

JERSEY / JUDGMENT

Giacomini SPA v Cucchiaro [2021]

JRC 245 (16 September 2021)

[2021] JRC 245

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[2021] JRC 245 [New search] [Help] Application for ex parte relief in proceedings begun by order of justice [2021]JRC245 Royal Court (Samedi) 16 September 2021 Before : R. J. MacRae, Esq., Deputy Bailiff, sitting alone Between Giacomini SPA Plaintiff And Nerina Cucchiaro Defendant And Church Street Trustees Limited (as trustee of the Giacomini Trust) First Party Cited Advocate N. Sanders for the Plaintiff. Advocate J. M. Renouf for the Defendant. Advocate D. Wilson for the Party Cited not present. ex tempore judgment the deputy bailiff: 1. This is an application for ex parte relief in proceedings begun by order of justice. In those proceedings the Plaintiff seeks to enforce against the Defendant an order in its favour awarding it compensation for loss and damages it suffered as set out in the order of the Milan ordinary court dated 28 th May 2020, confirmed by the Court of Appeal of Milan for the criminal section on 13 th July 2021. 2. The Plaintiff also seeks relief against the Party Cited, a Jersey service provider, including providing trustee services, against whom it has no direct course of action but which company in its capacity as trustee of a certain trust, may or may become indebted to the Defendant in respect of trustee fees, which the Defendant claims in the sum of approximately EURO 1 million. Now that claim to trustee fees is being dealt with by the Royal Court, differently constituted, presided over by the Bailiff and the determination of that fee claim is anticipated shortly. 3. In view of the Milan Court order requiring the Defendant to pay the Plaintiff compensation fixed in an interim amount in the sum of EURO 10 million, the Plaintiff in this order of justice today ex parte on notice to the defendant seeks an arrêt entre mains arresting the Defendant's moveable property in Jersey comprising all and any sums which may become due to her from the Party Cited. 4. The papers were filed on the Court last Friday and on Monday the Bailiff's Judicial Secretary wrote to the Advocate for the Plaintiff in respect of various concerns the Court had about the form of the order of justice in particular the absence of an undertaking in damages. That and the other matters of concern to the Court

were remedied in the course of yesterday, Wednesday, and yesterday in the afternoon the Plaintiff elected to notify the Defendant's Jersey advocate, Advocate Renouf of the hearing this morning, and accordingly Advocate Renouf has appeared this morning. But the Court entirely accepts he has had very limited opportunity to consider the papers and indeed take instructions and certainly he has been not able to either file evidence or produce any authorities. 5. In the very limited time available to Advocate Renouf he has had the opportunity to consider and make various points to the Court today. He says, and I will not deal with all the points he makes only those of substance for the purpose of today's application, he says this application really ought to have been listed before the 'trust court' if I may call it this, as there have been proceedings in Jersey in relation to the trust for some 7 years. Dealing with that point, the Plaintiff says that as the Plaintiff is a stranger to those proceedings it was appropriate for a different judge of the Royal Court to determine this application. Although I can understand the reason for the Plaintiff's stance, in my view there is no difficulty with this or indeed any further applications being determined by the Bailiff, if necessary assisted by the Jurats who are dealing with the outstanding judgment before the Bailiff in relation to the trust. Indeed, there may be certain advantages in that Court, with its knowledge of the history, dealing with any further applications in this case. Nonetheless there is no reason, in my judgment, why I should not deal with this matter today. 6. In relation to the substance of the application, Advocate Renouf makes the points that in respect of the particular asset over which an *arrêt entre mains* is sought at this point there may be competing claims. These claims fall into two categories. Firstly the EURO 1 million, or thereabouts, which may ultimately be payable by the Party Cited to the Defendant is part of the sum of EURO 3 million held in escrow in the trust in respect of not merely the Defendant's claim for trustee fees but also the claims of another former trustee. Secondly, Advocate Renouf produces a document in Italian, which has not been translated, which appears to indicate that in November last year the Defendant sold, or assigned the benefit of her claim on account of trustee fees

- which she seems to have valued at being worth approximately EURO 800,000 - to another entity called NPL Opportunities based in Luxembourg for EURO 90,000 which she subsequently received. 7. It may well be that there are other individual entities with potential claims to these monies, and it may be that they will need to be an apportionment or pro rata consideration by the current trustee of the former co-trustee's claims to the monies held in escrow. In respect of the possible sale of the Defendant's claim to trustee fees to the Luxembourg entity, that is a matter that in due course the Defendant may wish to deal with on affidavit and it is right to observe, as Advocate Renouf has, that the effect of an interim *arrêt entre mains* is to create an immediate proprietary interest in favour of the party who has obtained it. It does not merely take effect as a personal order and the Court was referred to the judgment of the Court of Appeal in *F G Hemisphere LLC v Democratic Republic of Congo*

[2011] JLR 486 . 8. Be that as it may, the Plaintiff's claim against the Defendant clearly has merit and the interim order that is being sought today may be discharged either on a subsequent inter partes application or simply not confirmed at trial, but in my view, this is an order that the Court, on the material I have seen, should in its discretion prima facie be minded to grant today. 9. A second point that is raised against the Plaintiff's application is that the Milan proceedings are not complete in the sense that there may be an appeal to the Italian final Court of Appeal, the Court of Cassation. Such an appeal has not yet been lodged. Professor Mario Zanchetti, an attorney at law for the Milan Bar who swore an affidavit in support of the Plaintiff's claim says that the Milan order remains immediately enforceable and in effect is final in so far as the Court of Appeal of Milan is concerned. If an appeal is made to the Court of Cassation it is unlikely to be handed down before July of next year and he repeats that the award is immediately enforceable irrespective of whether that Cassation appeal is lodged. My attention was drawn by Advocate Sanders to Dicey, Morris & Collins on The Conflict of Laws (15 th Edition) particularly Rule 42 which deals with enforcement of foreign judgments and I note at paragraph 14-026 the authors say that a foreign judgment may be final and conclusive even when an appeal is pending in the foreign country and furthermore (at 14-022) provides that even in the context of criminal proceedings an order for compensation in favour of a non state party may be enforced by a foreign court, by which I mean Jersey for these purposes. 10. Accordingly, in my judgment the Court is empowered to grant the orders contained in the order of justice and having regard to the submissions that I have received and the arguments that I have read, the Plaintiff's two skeleton arguments and the affidavits and authorities in support, I grant the Plaintiff's order of justice today, the relief sought and make the orders for service. 11. Accordingly, for the avoidance of doubt I order the arrêt entre mains sought at 1(a) on page 9 and make the order for service on paragraph 2 of page 9. I think that the order in relation to variation or discharge should be renumbered 3 and the further paragraph on page 10 renumbered 4. I noted in the course of argument the absence of a penal notice which is a general feature of an order of justice injunctions, but counsel for Plaintiff has made it clear that as the current holder of the funds is the Party Cited it was thought to be inappropriate to put such a notice in the draft order and that is something which I accept. 12. I direct that any application made by the Defendant to set aside this ex parte on notice application should be heard speedily before any judge of the Royal Court, for the avoidance of doubt including the Bailiff, with a time estimate of half a day and the Court would expect the Defendant to file an affidavit in support of any such application. 13. For the avoidance of doubt, I did consider whether or not it was appropriate for the Plaintiff to be required to fortify the undertaking in damages given in this case and found that it was not appropriate to require fortification. Authorities F G Hemisphere LLC v Democratic Republic of Congo

[2011] JLR 486 . Dicey, Morris & Collins on The Conflict of Laws (15th Edition) Page Last Updated: 08 Oct 2021 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: https://www.bailii.org/je/cases/UR/2021/2021_245.html

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