

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM No: BVIHC (COM) 2019/0157

BETWEEN:

VTB COMMODITIES TRADING DESIGNATED ACTIVITY COMPANY

Claimant

-and-

**(1) BELFORE REAL ESTATE LTD
(2) KERLEY CAPITAL SA
(3) DMITRY PETROVICH MAZUROV
(4) DMITRY ILLARIONOV
(5) NIKOLAOS POZIDIS
(6) COMMODITY SERVICE LLC
(7) ARYAT MULLAKHMETOV
(8) GREEN OIL HOLDING INC.
(9) ARGENTA DEVELOPMENT SA**

Defendants

Appearances:

Mr. David Welford and Mr. Alexander Muksinov of Ogier for the Claimant
Mr. Tim Prudhoe for the Second Defendant
Mr. Darren Reeds, one of the Receivers, in person
The other Defendants did not appear and were not represented

2021: May 17
 May 25

JUDGMENT

[1] **JACK, J [Ag.]**: By application made on 21st December 2020 the Claimant (“VTB”) seeks an order that receivers be appointed in aid of the enforcement by way of

equitable execution of an award dated 29th April 2020 made by an arbitral tribunal appointed under the rules of the London Court of International Arbitration against the third defendant (“Mr. Mazurov”). This application came before me on 17th May 2021. For the purpose of enforcement, VTB seeks the appointment of the existing receivers over all the assets, wherever situated, of Mr. Mazurov, including the issued share capital of the first defendant (“Belfore”), the second defendant (“Kerley”), the eighth defendant (“Green Oil”) and the ninth defendant (“Argenta”). These four companies are all incorporated in this Territory.

[2] I can take the facts from Mr. Welford’s skeleton argument:

“2.2 [VTB] is a judgment creditor of... Mr. Mazurov:

(a) By way of a Request for Arbitration dated 9 September 2019..., VTB commenced the LCIA Arbitration against Mr. Mazurov pursuant to cl 15.1 of a Deed of Guarantee dated 19 October 2018... between VTB and Mr. Mazurov. A tribunal comprising Dame Elizabeth Gloster, Professor Loukas Mistelis and Sir Bernard Eder... was subsequently appointed in accordance with the Guarantee and the Arbitration Rules.

(b) On 29 April 2020, the Tribunal issued an award... ordering Mr. Mazurov to pay to the Applicant the following sums:

- 1) €69,627,957.50, representing the amount found by the Tribunal to be due to the Applicant under the Guarantee to 23 March 2020;
- 2) Interest on the above amount at a total daily rate of €35,123.20 until payment; and
- 3) £248,525 sterling in respect of arbitration costs and legal costs plus interest at a rate of 4% per annum compounded quarterly from the date of the Award until payment.

2.3 The Award has not been paid and remains outstanding.

2.4 On 23 June 2020 by Order of [Jack J] Darren Reeds and Wesley Edwards of CVR Global (B.V.I.) Limited were appointed as Joint Receivers on an interim basis in aid of the LCIA Arbitration over all the issued share capital in Belfore and Kerley.

2.5 On 9 July 2020 pursuant to the Order of [Jack J]..., the Award was registered in the BVI so that it may be enforced as if it was an order of the Court and the Applicant has been granted permission to enforce the Award in the same manner as a judgment or order of the Court.

2.6 Pursuant to paragraph 4 of the Registration Order, Mr. Mazurov was entitled to apply for the Registration Order to be set aside or varied within 14 days of service of the Registration Order upon him. Pursuant to paragraph 24(2) of the Order of [Wallbank J] dated 4 November 2019 in these proceedings Mr. Mazurov was deemed served with the Registration Order on 27 July 2020. Accordingly, the said 14 days' period expired on 11 August 2020 and Mr. Mazurov has not applied to set aside or vary the Registration Order.

2.7 On 15 July 2020 by Order of [Jack J] the First Interim Receivership Order was continued until the Adjourned Return Date (as defined therein), which was listed for a 1 day hearing on 2 November 2020. On 2 November 2020, at the Adjourned Return Date hearing, [Jack J] continued the First Interim Receivership Order (as varied by Orders of Jack J dated 15 July 2020 and 14 August 2020) until further order of the Court.

2.8 On 21 December 2020 the Applicant filed the Equitable Receivership Application for orders that the appointment of the Joint Receivers be continued and extended in aid of the enforcement by way of equitable execution of the Award over the assets of Mr. Mazurov, including the issued share capital of Belfore, Kerley, Green Oil and Argenta, and that the Joint Receivers be provided with powers necessary to aid the enforcement of the Award.

2.9 On 8 January 2021, the Equitable Receivership Application documents were served on Belfore, Kerley, Green Oil and Argenta, and on Mr. Mazurov on 11 January 2021...

2.10 On 3 February 2021, by Order of [Jack J] Darren Reeds and Wesley Edwards of CVR Global (B.V.I.) Limited were appointed as Joint Receivers on an interim basis in aid of the LCIA Arbitration over all the issued share capital in Green Oil and Argenta. On 3 March 2021, [this order] was continued until further order of the Court.

2.11 On 3 February 2021, [Jack J] made the Service Order, which granted VTB permission to amend the Amended Fixed Date Claim Form and to serve the Re-Amended Fixed Date Claim Form and the Equitable Receivership Application on the Shareholders out of the jurisdiction and by way of alternative service.

2.12 The Re-Amended Fixed Date Claim Form and Equitable Receivership Application documents were served on the Shareholders on 17 March 2021... Pursuant to paragraph 9 of the Service Order, the Shareholders had 35 and 56 days from the date of service to file an acknowledgement of service and a defence, respectively. The period for filing a defence expired on 13 May 2021.

2.13 The Shareholders have not filed an acknowledgement of service or defence by the due date or at all.

2.14 On 18 February 2021, the Re-Amended Fixed Date Claim Form was served on the other Respondents — Green Oil and Argenta; on 19 February 2021 on Belfore and Kerley; and on 22 February 2021 on Mr. Mazurov, none of whom has filed an acknowledgement of service or defence by the due date or at all...

2.16 On 12 April 2021, VTB's application to withdraw its application for a charging order over the shares of Belfore and Kerley, and for the discharge of its provisional charging order was granted and this hearing was listed to determine the Equitable Receivership Application.

2.17 While the Shareholders are the registered shareholders of Belfore, Kerley, Green Oil and Argenta, the Applicant's case is that the ultimate beneficial owner of the four companies is Mr. Mazurov and, accordingly, the Award can be enforced against his interest in the companies."

- [3] The claim to appoint receivers over the shares in Belfore, Kerley, Green Oil and Argenta is straightforward. VTB have shown a *prima facie* case against Mr. Mazurov that he is the ultimate beneficial owner of those shares. Neither Mr. Mazurov nor the companies nor their nominal shareholders have adduced evidence to gainsay that *prima facie* case. Both interim and final charging orders could therefore properly have been made in respect of those shares. However, a charging order merely gives the beneficiary of the order the right to sell the shares. In many cases, for example, where shares are publicly listed, that is a sufficient remedy for the judgment creditor. In other cases, particularly in relation to private companies, shares will be sellable only at a discount — and sometimes a substantial discount. In such cases, it may be appropriate to appoint an equitable receiver over the shares. The receiver can use his powers to change the directors or wind the company up, so that the underlying assets of the company can be realised: see **Industrial Bank Financial Leasing Co Ltd v Xing Libin**.¹

¹ BVIHC (COM) 0032 of 2018 (determined 28th January 2020) (Jack J).

- [4] Belfore and Kerley hold a valuable apartment in Moscow. There is a potential issue between the companies on the one hand and Mr. Mazurov's Russian court-appointed trustee in bankruptcy on the other hand as to who has the better claim to the apartment. In practice it will only be if receivers are appointed over the shares that that issue will be capable of resolution in a way which will realise value for VTB. Selling the shares in Belfore and Kerley is likely to realise very little. Appointing receivers is the only way to realise the true value of the apartment. Likewise in relation to Green Oil and Argenta, no one will be interested in buying the shares. Receivers will be able to investigate the underlying assets and realise their value.
- [5] Accordingly, I am happy to continue the appointments of Mr. Reeds and Mr. Edwards as equitable receivers of the four companies, but now as receivers for the purpose of execution rather than as interim receivers. (See generally **VTB Bank (Public Limited Joint Stock Company) v Miccos Group Ltd**² for the differences between the two types of receivership.)
- [6] The application to appoint the receivers over all the other assets of Mr. Mazurov, whether inside or outside the BVI raises different issues. Firstly, VTB have been unable to identify any assets which would be the subject of the receivership. Secondly, Mr. Mazurov is not resident within the jurisdiction of the Eastern Caribbean Supreme Court. He is only before the Court under its long-arm jurisdiction given by CPR 7.3(5) (enforcement of an arbitral award), in order that enforcement could be effected against the four BVI companies. Thirdly, it is doubtful whether any foreign jurisdiction would recognise the authority of receivers appointed by this Court.
- [7] So far as the first issue is concerned, there is no difficulty appointing a receiver over unidentified assets on an interim basis: **Miccos** at para [25]. This is because the power to appoint an interim receiver is co-extensive with the power to

² BVIHC (COM) No 2018/0067 (determined 23rd January 2020).

grant a freezing order. However, a receiver by way of execution needs to know what assets he may sell. In my judgment, this requires the order of appointment to identify the assets with reasonable particularity. An appointment over “all the assets beneficially owned by Mr. Mazurov” would in my judgment be too vague. **Kerr & Hunter on Receivers and Administrators**³ comment that as a matter of practice “both the application notice and order, in cases where the appointment is sought by way of equitable execution, should specify the property over which the receiver is sought, for the receiver will not be appointed over the debtor’s property generally.” Mr. Welford correctly points out that the only authority cited for that proposition does not go so far: **Hamilton v Brogden**.⁴ However, in my judgment **Kerr & Hunter** nonetheless identifies the correct approach.

[8] Further such a wide-ranging receivership would be potentially oppressive. All forms of execution have exceptions. Examples include preventing seizure of tools of trade under a writ of fi.fa. and permitting the debtor to keep sufficient income to support himself under an order making deductions from wages. A receivership over all of Mr. Mazurov’s assets without exception would contain no such carve-outs. It would — at least theoretically — leave Mr. Mazurov to starve.

[9] As regards the second and third issues useful guidance is given by **Cruz City 1 Mauritius Holdings v Unitech Ltd.**⁵ There, Males J (as he then was) was considering an application for the appointment of an equitable receiver by way of execution of an English arbitration award against an Indian company. The award had been registered for enforcement in England. He held:

“35. It is clear that an order for appointment of a receiver does not confer any proprietary right transferring ownership of the asset in question to the receiver. Rather it operates *in personam*, having effect as an injunction restraining the judgment debtor from receiving any part of the property which it covers, if that property is not already in his possession: **Masri v**

³ 21st Ed (2020) at para 3-7

⁴ [1891] WN 14, [1891] WN 36.

⁵ [2014] EWHC 3131 (Comm), [2014] Bus LR D25.

Consolidated Contractors International (UK) Ltd (No 2)⁶ at paras [50] to [53]. There is, therefore, no rule preventing the court from making a receivership order by way of equitable execution in relation to foreign assets. Such orders have been made for well over a century, even if not necessarily by way of equitable execution: **Masri** at para [62]. There needs to be a sufficient connection with the English jurisdiction to justify the making of such an order and to satisfy the requirements of comity, but the fact that the order is made with a view to the enforcement of an English judgment or award provides that connection: **Masri** at paras [59] to [61].

36. Because the order operates *in personam*, what matters is whether the court has personal jurisdiction over the defendant. It is not a bar to the appointment of receivers that the English court's order will not or may not be recognised by the foreign court where the assets are located."

[10] In that case, a very material factor was that the debtor had agreed to a London arbitration and therefore submitted to enforcement of any award by the English courts. Here there is no such connection. Yes, this Court has jurisdiction over Mr. Mazurov, but for the purpose of enforcing the English arbitration award against Mr. Mazurov's BVI assets, not generally. I am doubtful as to whether this Court has jurisdiction to take world-wide enforcement steps against a debtor who is brought before the Court on such a limited basis. However, I do not need to determine that question. Even if the Court has jurisdiction to appoint receivers over Mr. Mazurov's world-wide assets, the fact that Mr. Mazurov comes before the Court under the Court's long-arm jurisdiction requires the Court to exercise circumspection before making such an order.

[11] It is not part of this Court's function to act as a world policeman for the enforcement of foreign judgments and foreign arbitral awards. The Court will (subject to any available defences) assist creditors to enforce foreign judgments and awards against BVI assets, but there must in my judgment be some special reason for the Court to seek to enforce such judgments and awards against the world-wide, extra-territorial, assets of the debtor. If Mr. Mazurov were resident in this Territory, then that might afford some special reason to grant relief against his

⁶ [2008] EWCA Civ 303, [2009] QB 450.

world-wide assets. However, Mr. Mazurov has no connection with this jurisdiction other than his choice of four BVI companies to hold assets on his behalf. That in my judgment is no sufficient basis for this Court to seek to enforce the London arbitration award outside the jurisdiction. There is no reason why the English courts should not undertake that task.

[12] Assuming without deciding that I have the power to appoint receivers by way of execution over Mr. Mazurov's assets outside the jurisdiction, as a matter of discretion I would refuse to do so.

[13] I am reinforced in that conclusion by the question of recognition in other jurisdictions of this Court's appointment of receivers. There is no evidence that any other jurisdiction anywhere in the world would recognise a power given by this Court to its receivers to sell assets held by the debtor outside the jurisdiction. This Court will not act in vain. If an appointment would help realise the value of assets outside the jurisdiction, then the Court would be sympathetic to the making of an appointment for that purpose. In the absence of such evidence, there is no purpose appointing receivers. On this separate ground too, I would refuse to exercise my discretion to appoint receivers.

Conclusion

[14] Accordingly, I appoint receivers over the shares of the four BVI companies, but refuse to appoint receivers over Mr. Mazurov's assets world-wide.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar