

JERSEY / JUDGMENT

Crociani v Crociani and Ors [2018]

JRC 230C (14 December 2018)

[2018] JRC 230C

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judgment

the COMMISSIONER: 1. The Third Defendant applies for two orders, firstly to widen the scope of the post-judgment worldwide freezing order dated 11 th September, 2017, in so far as it relates to disclosure on the part of the Fifth Defendant, and secondly for the Fifth Defendant to provide a full copy of the 22 page document Advocate Hoy, then acting for the Fifth Defendant, produced to the Court at a hearing on 2 nd November, 2018. The 2 pages produced appear to show the Fifth Defendant has filed a criminal complaint against the Third Defendant and others in Monaco. It is not known why, and Advocate Hoy has not explained in correspondence why he produced that partial extract other than to say he was instructed to do so. 2. In this judgment we are not going to go into the background of this matter which is contained now in a number of earlier judgments. In essence the Third Defendant is seeking to enforce the judgment it has against the First Defendant for which it needs disclosure as to where her assets are located and how they are held. In the absence of any disclosure from the First Defendant the Fifth Defendant is a party most likely in its view to have up to date and accurate evidence about the First Defendant's assets, bearing in mind the well documented close connection between them. 3. Under the terms of the post-judgment worldwide freezing order made on 11 th September, 2017, the following order was made: "The First Plaintiff and the Second, Fourth, Fifth and Eighth Defendants shall within 28 working days of service hereof upon them or such longer period as the Third Defendant may agree, inform the Third Defendant's Advocate in writing of all assets which they believe, whether on the basis of information held by them or for which they are entitled to call, are owned beneficially by the First Defendant 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. For the avoidance of doubt this includes any asset which is purportedly beneficially owned or controlled directly or indirectly by the Fifth Defendant, where it is reasonable to infer that in reality such asset may be held for the benefit of the First Defendant. In each case the parties shall, where they have such information, give brief particulars of the value, location and details of all such assets. Where the information which the parties have is not current, the parties shall specify the approximate date upon which they obtained such information. The parties are not required to disclose information

which has already been disclosed in the trial papers in this action nor to disclose any documents which are subject to legal professional privilege. The information must be confirmed in an Affidavit exhibiting all relevant supporting documents, which must be provided to the Third Defendant's Advocate within fourteen working days after providing the information." 4. In her affidavit of 7 th December, 2018, Lynn Gregory, a senior associate of Baker and Partners who act for the Third Defendant, details the disclosure that has been made by the Fifth Defendant pursuant to that order and why the Third Defendant believes that the Fifth Defendant has not properly complied with her obligations. The matter has been the subject of lengthy correspondence over the course of this year culminating in a comprehensive letter from Baker and Partners to Advocate Hoy on 9 th October, 2018, complaining over the failure of the Fifth Defendant to respond to requests for information and giving notice of the further disclosure orders it would be seeking. In particular the Fifth Defendant was put on notice that the Third Defendant would ask for orders relating to the Fifth Defendant's knowledge of valuable art work at one stage owned by the First Defendant in the light of pima facie evidence that the Fifth Defendant was actively involved in their movement and possible part ownership since October 2015. 5. In terms of the law, the Court's ability to order disclosure in support of the execution of judgments has been affirmed in a number of Jersey cases. These cases have approved the dicta of Colman J in *Gidrxslme Shipping Co. Ltd. v Tantomar-transportes Maritimos Lda*

[1995] 1 W. L. R.299 which provides as follows: "It is to be observed, however, that both in *Ashtiani v. Kashi* and in *Derby & Co. Ltd. v. Weldon* (Nos.3 and 4) the courts were concerned with pre-judgment orders which included Mareva injunctions. The orders for disclosure were therefore orders ancillary to those injunctions. There was no question of there being any other order in support of which a disclosure order could be justified. Where, by contrast, one has the position that a judgment has been already obtained or an award made and where a Mareva injunction in aid of execution is justified, the jurisdiction to make a disclosure order arises both as a power ancillary to and in support of the injunction and independently of the injunction as a power in support of the execution of the judgment or award" 6. In *Jomair Leasing v Hourigan*

[2011] JRC 042 the court confirmed "...that the threshold for obtaining disclosure in aid of execution of a judgment or award is much lower than where disclosure is sought in support of a pre-trial freezing injunction." The court further confirmed that the jurisdiction extends to third parties not just the defendant:- "We note that disclosure is sought from the party cited rather than the defendant but this does not affect the position. The essential principle remains that the Court can make disclosure orders whether against a defendant or third parties in order to aid in the execution of a judgment or award and the interests of justice would usually point in favour of ordering such disclosure." 7. Such orders are made pursuant to the inherent jurisdiction of the court rather than under the Norwich Pharmacal jurisdiction. In the case of *ENRC v Zarmin Ferrous Limited*

[2015] JRC 217 the court suggested the rational is to avoid freezing orders becoming "toothless" . The court also noted that disclosure orders post judgment should be more readily made:- "In our view, the Court has a wide discretion in a post judgement case to order further disclosure and ordinarily it is just and convenient to do so in order to effectively police the freezing order and so that the judgment creditor has all the information he needs to execute the judgment anywhere in the world; the whole for the purpose of ensuring that the judgment obtained is not rendered nugatory" 8. The main thrust of the new disclosure order sought by the Third Defendant is to ascertain the Fifth Defendant's knowledge of the First Defendant's assets going back to 6 th July, 2015, when the Third Defendant first gave notice it would be enforcing its indemnity against the First Defendant and her knowledge of specific matters relating to the art work and the whereabouts of the portfolio which was appointed out of the Grand Trust effectively for the benefit of the First Defendant. 9. The application sought is accompanied by the usual undertaking which is in these terms:- "to pay the reasonable costs of the Fifth Defendant incurred as a result of complying with this Order and, if the Court later finds that this order has caused her loss and decides that she should be compensated for that loss by the Third Defendant, the Third Defendant will comply with any Order this Court may make as to damages" 10. However, the Fifth Defendant has now dispensed with the services of Advocate Hoy and wishes to instruct Advocate Steenson. Some £250,000 is owing in fees to Advocate Hoy's firm and he has objected to Advocate Steenson going on the record until they are discharged. Advocate Steenson therefore, appeared before us on the very limited basis of applying for an adjournment, but not otherwise instructed on the two applications. His application was to adjourn both matters to the 14 th February, 2019, a date which at one stage was reserved to deal with both the disclosure application and a summons Advocate Hoy proposed pursuing seeking to set aside the disclosure orders in their entirety. That summons has not been issued and at the date fix held on 21 st November, 2018, which Advocate Hoy did not attend but of which he was notified, the 13 th December was fixed for the hearing of both of the applications of the Third Defendant. The summonses were issued for that date and sent to Advocate Hoy who responded that he was no longer instructed and had sent the enclosures to the Fifth Defendant. 11. Advocate Steenson said the Fifth Defendant was under the impression that whilst the application in relation to the criminal complaint was to be heard on 13 th December, 2018, the application in respect of the disclosure order was to be heard on 14 th February, 2019. He said there was no prejudice to the Third Defendant in both matters being adjourned to 14 th February, 2019, but prejudice to the Fifth Defendant who would be deprived of the opportunity of denying the allegations that she had not complied with the current disclosure order, allegations he said which were tantamount to saying she was in contempt of court. He also suggested that the Third Defendant may be making these allegations as a means of frustrating the Fifth Defendant's application to Privy Council for leave to appeal against the substantive judgment of the Court of Appeal. 12. There is nothing to say that the fee dispute with Advocate Hoy will be resolved in time to allow Advocate Steenson to come on the record for the 14 th February, 2019. Unless it is amicably resolved the only way of progressing the issue is for the fee

dispute to be sent to the Law Society for adjudication to which both parties must agree and which can take months, or for him to apply for an order allowing him to represent the Fifth Defendant on terms as to security for Advocate Hoy's fees, which again would take time. 13. The following points arise in our view:- (i) The Fifth Defendant has had ample notice of this application and she has provided no reason in correspondence why she should not produce the information sought. (ii) The fee dispute with Advocate Hoy is a matter for her to resolve, but it cannot be allowed to impede the enforcement of the Third Defendant's judgment. (iii) The applications are for information, and if the Fifth Defendant has information there can be no prejudice to her supplying it. All of her reasonable costs will be discharged by the Third Defendant in so far as the disclosure application is concerned. (iv) There is a history in this case of the First Defendant and the Fifth Defendant working together to frustrate the claims of others to assets they control. (v) Any delay in the provision of information about the assets of the First Defendant is prejudicial to the Third Defendant. It has paid out over \$100million in respect of assets which were appointed out to the First Defendant or for her ultimate benefit. 14. Advocate Steenson was concerned that the Court in making disclosure orders would be making findings of fact against the Fifth Defendant of a serious nature, akin to finding that she is in contempt of the Court's orders. This is not the case. We make no such findings against the Fifth Defendant, but we are satisfied on the evidence before us that she has information that would assist the Third Defendant in the enforcement of its judgment and we can see no reason why that information should not be provided and indeed every reason why it should be provided promptly. 15. The criminal complaint in Monaco is a discreet issue. We can understand that such complaints might ordinarily be confidential but the Fifth Defendant has chosen to reveal it in part in proceedings here. The order sought makes it clear that she should comply with the order for disclosure of the remainder of the document only to the extent permitted by Monaco Law, and she is therefore protected from jeopardy in that respect. If Monaco Law makes it illegal for her to disclose this information to this court then it does not have to be disclosed, but she must produce clear legal advice to that effect. 16. In conclusion, we refuse the application for an adjournment and we grant both applications and make the orders in the form of the drafts submitted to us. *Authorities Gidrxslme Shipping Co. Ltd. v Tantomar-transportes Maritimos Lda* [1995] 1 W. L. R.299. *Jomair Leasing v Hourigan*

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