Court of Appeal 12 December 2016 Before : Sir Michael Birt, sitting as a Single Judge Between Edoarda Crociani Applicant/First Defendant And BNP Paribas Jersey Trust Corporation Limited Respondent/Third Defendant Advocate N. M. C. Santos-Costa for the Applicant. Advocate S. M. Baker for the Respondent.

judgment

birt ja: 1. This is an application for leave to appeal against the decision of the Royal Court (the Bailiff with Jurats Nicolle and Ramsden) dated 25th November 2016 rejecting the applicant's application to discharge a freezing injunction with accompanying disclosure order granted ex parte by the Bailiff on 4th August 2016. The background 2. I gratefully draw on the Bailiff's description of the relevant

background.

3. The proceedings concerning the injunction are ancillary to complex trust proceedings which are currently before the Royal Court ("the main action"). The First Plaintiff in those proceedings is a beneficiary of the Grand Trust, a trust governed by the laws of Jersey of which the First, Second and Third Defendants were trustees. The Second and Third Plaintiffs are children of the First Plaintiff. On 9th February 2010, the First, Second and Third Defendants are said to have appointed all of the assets of the Grand Trust, other than a secured long-term promissory note issued by Croci International BV in favour of the First Defendant, to a trust then governed by the laws of Jersey known as the Fortunate Trust ("the 2010 Appointment"). At the time of the 2010 Appointment, it is said that the trustees of the Fortunate Trust were the First Defendant and the Third Defendant. The Second Defendant was subsequently appointed as a trustee of the Fortunate Trust in May 2010. 4. On 30th June 2011, the First Defendant revoked the Fortunate Trust and the assets comprising the trust fund of that trust vested in her pursuant to an instrument of revocation and termination of that date ("the 2011 Revocation"). In the main action the Plaintiffs allege inter alia that the First, Second and Third Defendants executed the 2010 Appointment in breach of trust and

they seek, inter alia, the reconstitution of the Grand Trust fund and the appointment of a new trustee by the Court - alternatively they seek equitable compensation. These proceedings are defended by the First, Second and Third Defendants. 5. Until May 2015 the First, Second, Third, Fourth and Seventh Defendants were all represented by Messrs Carey Olsen, and a composite answer had been filed by that firm on behalf of the First to Fourth Defendants, followed later by an answer on behalf of the Seventh Defendant. After May 2015, the Third and Seventh Defendants chose to be separately represented and wished to amend their answers rather than rely upon the answers filed previously. The Third Defendant sought leave to amend and also to bring a third party claim against the First Defendant, and two bases were advanced for doing so. The first was that the Third Defendant was entitled to an indemnity under clause 6 of the 2010 Appointment. The second was that the Third Defendant was entitled to an indemnity under the 2011 Revocation. In due course leave to amend was granted and the First Defendant has now filed an answer and counterclaim to that third party claim. 6. The sums involved both in the main action and accordingly also in the third party claim are very substantial. It is asserted by the Third Defendant that if the Plaintiffs were to be successful in all elements of their claim for reconstitution of the Grand Trust fund, the Third Defendant would be jointly and severally liable with the First and Second Defendants for sums up to approximately US\$149 million, that being the value of the assets which the Plaintiffs allege should currently be held within the Grand Trust, but are not. In addition to those sums, reconstitution of the Grand Trust Fund could also involve the transfer of the promissory note mentioned above, the value of which is thought to be approximately €36 million. At the time of the hearing of the application for the freezing injunction, it was said that applying the then current conversion exchange rates, the total which the Third Defendant sought to have frozen was US\$194 million. 7. On 4th August 2016 the Third Defendant lodged what was called a 'Supplemental Order of Justice'. It was so called because it was supplemental to the main action and raised matters ancillary to the questions raised in the main action. By the Supplemental Order of Justice, the Third Defendant sought an injunction to freeze assets beneficially owned by the First Defendant or over which she has control, coupled with a disclosure order to support the freezing injunction, those orders being said by the Third Defendant to provide necessary protection in connection with the Third Defendant's third party claim in the main action seeking an indemnity from the First Defendant in relation to any liability which the Third Defendant may incur towards the Plaintiffs in the main action. 8. The terms of the disclosure order at para 2 of the prayer of the Supplemental Order of Justice were as follows:- "The First Defendant shall within twenty one working days of service hereof upon her inform the Third Defendant's Advocate in writing of all assets owned beneficially by her or from which she is able to benefit or which are under her direct or indirect control (to include those assets held by a third party in accordance with the First Defendant's direct or indirect instructions) in the Island of Jersey or elsewhere whether such are held in her own name or not and whether such are solely or jointly owned. In each case the First Defendant shall give the value, location and details of all such assets. The information must be confirmed in an Affidavit which must be provided to the Third Defendant's Advocate within

fifteen working days of service hereof upon the First Defendant." 9. As already stated, the interim injunction was granted by the Bailiff *ex parte* on 4th August 2016. On 22nd August 2016 the First Defendant applied to have the injunction and the disclosure order discharged in their entirety. That application was heard on 2nd September and was subsequently rejected by the Royal Court in its judgment of 25th November 2016 *Crociani -v- Crociani*

[2016] JRC 220B . The Royal Court judgment 10. At paragraph 12 of the judgment, the Bailiff summarised the submissions put forward by Advocate Santos Costa on behalf of the First Defendant as follows:- "(i) At best there was a mere contingent liability from the First Defendant toward the Third Defendant for an unascertained sum, that liability potentially arising if the Defendants are unsuccessful at trial. (ii) There is no jurisdiction to grant a freezing injunction on the basis of a contractual indemnity where the underlying loss is not yet crystallised. (iii) Injunctions could be granted as *quia timet* relief, in which case the applicant would have to show a clear right of indemnity, a clear prospect that the indemnity will be engaged (the so called "visible cloud"); and a clear indication or imminent threat or danger that the indemnity will not be honoured. On the evidence, the Third Defendant had not demonstrated that it satisfied the relevant criteria for *quia timet* relief for even if the criteria for *quia timet* are identical to those for a traditional freezing injunction, the Third Defendant had to demonstrate that the Plaintiffs had a good arguable case, and not just that it has a good arguable case for an indemnity against the First Defendant. (iv) There was no real risk of dissipation of assets on the part of the First Defendant. (v) The Third Defendant had failed to make full and frank disclosure. (vi) The Third Defendant had waited too long to seek this relief and did not come to equity with clean hands." 11. As recorded at paragraph 26 of the judgment, Advocate Santos Costa went on to submit that the correct test for *quia timet* relief in respect of an indemnity was:- "(i) There must be a sufficiently clear right to an indemnity; (ii) There must be reasonably good perhaps clear evidence that a liability will fall on the party entitled to be indemnified; and (iii) There must be clear evidence of a threat by the indemnifier to ignore his obligations." 12. The Royal Court considered first the question of jurisdiction. After discussing a number of cases including *Solvalub Limited v Match Investments Limited*

[1996] JLR 361 and *Zucker and others v Tindall Holdings PLC*

[1992] 1 WLR 1127, the Court rejected the submission that it was in effect being asked for *quia timet* relief and stated at para 25 that it regarded "the Third Defendant's application for freezing orders as a request to the Court to exercise that part of its armoury so as to ensure that if the Plaintiffs are successful at trial and the Third Defendant successful in its claim for third party relief against the First Defendant, then that order of the Court can be enforced." 13. As to the appropriate test to be applied, the Royal Court approved the formulation of the test by Advocate Redgrave (on behalf of the Third Defendant) which it had summarised at para 28 as follows:- "(i) Do the Plaintiffs have a good arguable case in the Order of Justice? (ii) If they do, does the Third Defendant have a good arguable case for

an indemnity from the First Defendant? (iii) Is there a real risk that the Third (this is the word used in the judgment but it is clearly an error for 'First') Defendant will dissipate her assets so as to frustrate any judgment in favour of the Third Defendant in respect of the indemnity." 14. The Royal Court then considered the facts of the case and, for the reasons set out at paragraphs 31 - 58, it answered the above three questions in the positive and considered that, in its discretion and notwithstanding the points raised by the First Defendant concerning delay, full and frank disclosure and clean hands, the balance of convenience lay in favour of maintaining the injunctions. 15. At the hearing on 25th November when the judgment was handed down, the Royal Court refused leave to appeal, no doubt bearing in mind that, in interlocutory matters, leave may be obtained from the Court of Appeal and it is often preferable to leave the Court of Appeal to decide whether it wishes to hear the case. Time for compliance with the disclosure order was extended to 2nd December. 16. The First Defendant filed an application for leave to appeal on 28th November and I subsequently granted a stay of the disclosure order until the hearing of the application for leave to appeal, which was fixed for 7th December. Test on appeal 17. The test for determining whether leave to appeal should be granted is well established. In *Crociani v Crociani*

[2014] (1) JLR 426, *Beloff JA* held (at para 40) that in order to obtain permission to appeal, an appellant must show that:- (i) the appeal has a real prospect of success; (ii) a question of general principle falls to be decided for the first time; or (iii) there is an important question of law upon which further argument and a decision of the Court of Appeal would be to the public advantage. 18. In relation to appeals against an exercise of discretion by the Royal Court, the Court of Appeal will only interfere if the Royal Court:- (i) has misdirected itself as to the principles governing the exercise of its discretion; (ii) has taken into account matters which it ought not to have done or failed to take into account matters which it ought to have done; or (iii) reached a decision which is plainly wrong. 19. In her application for leave to appeal, the First Defendant maintains that the Royal Court erred in law in determining that there was jurisdiction to grant a freezing injunction where there was no accrued cause of action but merely a contingent, unascertained liability potentially arising under an indemnity. She further contends that the Royal Court erred in law in concluding that the relief sought in the Supplemental Order of Justice was a *Mareva* injunction rather than a *quia timet* injunction. She further contends that the Court misdirected itself as to the appropriate test to be applied on the granting of injunctive relief in this case either by reference to the dicta of Lord Nicholls in *Mercedes Benz AG v Leiduck*

[1996] AC 284 to the effect that the discretion to grant freezing injunctions should be exercised with "particular caution" in the case of a prospective cause of action or having regard that the relief sought ought more properly to be characterised as *quia timet* relief. 20. The application for leave to appeal then goes on to raise a number of other grounds in relation to the Royal Court's decision which, in view of the decision I have come to, I do not need to summarise. 21. I have concluded that it would be right to grant leave to appeal in this case

on the basis of grounds (ii) and/or (iii) as summarised at para 17 above. I consider it would be useful for the full Court of Appeal (rather than a single judge) to consider the nature of the injunctive relief sought in this case and the test which should be applied when considering whether to grant such an injunction. In so concluding, I am not to be taken as expressing a view on the prospects of success ie ground (i). However, having decided to grant leave, I do not restrict leave to any particular grounds of appeal as set out in the application for leave to appeal. The First Defendant is therefore free to pursue all the grounds of appeal listed in her application for leave to appeal. Stay of the disclosure order pending appeal (i) The law 22. The issue of whether there should be a stay of a disclosure order ancillary to the freezing injunction pending a challenge to the grant of the freezing injunction (whether by way of inter partes challenge or on appeal) has been the subject of consideration in the English Courts. 23. In *Motorola Credit Corporation v Uzan*

[2002] EWCA Civ 989 the Court of Appeal was concerned with an application to stay a disclosure order made ex parte pending the inter partes application to set aside the freezing order (and therefore the accompanying disclosure order). David Steel J at first instance refused a stay on the ground that it would be prima facie inappropriate to carve the order up so as to allow the restraining order to stand but the mandatory requirements for disclosure to be put on hold pending the challenge. His decision was upheld by a majority of the Court of Appeal. At para 29, Waller LJ said this:- "29. In my view, in the light of the above citation from Steyn LJ the attack that David Steel J misdirected himself is unfounded. ... The factors that weigh with me are these. First, although it is an invasion of privacy to force any party to disclose assets, a freezing order in normal circumstances simply cannot be effective without that disclosure. Once one has the situation which did exist in this case, which was that on 13th June it was accepted that the freezing order should continue, then prima facie David Steel J is right in saying that a disclosure provision would be the normal provision so that that freezing order can be properly policed and be effective." 24. Consideration was also given to this issue in the case of *Raja v Van Hoogstraten*

[2004] 4 All ER 793 . This was a complicated case where the defendant had failed to comply with the disclosure provisions of a freezing order which had been obtained ex parte. In very unusual circumstances - the Court mislaid the defendant's application to set aside the freezing order and accompanying disclosure order and the High Court had held the defendant to be in contempt by not complying with the disclosure requirements despite his not having an opportunity to address the Court - the Court of Appeal had to consider an appeal against the finding of contempt. However, in passing Chadwick LJ made some helpful remarks and I think it is worth citing them in full as follows:- "104 The problem in cases where an order for disclosure has been made at the same time as, and in order to give teeth to, a freezing order made without notice to the defendant, is that the freezing order may be set aside after hearing full argument on both sides. If so, it will then be seen that there was no proper basis for the disclosure order. But by that time the Defendant may have been irremediably prejudiced by the disclosure of assets which he should not have been required to disclose. On the other hand, if it is held after full argument that the

freezing order should stand, then the claimant may be irretrievably prejudiced if the order has not been capable of being policed in the meantime. The court is faced with the position, (familiar, also, in other contexts), that whichever course it takes on an application which has to be decided without full argument may lead to irretrievable prejudice to one side or the other. There is a balance to be struck. The need to strike a balance between the prejudice to the defendant if he is required to disclose assets which it is later held he should not have been required to disclose and the prejudice to the claimant if the defendant is not required to disclose assets which it is later held that he should have been required to disclose, was recognised by this court in the Motorola case. The decision in that case illustrates that there is no general rule that a party against whom a freezing order has been made is entitled to a stay of the disclosure obligations ancillary to that order until after it has been finally determined whether the freezing order should stand. Indeed, it provides support for the proposition that, in a normal case, a stay of the disclosure obligations is likely to be refused. But it is no authority for the proposition that the defendant will always be refused a stay of the obligation to make disclosure pending the final determination of his application to set aside the freezing order ; no authority for the proposition that, notwithstanding that his application to set aside the freezing order is made before the time at which he has to make disclosure, the question whether or not the obligation to make disclosure should be stayed pending the final determination of that application need not be entertained by the court; and no authority for the proposition that, having made an application within time, he should not be heard on that application (or on the question of an interim stay) until he has first made the disclosure to which he objects." [Emphasis added] 25. Both these cases were considered in this jurisdiction in the case of *United Capital Corporation v Bender*

- [2006] JRC 045 where the Court approved the approach set out by Chadwick LJ in *Van Hoogstraten* . I was the judge in that case and I went on to say at para 7:- "I must therefore consider where the balance comes down in this case because it is a matter of judicial discretion and there is no absolute rule one way or the other; but I do endorse the proposition in *Motorola* which appears to be supported in *Van Hoogstraten* , that, in a normal case, a stay of the disclosure obligation is likely to be refused notwithstanding a challenge to a freezing order." Neither party before me sought to challenge the correctness of the approach laid down in *Bender* . (ii) Submissions of the First Defendant 26. Before turning to summarise the submissions of the First Defendant, I should add that, in an open letter from Baker and Partners dated 2nd December 2016, the Third Defendant said that, if leave to appeal were granted, it would be prepared to offer an undertaking that it would not use any information disclosed by the First Defendant pursuant to the Supplemental Order of Justice for the purposes of obtaining injunctions or asset preservation orders in other jurisdictions pending the determination of the appeal. 27. Advocate Santos Costa submits, that if leave to appeal is granted, the disclosure orders in the Supplemental Order of Justice should be stayed pending appeal. He refers to the well-established principle that the Court will grant a stay where to refuse to do so would render

the appeal nugatory unless the Court is satisfied that the appeal is not bona fide, has no realistic chance of success or there are other exceptional circumstances; see *Veka AG v T A Picot (CI) Limited*

[1999] JLR 306 . 28. I would summarise his submissions as follows:- (i) He submitted that there was a significant difference between the present case and that of *Bender* and the other cases referred to in *Bender* . In all those cases, there had been a discretionary decision by the court of first instance as to whether to grant a *Mareva* injunction. Any appeal would therefore be against the exercise of that discretion and it was well known that this was a difficult ground of appeal upon which to succeed. Conversely, in the present case, the submission on appeal would be that the Royal Court had no jurisdiction to grant the freezing injunction because, when properly analysed, the relief sought was in the nature of *quia timet* relief where the test for granting an injunction was different from and higher than the test in the case of a *Mareva* injunction. If the Royal Court simply had no jurisdiction to grant the freezing injunction in question, it would be wrong not to stay the accompanying disclosure order. (ii) Turning to consider the possible prejudice to the Third Defendant if a stay were granted, he submitted that there would be very little prejudice. (a) The Third Defendant had delayed from February 2016 (when it was allowed to bring the third party claim against the First Defendant) until August 2016 before seeking an injunction. There had therefore presumably been no concern about dissipation of assets by the First Defendant in that period. (b) There had been a delay of some 12 weeks between the hearing of the application to discharge the injunction on 2nd September and the decision of the Royal Court to reject that application on 25th November. Throughout that time the disclosure order had been stayed. If the Third Defendant was content for such a stay for those 12 weeks, it could not realistically be argued that a delay of a further 6 weeks or so until the hearing of the appeal at the January sitting in the Court of Appeal would materially prejudice the Third Defendant. (c) Most significantly, the Third Defendant had offered the undertaking, (referred to at para 26 above) not to institute mirror proceedings in any other jurisdiction pending the appeal. There would therefore be no effective policing of the freezing injunction. The whole purpose of a disclosure order was to enable such an injunction to be policed. If the Third Defendant was relaxed enough about the risk of dissipation and the need for policing to give such an undertaking, there could be no need for the Court to insist on disclosure pending appeal. (d) There could be no realistic risk of dissipation of assets by the First Defendant in the period pending appeal. The First Defendant had been party to the main action for some four years and had had ample opportunity to dispose of assets if that was what she wished to do. There was no reason to suspect that she would suddenly start disposing of assets between now and the hearing of the appeal in January. The Royal Court had relied on certain matters set out in its judgment as showing a risk of dissipation but when properly analysed, these reasons were not sufficient to justify the Royal Court's conclusion. For example, the evidence before it suggested that the decision to replace *Appleby Trust (Mauritius) Limited* as trustee of the Grand Trust by *GFIN Corporate Services Limited* was

instigated by Appleby Mauritius, not at the behest of the First Defendant. (e) In any event, the Third Defendant already had considerable knowledge of the assets of the First Defendant because it had been the trustee of both the Grand Trust and the Fortunate Trust and there had been a close professional relationship between the Third Defendant and the First Defendant. (iii) Conversely, he submitted, the First Defendant would suffer enormous prejudice if the disclosure order was not stayed. (a) The appeal would indeed be rendered nugatory. Once information has been disclosed, the disclosure cannot be reversed. Thus, even if the appeal is successful, the Third Defendant will remain aware of the disclosed information. Such information may have been passed to affiliates of the Third Defendant and the Third Defendant would retain an understanding of the First Defendant's asset position. (b) The Third Defendant might use the asset information to its strategic advantage in the main action. (c) In the absence of the proposed undertaking, the Third Defendant was likely to use the information disclosed to obtain mirror injunctions or similar orders in other jurisdictions. Those mirror injunctions or orders might be deemed to be in support of the main action and therefore not conditional on the continuation of the Jersey injunction. It followed that the discharge of the freezing injunction on appeal might be to no avail as the injunctions in other jurisdictions could nonetheless continue. In that event, a successful appeal resulting in the discharge of the freezing injunction by the Court of Appeal would be a pyrrhic victory and the appeal would be rendered nugatory. (d) The information disclosed might become available to the Plaintiffs whether via the affidavit verifying the disclosure and lodged at the Judicial Greffe or otherwise. The Plaintiffs' advocates had already asked to see information about the proceedings before the Royal Court and there was a representative of the Plaintiffs' advocates present at the current hearing before me. There could be no doubt that knowledge by the Plaintiffs of the detailed financial position of the First Defendant could be used to their advantage in the main action. (iv) The First Defendant's human rights were engaged pursuant to the First Protocol Article 1 of the ECHR - I would add that it seems to me that it would be Article 8 which would be of more application in relation to a disclosure order. The disclosure order constituted an interference with those rights and it followed that any order had to be proportionate. It was submitted that disclosure of the information pending appeal was not proportionate because it was not necessary. The assets would be preserved pending appeal simply because of the existence of the freezing injunction. The disclosure was also not proportionate because it was in effect irreversible. Decision 29. I have carefully considered the points made forcefully by Advocate Santos Costa. I accept that, as set out by Chadwick LJ in the passage quoted at paragraph 24 above, I must strike a balance between the prejudice to the First Defendant if she is required to disclose information about her assets which (if she is successful on appeal) she should not have had to disclose and the prejudice to the Third Defendant if the First Defendant is not required to disclose information about her assets which (following an unsuccessful appeal) she should have been required to disclose. 30. Having carried out that exercise, I have concluded that there should be no stay of the disclosure order pending appeal. I would summarise my reasons as follows:- (i) I do not accept the submission of Advocate Santos Costa at para 28(i) that

the nature of the appeal in this case makes a difference. In the ordinary case, an appellant argues that the court below was wrong to grant a freezing injunction because it wrongly exercised its discretion; in the present case it is argued that the court below wrongly granted an injunction because it mis-characterised the nature of the injunction in question and therefore applied the wrong test. In either case, the argument before the Court of Appeal is that the injunction should not have been granted and that the appeal should therefore be allowed with the consequence that the disclosure order will fall away. I cannot myself see that it makes any difference to the approach of this Court on the question of a stay of the disclosure order pending appeal whether the criticism of the court below is based upon its wrongful exercise of a discretion or an error of law as to the nature of its jurisdiction. If the merits of the proposed appeal appear to be extremely strong, that could no doubt be a relevant factor; but that would be so whether the appeal was based upon a faulty exercise of discretion or on an error of law. I do not consider that the present case is one where the prospects of a successful appeal are so strong that this should be a material factor in my decision. (ii) Turning to the question of the prejudice to the Third Defendant if a stay is granted, I accept that the Third Defendant delayed from February to August 2016 before seeking an injunction. However, it explained - which explanation appears to have been accepted by the Royal Court - that it was the decision of the Supreme Court of Mauritius on 5th July 2016 which was the trigger for taking action because that court found that the purpose of inserting an exclusive jurisdiction clause in the deed appointing GFIN as trustee in place of Appleby was in order to circumvent and defeat the effect of the judgment of the Privy Council as to Jersey being the appropriate forum. As to the failure to apply to lift the stay of the disclosure order in the 12 week period before the Royal Court reached its decision, Advocate Baker explained very frankly that he did not expect the Royal Court to take that long to deal with an injunction matter and therefore expected the judgment to be delivered at any moment. Taken in the round, I do not consider that either of these delays amount to sufficient reason to grant a stay at this stage. (iii) In my view, Advocate Santos Costa's strongest point in relation to lack of prejudice to the Third Defendant concerns the undertaking. He submitted that there was in effect going to be no policing of the injunction in the period leading up to the appeal and that the sole reason for courts refusing to stay disclosure orders when a freezing injunction is under appeal is that the injunction needs to be policed in the meantime. If no policing was going to be taking place, what was the point of the disclosure order? Advocate Baker's response to this was that the disclosure order would still serve an important purpose in ensuring that the injunction was obeyed by the First Defendant. The Third Defendant needed to know the location, nature etc. of the assets now so as to be able to ascertain whether there had subsequently been any dissipation. Once she knew that the Third Defendant knew what her assets were, it was far less likely that the First Defendant would dispose of or seek to hide any assets. If she did, she would be in contempt of court and the Royal Court would have various sanctions available to it to enforce the order. If there was no disclosure until after an unsuccessful appeal, it would be far more difficult for the First Defendant to establish any dissipation as it would have no satisfactory starting

point. Furthermore, it was wrong to say that there would be no policing because of the undertaking. Once the nature of the assets was known, steps could be taken to try and keep a watching brief as to any disposal eg the sale of artwork at Sothebys. In addition, steps could be taken to prepare for taking any necessary proceedings in other jurisdictions so that the Third Defendant would be ready to move quickly, if necessary, should the appeal be dismissed. Thus, although the policing would be more limited than in the normal case (where proceedings in other jurisdictions could be taken) the disclosure order was still necessary in order to ensure that the injunction was effective. (iv) I accept the submission of Advocate Baker on this score. It seems to me that, in the absence of disclosure, a freezing injunction is very hard to enforce and the authorities are consistent in saying that a disclosure order is necessary in order to police a freezing injunction. If there is no disclosure until after any unsuccessful appeal, there will in effect be a complete inability to police the injunction in the meantime. I consider that disclosure of the First Defendant's current assets will assist in discouraging any dissipation (should the First Defendant be minded to do so) and in enabling the Third Defendant and the Court to identify and seek to rectify any dissipation should it occur. (v) I note the point made by Advocate Santos Costa (at para 28(ii)(d)) about the lack of risk of dissipation. However, this is a case where, as set out in the Bailiff's judgment, the Royal Court has found that there is such a risk. It is of course open to the First Defendant to argue before the Court of Appeal that the Royal Court was wrong to so find. But at this interlocutory stage, I cannot ignore the fact that the Royal Court has held there to be a risk of dissipation sufficient to justify the imposition of the freezing injunction. (vi) As to the suggestion that the Third Defendant already knows much about the First Defendant's assets, I accept Advocate Baker's response to the effect that such knowledge is not complete and that it is historic, so is likely in many cases to be out of date. (vii) Turning to the prejudice identified by Advocate Santos Costa as being suffered by the First Defendant should I refuse a stay, I consider that much of this can be mitigated. In the first place, the Third Defendant has offered the undertaking, which the Court proposes to accept. That will mean that the First Defendant will not be faced with proceedings in any other jurisdiction pending appeal. (viii) As to the risk of disclosure to the Plaintiffs, I accept the point made by Advocate Santos Costa that this would be wrong. The freezing injunction is sought by the Third Defendant alone and the information is supplied under the disclosure order simply so that the Third Defendant (and consequently the Royal Court) can police the injunction. The Plaintiffs are not party to these supplemental proceedings and I see no reason why they should become so. I see no proper reason for any information supplied pursuant to the disclosure order to be given to the Plaintiffs without the leave of the Court. Advocate Baker made it clear that the Third Defendant was willing to agree to such a restriction and accordingly I shall be ordering that any information supplied to the Third Defendant pursuant to the disclosure order may not, without the leave of the Royal Court or this Court, be given to any other person (other than its legal advisers). That includes passing information to any associate companies of the Third Defendant. This should mean that, if the appeal is successful, the disclosed information will not come into the hands of any

other person including the Plaintiffs. (ix) I accept that the information will remain known to the Third Defendant but I cannot at this stage see that as being a particularly significant prejudice to the First Defendant and she has not identified anything other than a general fear to that effect (see para 7 of her affidavit of 5th December 2016). (x) As to the point concerning the First Protocol of Article 1 and Article 8, I accept that the disclosure order is an infringement of the First Defendant's right to respect for her private life but I regard such interference as being proportionate. The fact is that the Royal Court, having heard an inter partes application and considered the matter, has concluded that there is a risk of dissipation such as to justify a freezing injunction. I accept that this conclusion is challenged on appeal but nevertheless that is the view of the Royal Court having heard submissions from both parties. In those circumstances, for the reasons set out in *Bender* and the cases cited there, it is entirely proportionate to conclude that, for so long as the injunction remains in place, the accompanying disclosure order may also remain in place if it is necessary in order to police the injunction. (xi) As to the argument that the appeal will be rendered nugatory if a stay is not granted, a successful appeal will result in the discharge of the freezing injunction and the disclosure order, which will clearly be very significant for the First Defendant. I accept that the information disclosed in the meantime pursuant to the disclosure order cannot be retrieved but, for the reasons set out in *Bender* and the cases cited there, this is something which has to be taken into account in the balancing operation but is not determinative on the question of a stay. 31. In summary, for the reasons set out above, I consider that, on the facts of this case, the arguments in favour of rejecting a stay of the disclosure order pending appeal outweigh those in favour of a stay and accordingly the balancing exercise referred to in *Bender* comes down in favour of rejecting the First Defendant's application for a stay of the disclosure order. 32. As to timing, the Royal Court ordered disclosure within 48 hours (although this was subsequently stayed first by the Royal Court and then by me). Advocate Baker suggested that 48 hours from the date of my decision would be appropriate given the amount of time that the First Defendant has had to prepare for the possibility of a disclosure order being made and Advocate Santos Costa did not seek to argue for any longer period. 33. In the circumstances, noting and relying upon the undertaking given by the Third Defendant, I direct that disclosure in accordance with the Supplemental Order of Justice must be given by the First Defendant by close of business on 14th December 2016. I further direct that any information provided by the First Defendant to the Third Defendant pursuant to the disclosure order is not (subject to any further order of the Royal Court or this Court) to be supplied by the Third Defendant to any person (including any of its affiliates or associated companies) other than to its legal advisers. *Authorities Crociani - v- Crociani*

[2016] JRC 220B . *Solvalub Limited v Match Investments Limited*

[1996] JLR 361 . *Zucker and others v Tindall Holdings PLC* [1992] 1 WLR 1127. *Crociani v Crociani* [2014]

(1) JLR 426. Mercedes Benz AG v Leiduck

[1996] AC 284 . Motorola Credit Corporation v Uzan

[2002] EWCA Civ 989. Raja v Van Hoogstraten

[2004] 4 All ER 793 . United Capital Corporation v Bender

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