

JERSEY / JUDGMENT

Dresser-Rand BV v Al Rushaid Petroleum Investment Company and Ors [2021] JRC 321 (21 December 2021)

[2021] JRC 321

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judgment

the COMMISSIONER: 1. This judgment is concerned with whether the Court has jurisdiction, and if so, whether it should exercise that jurisdiction, to make a worldwide disclosure order against the Defendant. 2. The Plaintiff is incorporated in the Netherlands and the defendant in Saudi Arabia. They entered into a Business Venture Agreement ("BVA") on 18 th March 2009 (later amended) governed by English law to manufacture steam turbines, the packaging of centrifugal and reciprocating compressors and the provision of various services and technical support and this through the First Party Cited Dresser-Rand Arabia LLC, ("Dresser-Rand Arabia"), a company incorporated in Saudi Arabia, owned as to 50.1% by the Plaintiff and 49.9% by the Defendant. The joint venture has no connection with Jersey. Dresser-Rand Arabia did not appear in these proceedings and the Court was informed by Advocate Holden that it was deadlocked and therefore unable to act. 3. The Plaintiff claims that the Defendant has failed to honour its commitments under the BVA, in particular to make capital contributions to Dresser-Rand Arabia and the dispute was referred by it to arbitration in accordance with the terms of the BVA, which provides that the seat of any arbitration would be Dubai, United Arab Emirates and which arbitration would be conducted under the International Chamber of Commerce Rules ("ICC"). Each party nominated a co-arbitrator who jointly nominated a chairman (the "Arbitral Tribunal"). Without going into the procedural history of the arbitration, the Defendant withdrew from participation and on 29 th July 2019, the Arbitral Tribunal found that the Defendant had breached its funding obligations under the BVA and ordered by way of specific performance that it should pay Dresser-Rand Arabia the amount of US\$43,241,187.00. We will refer to this as "the Award". The Defendant was also ordered to pay to the Plaintiff legal and related costs of the arbitration in the sum of US\$2,281,094.93 and US\$268,000 in respect of ICC administrative expenses and the Arbitral Tribunal's fees and expenses. Steps to enforce the award 4. In September 2019 the Plaintiff submitted an application to the United States District Court, Southern District of Texas, Houston Division, for the recognition and enforcement of the Award, which application was refused on the grounds that the US courts did not have jurisdiction over the Defendant and on forum non conveniens grounds on the basis that the dispute is most closely connected with the Kingdom of Saudi Arabia. 5. The Plaintiff made an application to the English High Court by claim

form dated 4 th February 2020 for the recognition and enforcement of the Award and on 12 th March 2020 obtained an order permitting the Award to be enforced in the same manner as a judgment of the English courts. The application was made for the purpose of enforcing the Award against the Defendant's assets in England and Wales. No steps were taken by the Defendant to apply to set aside the order. 6. The Plaintiff sought to enforce the Award against the Defendant in Saudi Arabia. The translation of the short judgment of the Court of Enforcement in Al Khobar, First Department of Enforcement, of the 17 th September 2020 recites the submissions of the parties as to the enforcement of the Award, and says this: "When the pleading reaches this point, I decided to stop the electronic pleading, and in another session the attorney of the plaintiff/ Yazid Muhammad Saad Al Hammali attended, civil registration No. 1088403199 and the attorney of the defendant, Abdullah Muhammad Abdulaziz Al Amro, attended civil registration number 1089798134.

Reasons

Based on the aforementioned facts of the case and the answer and because the verdict on which the application for execution is based has stipulated that the amount of the claim is to be paid to Dresser Rand Arabia and since the application submitted to us bears the name of different claimant and a different commercial registry, which makes it impossible to continue the enforcement.

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Accordingly, and for all the above, the department has decided to reject the execution request and not continue with it because of the above reasons and the inclusion of this decision in terms of urgency and the plaintiff and the defendant may object to this decision within ten (10) days starting from Sunday 03/02/1442H, and God grant success. The signature of the head of the department Mohammad Walid Khaled Al-Azman" 7. We understand that there has been no objection to or appeal against this decision. No evidence as to the law of Saudi Arabia has been provided to the Court, but we are told that Saudi Arabia is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 th June 1958 ("the Convention"). 8. On the 23 rd November 2020 the Defendant voluntarily paid the Plaintiff the legal and related costs awarded to the Plaintiff. 9. The Plaintiff identified that the Defendant held an interest in a Jersey company, Cleveland Bridge Dorman Long Engineering Limited ("CBDLE"), which in turn owned the entire issued share capital of an English company, Cleveland Bridge UK Limited (CBUK), which in turn owned a group of trading companies involved, we understand, in engineering. The shares in CBDLE are held by the Second and Third Parties Cited. 10. On 12 th February 2021, the Plaintiff commenced proceedings against the Defendant in Jersey by way of Order of Justice, bringing in the Parties Cited, by which it was granted an interim arrêt entre mains over the Defendant's assets in Jersey, particularly as held by the Second and Third Parties Cited, and discovery orders in relation to the Defendant's assets in Jersey. Leave to serve the proceedings on the Defendant out of the jurisdiction was granted. The final relief sought was as follows: (i) Leave

to enforce the Award as and in the same manner as a judgment of the Court. (ii) Confirmation of the interim arrêt entre mains . (iii) Directions as to the execution and implementation or otherwise in respect of the arrêt entre mains as the Court shall in its discretion think fit. (iv) An order for the appointment of Receivers in respect of such obligations and/or property owed to and/or held on behalf of the Defendant by the Second and Third Parties Cited with such directions to any such Receivers as the Court shall in its discretion think fit. 11. We will refer to the Jersey proceedings in more detail below. 12. On 22 nd June 2021, the Plaintiff applied for a third-party debt order from the English High Court, in respect of any debts owed by CBUK to the Defendant up to the value of the Award. An interim third-party debt order was made to be heard on 29 th July 2021, but those proceedings were interrupted by CBUK being placed into administration on 22 nd July 2021, with any further proceedings in respect of the third-party debt being stayed. On 14 th September 2021, the administrators published a report in which they proposed to dissolve CBUK as they did not anticipate that they will realise any funds to distribute to any unsecured creditors. It would seem therefore that CBDLE may have little or no value. Jersey Disclosure Orders 13. Paragraph 2 of the prayer to the Order of Justice contained the following disclosure orders: "2. Discovery (a) The Defendant shall within 5 working days of service hereof upon it inform the Plaintiff's Advocate of all of its assets in the Island of Jersey held by it whether in the Defendant's own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. (b) Each of the Second and Third Parties Cited shall within 5 working days of service hereof upon it inform the Plaintiff's Advocate of all of the Defendant's assets in the Island of Jersey held by it whether in the Defendant's own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. (c) The information so provided must be confirmed in an Affidavit which must be furnished to the Plaintiff's Advocate by such Defendant and/or Party Cited within seven working days after service hereof upon it, together with copies of all documents concerning all and any assets of the Defendant held by them and the nature of the holding and/or the terms of the arrangements under which the shares in CBDLE are held by the Second and Third Parties Cited." 14. The Defendant applied by summons for paragraphs 2(a) and (c) of the discovery order to be stayed on the basis that it intended to defend the enforcement of the Award in Jersey, that the Court did not have jurisdiction to order discovery prior to the granting of enforcement of the Award in Jersey and it would be unjust to the Defendant to provide discovery in advance of the final hearing, given that the underlying basis for the discovery orders may fall away. 15. The matter was compromised by a consent order issued on 7 th April 2021, by which, without prejudice to the rights of the Plaintiff to seek further discovery in aid of enforcement at any subsequent stage: (i) The Discovery obligations under paragraphs 2(a) and (c) were stayed until further order. (ii) The Defendant and the Second and Third Parties Cited would provide detailed discovery in respect of CBDLE and how the Defendant's interest in it was structured. The consent order was complied with, the information required being provided by letter from Mourant Ozanne dated the 9 th April 2021 and verified by affidavit on 13 th April 2021. 16. It would seem that as at this point, the Defendant has yet to inform the Plaintiff of all of its assets in the Island of Jersey held by it, whether in its own name or not, and whether solely or jointly owned, giving the value, location and details of all such assets, as per paragraph 2(a) of the Order of Justice. The pleadings 17. The

Order of Justice sets out the history of the arbitration proceedings and the Award. The United Arab Emirates is a signatory to the Convention and in the premises, the Award is a Convention award within the meaning of the Arbitration (Jersey) Law 1998 ("the Arbitration Law") which may be enforced in the same manner as a judgment of the Court pursuant to Article 36 and Article 29. Whilst acknowledging the payment of the sums due directly to it, the Order of Justice makes no reference to the decision of the Saudi Arabian court not to enforce the Award. It cites the existence of the shares in CBDLE held by the Second and Third Parties Cited as assets of the Defendant in Jersey which it said were capable of satisfying the Award. 18. An answer was filed by the Defendant on 21 st April 2021. In summary, it pleads that: (i) It has no obligation under the BVA to make capital contributions to Dresser-Rand Arabia and therefore no obligation of which specific performance can be ordered. (ii) Under the express terms of the BVA (clause 2.3(b)), dilution of the non-paying party's shareholding is the sole remedy for failure to make a requested capital contribution. The effect of the Award, therefore, is to clarify and establish the quantum of the funding liability of the Defendant, with the correct remedy being a dilution of its shareholding. (iii) The Plaintiff has no standing to enforce the Award, as the party with the benefit of the Award is Dresser-Rand Arabia. Alternatively, an award of specific performance requires the supervision of the Court and Jersey is not the appropriate jurisdiction to supervise performance by a Saudi Arabian company in favour of another Saudi Arabian company; (iv) the Award goes beyond the scope of the BVA and the Arbitral Tribunal and is not enforceable under Article 44(2) of the Arbitration Law which provides: "(2) Enforcement of a Convention award may be refused if the person against whom it is invoked proves - (d) subject to paragraph (4) that the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration." (v) The courts of Saudi Arabia expressly refused to enforce the Award because the amount of the claim is to be paid to Dresser-Rand Arabia and not to the Plaintiff. 19. We note that in paragraph 22 of the Answer, the Defendant pleaded that the shares in CBDLE held by the Second and Third Parties Cited were not assets held in Jersey owned by the Defendant, but rather were held on trust for Magai Investments Limited and Al Rushaid Investments BVI Limited, and were not, therefore, assets available to satisfy the Award. However, having regard to disclosure subsequently made by the Defendant, it is clear that the shares in Magai Investments Limited and Al Rushaid Investments BVI Limited are held for the Defendant. We do not think it is in dispute, therefore, that the Defendant ultimately beneficially owns the shares in CBDLE, a Jersey company. 20. In its reply, the Plaintiff asserts that the Defendant is impermissibly attempting to re-examine the merits of the Award and the powers of the Arbitral Tribunal. The Plaintiff asserts that the Award was within the scope of the submissions to the Arbitral Tribunal and that the Plaintiff has the standing to enforce the Award, which was made in its favour. An order for specific performance requires little, if any, supervision by the Court. The Plaintiff's statement of claim in the arbitration, which included a claim for specific performance, was filed with the Arbitral Tribunal and served on the Defendant, which raised no objection thereto, and has now waived its right to do so. Dresser-Rand Arabia is a party to these proceedings and has raised no objection to the Plaintiff enforcing the Award. The Defendant has not instituted any action for annulment in the courts of the United Arab Emirates, as provided by the law of the seat of the

arbitration, or otherwise howsoever sought to annul or otherwise set aside the Award on any ground. Worldwide disclosure order 21. By its summons dated 27 th July 2021, the Plaintiff asks that the stay ordered by paragraph 2 of the consent order on th April 2021 be discontinued and that a worldwide disclosure order be made against the Defendant: "2 The Defendant do serve a list verified by affidavit of all of its assets held by it whether in the Defendant's own name or not and whether solely or jointly owned, and wherever situate, giving the value, location and details of all such assets." Further specific orders were sought in the summons, to which we will refer later. Position of the Plaintiff 22. Given that the Defendant has not challenged the Award but resists its enforcement both in Jersey and other jurisdictions, the Plaintiff argues that it would assist the Plaintiff and the Court to ascertain and locate the Defendant's assets for appropriate enforcement for once and for all. The Defendant was before the Court and compellable to disclose this information, not having challenged service of the Plaintiff's proceedings. Advocate Holden made the following

submissions:

- (i) The Defendant had the opportunity to participate in the Arbitration but having begun by doing so withdrew from engaging with it. Since the Award was made, it has not sought to set aside the Award, under the law of the seat or otherwise. (ii) The Defendant has not satisfied its contractual obligations to the Plaintiff under the BVA since before 2017 and under the Award outstanding now since July 2019. (iii) The Plaintiff has taken various proceedings to enforce the Award. These have either been opposed (in Jersey and the USA) or ignored (in England). In Saudi Arabia, the Defendant opposed orders enforcing the Award as to payments to Dresser-Rand Arabia but paid the legal and related costs. (iv) The conclusion is that the Defendant seeks to ignore the Award to the extent it is able - only complying with it to the extent it is ordered to by a Court whose orders have teeth. In this action, the Defendant resisted disclosure of its assets. It sought to postpone such discovery indefinitely until the conclusion of the proceedings. It was therefore apparently content to litigate the question of enforceability generally and, presumably, only if it lost that fight being prepared to reveal where its assets actually are. Even then, it appears its position would have been that CBDLE is not directly its asset, and so keep that up its sleeve as a last line of defence. (v) The evidence is clear that the Defendant is beneficially interested in CBDLE. That begs the question how and where any such interest is held (including via further interests that may be held in Jersey), if it is not held directly by the Second and Third Parties Cited. However, to the extent (as it now appears) no value may be realised via that interest in CBDLE, that question is rendered academic for the purposes of enforcing the Award. (vi) The further question therefore arises whether the Defendant has any other assets whether in Jersey (albeit that the Defendant appears to deny this), but moreover where are its assets whether inside or outside Jersey. Such information is crucial to assist to target enforcement proceedings to obtain satisfaction of the Award, absent which the Defendant appears intent on non-payment. This Court has jurisdiction to order discovery in aid of enforcement to enable such targeting to allow the Plaintiff to enforce the payment due. Position of the

Defendant 23. The Order of Justice sought enforcement against assets of the Defendant in Jersey and the disclosure orders were limited to assets of the Defendant in Jersey. Pursuant to the consent order, disclosure has now been made in respect of the assets held by the Second and Third Parties Cited. No worldwide order should be made at this stage, because: (i) the Court does not have jurisdiction to order worldwide discovery in support of enforcement of the Award against a party with no connection to the jurisdiction. The Defendant has no nexus to Jersey at all. It is a Saudi Arabian company; (ii) alternatively, the Court should not exercise its discretion to order disclosure absent special circumstances of which there are none, and (iii) alternatively, in circumstances where there is an outstanding issue as to whether the Award should be enforced, the issue of a worldwide disclosure order should not be considered until after the Court has determined that the Award can be enforced in this jurisdiction. Court's jurisdiction 24. The existence and availability of discovery in aid of enforcement post-judgment or award has been well recognised in Jersey. Its purpose is to assist a plaintiff in whose favour a judgment or award has been obtained to identify assets against which it might be able to bring enforcement proceedings. Post-judgment or award discovery has a low threshold, because the merits of the obligation have already been adjudicated upon in favour of the plaintiff. 25. In *Goldtron Limited v Most Investments Limited*

[2002] JLR 424, the plaintiff was seeking to enforce an arbitration award against a Jersey incorporated company and the Court was concerned with the re-imposition of an ex parte freezing injunction following a finding of non-disclosure. Quoting from the judgment of Sir Michael Birt, then Deputy Bailiff, at paragraphs 28 -29: "28. In *Gidrxslme Shipping Co. Ltd. v Tantomar-Transportes Maritimos Lda (The Naftilos)* (3), Colman J considered the question of a worldwide disclosure order in connection with the enforcement of a domestic arbitration award. He held ([1994] 4 All E. R. at 519) that the absence of a court judgment, as distinct from an arbitration award, should make no difference, for it is the policy of the law that arbitration awards should be satisfied and executed. He went on to emphasize that quite different considerations applied post-judgment or post-award, as compared with pre-trial relief. In that particular case, there were two arbitration awards at issue; one had been turned into a judgment under the relevant provisions of the Arbitration Act 1950 but leave had not been given to enforce the second arbitration and it was possibly going to be the subject of proceedings to set it aside for misconduct. Yet the judge made no distinction between them and considered that he was dealing with a post-award position. 29. In this case, we are dealing with a Convention award, i.e. a foreign award, but one which is capable of enforcement in Jersey in the same way as a domestic arbitration. The clear policy of the 1998 Law is that such awards should be satisfied and enforced in the same way as judgments. The comments of Colman, J., referred to above, are just as apposite in respect of the facts of this case. 30. It is true that this case is not on all fours with either *Deutsche Schachtbau*

(2) or Tantomar (3). In the former case, leave (albeit stayed) had been given by the court to enforce the foreign arbitration award as a judgment. In Tantomar, the court was concerned with a domestic arbitration. However, for the reasons that we have given, we see no grounds for drawing a distinction between a domestic arbitration and a Convention award. In this case, the parties have chosen to arbitrate their differences. There is an award of the arbitration panel. The plaintiff seeks to enforce the arbitration award. Subject only to any appeal to the Moscow courts, this court is obliged to enforce the award unless the defendant satisfies the court that one of the exceptions in art. 45 of the 1998 Law applies. We consider that Mr Thompson was correct in submitting that the injunctions in this case are in aid of the enforcement of an arbitration award and that the applicable principles are those for post-judgment injunctions rather than pre-trial relief. The threshold is therefore considerably lower, as was made clear by Donaldson, M. R. in *Deutsche Schachtbau*.²⁶ In *Apricus Investments & others v CIS Emerging Growth Limited*

[2003] JRC 151, the plaintiffs obtained Mareva injunctions against the defendant (it would seem a Jersey company) to help enforce arbitration awards. When the defendant failed to comply with the injunctions, the plaintiffs sought additional disclosure orders. These were granted, and quoting from the judgment of Sir Philip Bailhache, then Bailiff, at paragraphs 17 - 18: "17 We need only refer to extracts from the judgment of Coleman J in *Gidrxslme Shipping v Tantomar-Transportes* (1994) 4 All ER, 507-519 where the learned Judge stated: 'Where, by contrast, one has the position that a judgment has already been 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. It follows that whereas it may on the facts of the case in question be inappropriate to extend the Mareva injunction to assets outside the jurisdiction - and it is clear from the two authorities cited that such extensions are likely to be rarely justified - very different considerations may apply to disclosure orders in aid of execution. That being so, there is, in my judgment, a very firm jurisdictional basis for an order, made post-judgment or post-award, which includes both a Mareva injunction confined to assets within the jurisdiction and a disclosure order in respect of worldwide assets.' 18. The learned judge continued at page 521: 'In view of the outstanding and unsatisfied awards against the defendants, amounting in aggregate to \$US 357,349.47 plus interest and costs, the first award having been converted into a judgment for US\$ 284,392.47, it is, in my judgment, entirely just and convenient in aid of execution of those awards that the defendants should be required to tell the plaintiffs where their assets are, whether inside or outside the jurisdiction of the English Courts.' 19. And later on the same page the learned Judge continued: 'In my judgment, quite different considerations apply in the case of a post-judgment or post-award disclosure order. In such cases it is just and convenient that the judgment or award creditor should normally have all the information he needs to execute the judgment or award anywhere in the world.'" 27. In *Africa Edge S.a.r.l. v Incat Equipment Rental Limited and others*

[2008] JRC 175 , worldwide freezing orders were made against a Jersey company and a Jersey resident, following judgments obtained against them in Belgium, which the plaintiff sought to enforce. The Court referred to the decisions in *Gidrxslme v Tantomar*, *Apricus v CIS Emerging Growth* and *Goldtron v Most* . Sir Michael Birt, then Deputy Bailiff, continued at paragraphs 8, 9 and 10: "8. In my judgment, this is particularly applicable where the judgment debtor is a resident of Jersey. In other words, this is the home jurisdiction so far as the debtor is concerned and it is therefore, in my judgment, very often the appropriate Court to make a worldwide disclosure order because it has in personam jurisdiction over that defendant. 9. I consider that this case is akin to a post-judgment or post-award case. It is true that there is no judgment in Jersey as yet, but there was a judgment in Belgium as long ago as 2002 to which both defendants submitted. It is therefore a case where, applying normal principles of private international law, one would expect that judgment to be capable of enforcement in this jurisdiction without reinvestigation of the merits. I am told that some application has been made in Belgium to set aside or challenge the judgment, but for the moment it seems to me the Court must proceed on the basis there is a valid judgment. 10. Accordingly, I do consider that this is a case where the sort of principles that I have just described in the *Gidrxsime* case are applicable. In my judgment, given the history of this matter, given the fact that the Belgian judgment has been outstanding so long but that payment has not been made, and given the inadequate disclosures initially made, it is proper to require the defendants to give disclosure of their worldwide assets, even in advance of any decision on whether a worldwide freezing order should be given. It seems to me that in a post-judgment case it is right as Coleman J said, that a creditor should normally have all the information he needs to execute the judgment or award anywhere in the world. The disclosure of the information will then enable the plaintiff, if so advised, to institute proceedings where there are other assets." 28. In each of these cases, the Court was concerned with Jersey resident defendants over whom it had personal jurisdiction, but that personal jurisdiction also extends to parties resident outside the jurisdiction who are properly before the Court, as was the case in *Dalemont Limited v Senatorov*

[2012] (1) JLR 108, where the Court rejected an argument that it did not have jurisdiction to make a worldwide disclosure order against a Russian judgment debtor who had been joined as a necessary and proper party to proceedings involving a Jersey resident defendant, because the Russian: "21. ...is properly before the court and indeed there is no argument at present that he is not. In theory, there is jurisdiction to make an order against a party properly before the court and the only question then is a matter of discretion as to whether such order should be made." Discussion 29. Noting that all of the Jersey cases that followed *Goldtron* involved Jersey resident defendants and that Jersey is not the home court of the Defendant nor the supervising court of the arbitration, Advocate Speck argued that the Jersey Court was not the court to consider the issue of worldwide disclosure. Absent nexus, he said there was no jurisdiction to make the order at all. 30. The only Jersey case which involved worldwide disclosure orders being made against a foreign party was

Dalemont, which Advocate Speck submitted was wrongly decided, or alternatively, should be confined to its own particular facts. For the Jersey Court to deal with issues of worldwide disclosure absent a nexus would require the Defendant to be a Jersey entity or for the Jersey Court to be the supervising court of the arbitration, and he submitted that the approach taken by the Court in Dalemont was not supported by authority, either in this jurisdiction or in England and Wales, where he said nexus was a requirement. Dalemont was inconsistent with the approach taken in England and Wales under section 25 of the Civil Jurisdiction and Judgments Act 1982 ("the CJA") or the inherent jurisdiction of this Court to grant such relief, as confirmed by *Solvalub Limited v Match Investments Limited*

[1996] JLR 361. *Solvalub* was, of course a pre-judgment case, in which a Mareva injunction was made against a non-Jersey resident defendant who had a bank account in Jersey restraining that defendant from dealing with the bank account. In a well-known passage, Le Quesne JA said at page 369: "If the Royal Court were to adopt the position that it was not willing to lend its aid to courts of other countries by temporarily freezing the assets of defendants sued in those other countries, that in my judgment would amount to a serious breach of the duty of comity which courts in different jurisdictions owe to each other. Not only so but the consequence of such an attitude would be that Jersey would quickly become known as a safe haven for persons wishing to evade liabilities imposed on them by the courts to which they are subject. This is exactly the reputation which any financial centre strives to avoid and Jersey so far has avoided with success. These local circumstances, in my judgment, explain why the law on the particular point under consideration should have developed as it appears to have developed in the authorities to which I have referred." 31. In support of his submissions and by way of example, Advocate Speck referred to *Motorola Inc v Hytera Communications Ltd & Others*

[2020] EWHC 980 (Comm). In that case, Motorola had obtained a very substantial judgment in the U. S. against three Hytera companies incorporated in China. The Hytera companies had two subsidiaries in England. Motorola sought freezing orders in the High Court against the three Hytera defendants and one of the English subsidiaries ("Shortboy") limited to assets within the English jurisdiction and worldwide disclosure orders against all four of them. The freezing orders within the English jurisdiction were granted on the grounds that a risk of dissipation had been proved. The worldwide disclosure order was granted against Shortboy, an English company within the English jurisdiction, but refused in relation to the three Hytera companies. Jacobs J. accepted the principle that disclosure orders could be wider in scope than freezing orders, but said at paragraphs 118, 119 and 121: "118. The issue of whether a disclosure order can go beyond a freezing order was considered by Gloster J. in *JSC VTB Bank v, Skurikhin* ("Skurikhin")

[2012] EWHC 3116 (Comm) : see in particular paragraphs [22] - [27]. There is no doubt that it is in principle permissible for a court to grant a disclosure order which is wider in scope than a freezing order, particularly where post judgment relief is sought: see the decision of Coleman J. in *Gidrxslme Shipping Co. Ltd. v Tantomar-Transportes Maritimos LDA* [1995]

1 WLR 299, quoted in paragraph [21] of Gloster J's judgment. 119. However, the general principle is that it is normally not appropriate for a disclosure order to go beyond the ambit of the freezing order, at least in the context of a pre-trial freezing order, and also that a disclosure order should, in normal circumstances, only be made as an aid to the effective working of the freezing order: see Shurikhin paragraph [27(i)]. It is also clear from the authorities that a cautious approach should be adopted by the court in relation to the grant of relief under s. 25 CJA 1992 in the case of non-residents with assets abroad: Shurikhin paragraph [24]. One reason for this is the need for a real connecting link between the subject matter of the measures sought and the territorial jurisdiction of the court (see paragraph [25]). It may well be that the need for this real connecting link explains why Motorola has confined its present application for a freezing order to Hytera China's assets within the jurisdiction. Against that background I do not consider it appropriate to grant a worldwide disclosure order against the three Hytera companies. Each of these companies is resident overseas (Hytera China in the PRC, and the other two companies in the United States). Orders for disclosure in support of enforcement are, in the first instance at least, a matter for the courts of the USA and China where these entities: see *Credit Suisse Fides Trust SA v Cuoghi*

[1998] QB 818, 827. There is in my view no sufficient connecting link which renders it appropriate for this court to make the worldwide disclosure orders which are sought against these companies. If there is no sufficient link to make a worldwide freezing order (which Motorola has not sought), then there is equally no sufficient link to make a general order for disclosure of Hytera's worldwide assets." 32. Jacobs J. went on to say at paragraphs 122 and 123 that Motorola had available to it the full range of the U. S. discovery tools by which it could learn information about the assets of the three Hytera companies. There was a further reason for not making a worldwide disclosure order explained at paragraph 124: "124 I consider that the availability of these rights, in the jurisdiction where the substantive proceedings have taken place, is a further reason why the English court should proceed with caution and, as a matter of discretion, refuse the relief sought. The decision of the Court of Appeal in *Motorola v Uzan*

[2003] EWCA Civ 752 at [115] identifies a number of particular considerations which the English court should bear in mind when considering whether to make an order under s. 25. These include whether there is a 'danger that the orders made will give rise to disharmony or confusion and/or risk of conflicting, inconsistent or overlapping orders in other jurisdictions, in particular the courts of the state where the person enjoined resides or where the assets affected are located'. In the present case, the United States is the jurisdiction where two of the Hytera companies reside. It is also the jurisdiction where the underlying proceedings have taken place, and where steps can be taken in a few weeks' time (or more quickly if an application is made to lift the current stay) to obtain discovery from all the Hytera companies. Although Motorola has not yet taken steps or made any applications in order to obtain discovery, I consider that the danger or risk of inconsistent decisions or overlapping orders is such as to militate against the disclosure order now

sought." 33. In our view the decision in *Motorola v Hytera* raises no point of principle and should be confined to its own particular facts for the following reasons: (i) The cases relied on by Jacob J., namely *Skurikhin v Credit Suisse* and *Motorola v Uzan* are all pre-judgment cases and the principles he relied on related to pre-judgment cases. In *Motorola v Uzan* the point of principle was the making of worldwide freezing orders in support of an action in another jurisdiction, in circumstances where the defendant in question was neither domiciled nor resident within the English jurisdiction and there was no substantial connection between the relief sought and the territorial jurisdiction of the English court. The defendants concerned had no assets within the jurisdiction of the English court. (ii) Whilst Jacob J. made reference to the *Gidrxslme* case, he did not address the principle established in that case, and adopted by the Jersey Court, that the jurisdiction to make disclosure orders in support of execution of a judgment or award arises independently of the jurisdiction to make disclosure orders in support of freezing orders. (iii) The key factors that militated against the exercise of that independent jurisdiction were the availability to Motorola of the full range of discovery tools in the US Courts, whose judgments were being enforced, and the danger of inconsistent and overlapping decisions with those of the US Courts. 34. We do not accept that *Dalemont* was wrongly decided. Advocate Speck conceded that *Dalemont* correctly decided that the court had jurisdiction to make worldwide disclosure orders against a party properly before the court, and the only question, therefore, is whether as a matter of discretion such an order should be made. *Dalemont* was a post-judgment case in which the plaintiff had obtained a judgment against the first defendant, a Russian national, before the Russian courts. There was an 'uncontested chronology' suggesting that immediately after the judgment had been given, the first defendant had transferred substantial assets to the second defendant, a Jersey foundation and underlying overseas companies, with the intention of preventing the enforcement of the judgment. The plaintiff sought to pierce the corporate veil of the Jersey foundation or to set aside the transactions by way of a Pauline action, in respect of which the first defendant was clearly a necessary and proper party. It was a feature of that case that the judgments were not enforceable against the first defendant in his home jurisdiction of Russia because it was not permissible to enforce judgments against assets other than those held in the legal name of the individual judgment debtor. There was also a strong issue of policy over the use of the Island's financial services to hide assets so as to defeat a judgment creditor. 35. Sir William Bailhache observed in *Dalemont*, at paragraph 17, that the Court is always concerned to ensure that it is able to enforce the orders which it makes, which is why, as stated in *Africa Edge v Incat*, it is often appropriate to make a worldwide disclosure order where the Court has in personam jurisdiction over a defendant. He went on to say at paragraph 20: "20 Furthermore, it is not as if the order for worldwide disclosure could be ignored by the first defendant with impunity. If the order were made and the first defendant refused to comply with it, one consequence might be to disbar the first defendant from defending the present proceedings." 36. It needs to be borne in mind that the English cases cited are concerned with the exercise of the English court's jurisdiction under section 25 of the

CGJA which gives the English court jurisdiction to grant all forms of interim relief unless " in the opinion of the court, the fact that the court has no jurisdiction apart from this section in relation to the subject matter of the proceedings in question, makes it inexpedient for the court to grant it." The Jersey Court, on the other hand, is exercising its inherent jurisdiction and it is worth reiterating that in the development of that jurisdiction, it has adopted the principles enunciated in *Gidrxslme* cited above. In summary: (i) It is the policy of the law that arbitration awards should be satisfied and executed in the same way as judgments. It makes no difference that leave has not been granted to enforce the award or that it might be subject to proceedings to set it aside (see paragraph 28 of *Goldtron* above) (ii) Different considerations apply post-award and it is just and convenient that an award creditor should have all the information he needs to execute the award anywhere in the world. (iii) There is a firm jurisdictional basis for post-judgment orders that order the disclosure of assets worldwide, which exists independently of the jurisdiction to make freezing orders. 37. Whilst such orders are particularly applicable where the award debtor is resident in Jersey, as per *Africa Edge* at paragraph 8, such orders may also be appropriate where a non-resident award debtor is properly before the Court as per *Dalemont* at paragraph 21. Provisional Decision 38. In this case the Court is not being asked to freeze assets of the Defendant outside of Jersey, but with ordering the Defendant to provide the Plaintiff with information that will enable the Plaintiff to take action to enforce the Award against assets held by the Defendant elsewhere in the world. 39. We take into account the following: (i) The Plaintiff has the benefit of a Convention award made on 29 th July 2019 and it is the policy of the law that it should be satisfied and enforced in the same way as a judgment. (ii) No challenge to the Award has been made by the Defendant before the courts of the United Arab Emirates, the seat of the arbitration. (iii) The Plaintiff has been unable to enforce the Award in Saudi Arabia, where the Defendant is resident, because it specifically enforces the Defendant's obligation to the Plaintiff to make a payment in favour of Dresser-Rand Arabia. The Plaintiff is therefore in the same position as the plaintiff in the *Dalemont* case. (iv) Whilst there is no evidence that the Defendant is moving assets in order to evade enforcement of the Award or using Jersey financial services to do so, it is resisting enforcement of the Award. It has done so successfully in the U. S. and in Saudi Arabia, has ignored the proceedings in England and is resisting enforcement in this jurisdiction. (v) The Defendant is properly before this Court. The leave given to serve out of the jurisdiction has not been challenged and the Defendant has submitted to the jurisdiction of the Court. The relief sought is in part for the confirmation of the *arrêt entre mains* over property in Jersey which it beneficially owns. That is the connecting link to this jurisdiction and in our view it is a sufficient link, one that has brought the Defendant, as the beneficial owner of that property, voluntarily into our jurisdiction. The fact that the shares are now thought to have no value is irrelevant. The value of shares may fluctuate, but whatever their value may transpire to be, they are shares in a Jersey company and therefore constitute property in this jurisdiction. (vi) The making of a worldwide disclosure order will not interfere with the management of the case in any other court or give rise to disharmony or

confusion and/or the risk of conflicting inconsistent or overlapping orders in any other jurisdictions, in particular in the courts of the state where the Defendant resides, namely Saudi Arabia. There are no proceedings in Saudi Arabia, the Courts of which have declined to enforce the award (but see below) and there are no proceedings anywhere else save for England and Wales, but those proceedings are stayed. There is no potential conflict as to jurisdiction rendering it inappropriate to make the worldwide disclosure order. 40. We have given consideration to the ability of this Court to enforce such a worldwide disclosure order, but as Advocate Holden points out, the Defendant has complied with the orders made by the Court to date and, as with the defendant in the Dalemont case, the Defendant cannot ignore such an order with impunity, as it could be disbarred from defending the current proceedings. 41. All of these factors militate in favour of the Court making a worldwide disclosure order against the Defendant. However, the Defendant raises an issue of timing. 42. The Defendant argues that the issue of whether or not a worldwide disclosure order should be made should be delayed until the outcome of these proceedings. The amounts involved here are substantial, and whilst there is no evidence that the Defendant is taking steps to hide or move assets in order to defeat the Award, any delay in the provision of information to enable the Plaintiff to enforce the Award in any other jurisdiction in which it is able to do so is in our view prejudicial to the Plaintiff. Delay runs counter to the policy of the Court that arbitration awards should be satisfied and executed in the same way as judgments. We are concerned here only with the provision of information and the balance comes down firmly on the side of the party with the benefit of the Award. The provision of that information will be subject to an undertaking from the Plaintiff that it will only be used for the purpose of enforcing the Award. 43. Subject to the provision of that undertaking, our provisional decision, therefore, is to lift the stay, and order that the Defendant serve a list verified by affidavit, by a date to be fixed, of all of its assets held by it whether in the Defendant's own name or not and whether solely or jointly owned, and wherever situate, giving the value, location and details of all such assets. Recent developments 44. Our decision is provisional because following the issuing of our judgment in draft on the 6 th December 2021, Advocate Holden wrote to the Court on the 8 th December 2021 informing it that unbeknownst to him on the 24 th November 2021 (the same day as the hearing of this matter) the Saudi Khobar Enforcement Court issued an enforcement order against the Defendant, it would seem at the instance of Dresser-Rand Arabia, ordering it to pay the amount due under the Award. This was the first step in the process that had only just been served on the Defendant and it was anticipated that it would be resisted. 45. Further correspondence has ensued but the Court takes the view that the existence and status of proceedings in Saudi Arabia was one of the considerations that informed the exercise of its discretion as to whether to make a worldwide disclosure order against the Defendant and accordingly it would be inappropriate to make the worldwide disclosure order until it has received further expert evidence as to the nature of the proceedings in Saudi Arabia, the applicable law and procedure in Saudi Arabia, the enforceability of the Award there and the availability of disclosure orders. 46. A further issue arises in that Dresser-Rand

Arabia did not appear and played no part in the Jersey proceedings and the Court was informed that it was deadlocked i.e. unable to act of its own accord. The fact that it has now apparently issued enforcement proceedings in Saudi Arabia would indicate that it is able to act. It's true position therefore needs to be clarified, preferably by it appearing in the Jersey proceedings. 47. Accordingly, the application for a worldwide disclosure order will be adjourned for that purpose. However, we see no reason why the Defendant should not be ordered to disclose its assets in the Island of Jersey (see paragraph 16 above). Further Orders 48. Two further orders are sought by the Plaintiff in its summons, firstly aimed at ensuring that the Second and Third Parties cited do not hold any other assets for the Defendant and secondly, confirming the Defendant's interest in the two companies for whom the shares in CBDLE are held by the Second and Third Parties Cited. These orders are essentially concerned with the assets held in or through Jersey, and it is appropriate that they should be made. 49. In conclusion (i) we adjourn the application for a worldwide disclosure, (ii) order the Defendant to disclose its assets in the Island of Jersey held by it, whether in its own name or not, and whether solely or jointly owned, giving the value, location and details of all such assets, as per paragraph 2(a) of the Order of Justice and (iii) grant the relief sought in prayers 3. and 4. of the Plaintiff's summons. We leave over the issue of costs. Authorities Arbitration (Jersey) Law 1998. Goldtron Limited v Most Investments Limited

[2002] JLR 424 . Apricus Investments & others v CIS Emerging Growth Limited

[2003] JRC 151 . Africa Edge S.a.r.l. v Incat Equipment Rental Limited and others

[2008] JRC 175 . Dalemont Limited v Senatorov

[2012] (1) JLR 108. Solvalub Limited v Match Investments Limited

[1996] JLR 361 . Motorola Inc v Hytera Communications Ltd & Others

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