IN THE LONDON CIRCUIT COMMERCIAL COURT

Case No: LM-2022-000049

Rolls Building
Fetter Lane
London
EC4A 1NL

Thursday, 26th January 2023

Before:
JUDGE PELLING KC

B E T W E E N:

JOSEPH KEEN SHING LAW

and

PERSONS UNKNOWN
& HUOBI GLOBAL LIMITED

MR D CONNELL (instructed by Edmonds Marshall McMahon) appeared on behalf of the Claimant
NO APPEARANCE by or on behalf of the Defendants

JUDGMENT
(For Approval)

JUDGE PELLING:

1. This is an application for orders broadly in the terms set out in an application notice dated 18 January 2023. None of the relevant defendants appear or are represented. However, Huobi Global Limited, the fourth defendant that operates the cryptocurrency exchange in relation to the various wallets at the heart of this litigation, are fully aware of the application and have cooperated with the claimants and their solicitors to the extent that whilst they do not consent to the order that I propose to make, they nonetheless do not oppose it.
2. The application is supported by the evidence which has been filed in support of it and a lengthy skeleton from counsel for the claimant setting out the issues that arise and the difficulties that have occurred in the course of the hearing.
3. In substance, I am entirely satisfied that it is appropriate as a matter of principle to make the orders sought. The background is that worldwide freezing relief has been made against the relevant defendants, other than the fourth defendant, in relation to assets contained in two wallets or accounts maintained with the fourth defendant, referred to as accounts one and accounts two.
4. In relation to one of the accounts, there is overwhelming evidence that suggest the funds which have been credited to that account are funds which have been derived by fraud from the claimant. That is the subject of paragraph one of the proposed order and requires the delivery up of those funds.
5. The funds credited to that account are the subject of a proprietary claim. The funds that are credited to that account, therefore, are the property of the first defendant and no real issue arises other than the extraterritorial aspects of the case in requiring that that money be transferred back to the claimant in circumstances where the defendants have not participated in any aspect of this litigation and filed no defence or responded materially in any way at all.
6. As I have said, the funds are held offshore by the fourth defendant in the account maintained with that organisation, but the fourth defendant has indicated to the claimant's solicitors an intention to cooperate with any order the English court might make, and therefore I need say no more about paragraph two.
7. The other account which contains a significantly higher sum in cryptocurrency, I am satisfied contain the proceeds of the fraud that has been inflicted on the claimant. What is much more difficult and was frankly acknowledged from the outset by counsel for the

claimant is in maintaining a strictly proprietary claim in relation to the funds credited to that account. Nonetheless, the claimant has succeeded in obtaining, albeit by default, judgments for all his personal causes of action in relation to the losses. The account is plainly controlled by the defendants responsible for the fraud and in those circumstances, in the normal way, there would be an ability to enforce a monetary order if the accounts were maintained in England.

8. A worldwide freezing order was granted, as I have said, previously in this case. Therefore, the question that arises is how best to manage the funds that are currently standing in the cryptocurrency account controlled by the defendants but maintained by the fourth defendant.

9. The answer which in the end I am invited to adopt is one which involves three stages. It involves first of all converting the cryptocurrency held in the relevant account to fiat currency. Then ordering that the fiat currency be transferred to England and Wales and either paid directly into the court funds office or paid to the claimant's solicitors on the understanding that it will be then paid by them to the court funds office.

10. The circumstances in which a court will order the transfer of funds the subject of a worldwide freezing order into England and Wales are generally limited because the assumption which underlies the making of a worldwide freezing order is that the defendants concerned will comply with the order.

11. Whilst the position currently is that the fourth defendant is not permitting the other defendants access to the account, that may not necessarily occur and continue to be the case, and of course the court has no control over any of the relevant defendants, all of whom are based exclusively outside the jurisdiction of this court. In those circumstances, I am satisfied that exceptionally, it is appropriate that the funds within the account be transferred into England and Wales.

12. The question which then arises is how best to deal with them. One solution would be for them to be held by the claimant's solicitors pending further order of the court. However, the more satisfactory solution in my judgment is for the funds to be paid into the court funds office, that so as to enable appropriate applications to be made for an order under CPR rule 72.10 for, in effect, execution against those sums.

13. In relation to an application such as this, Gee on Commercial Injunctions, identifies a series of principles which he suggests ought to be adopted when considering whether to make an order involving the transfer of assets which are otherwise the subject of a worldwide

freezing order into more direct control by the court.

14. He suggests in paragraphs one and two of this summary that firstly, 'The claimant must show by clear evidence that the defendant is likely, unless restrained by order, to dispose or deal with the assets so as to deprive the claimant of the fruits of any judgment that may be obtained'. That has been written in the context of a pre rather than a post-judgment freezing order. As far as that is concerned, a judgment has been entered in this case and the very strong policy of English law is to enforce judgments entered by this court in favour of claimants.

15. Secondly, if the claimant has in any event demonstrated a risk of dissipation identified in paragraph one by Mr Gee, because the claimant has obtained a worldwide freezing order and could not obtain such an order without satisfying that test on the evidence.

16. The second requirement identified by Mr Gee is that, 'The court should be slow to make a delivery up order unless there is some evidence or inference that the property was acquired by the defendant as the result of alleged wrongdoing'. That cannot seriously be in dispute in the circumstances of this case in relation to having regard to the judgments that have been entered. However, the real point is that this is an order which is being sought in aid of enforcement of a judgment and therefore again, that paragraph is more realistically concerned with pre rather than post judgment orders.

17. Paragraph three, I need not take up time talking about because it is not material.

18. Paragraph four, which requires the order to be specify clearly what is being transferred, plainly satisfies that requirement.

19. The other principles which are identified by Mr Gee, albeit without authority, are that, 'An order for delivery up should generally not be made to anyone other than the claimant's solicitor or a receiver appointed by the High Court, and the court should appoint a receiver unless satisfied that the claimant's solicitors have or can arrange suitable safe custody for what is being delivered'.

20. As far as that is concerned, this case is concerned with the delivery up of cash or its equivalent rather than assets. Delivery up to the claimant's solicitors is one which is a course which I could have adopted but which is not the most convenient or appropriate in the circumstances, other than as a conduit to the money being paid into the court funds office.

21. I am satisfied that payment by the routes identified in the court order that is proposed by the claimants more than adequately protects the fund as a fund because of the solicitors'

undertakings given by the claimant's solicitors, to receive the cryptocurrency or its fiat equivalent and hold those funds to the order of the court, save for the purpose of paying the sums into the court funds office in accordance with the detailed directions set out in the order. That is more than sufficient to ensure safe custody of what is to be delivered up pursuant to this order.

22. Mr Gee makes the point that in relation to cash, the court may order delivery up of the cash and for it to be paid into either a blocked account or into court. Since the object of this exercise is ultimately to seek to enforce the personal judgments that have been obtained by the claimant against the sums that are being transferred, paying it into a blocked fund is likely to engage the full panoply of the third party debt order provisions. Whereas, if the funds are paid into court, then the procedure is likely to be more simple and straightforward, particularly having regard to the fact that the defendants have not at any stage participated in this litigation. I am satisfied, therefore, that it is more appropriate to direct that the sums be paid into court rather than into a blocked account.

23. I should also make clear that I do not consider the appointment of a receiver to be an appropriate way forward either since the sums involved are inevitably modest, and the effect of appointing a receiver will simply be to further erode the sums that are available for execution of the judgments obtained by the claimant, via further their professional fees.

24. In those circumstances, I am satisfied that the order that is proposed is the appropriate one in the circumstances and that this requires that the cryptocurrency held in the relevant account be converted to fiat currency by one of two routes, broadly speaking. Either by the fourth defendant, who then is required to credit the sums over to the claimant's solicitors. Or alternatively, by the fourth defendant crediting the cryptocurrency held in the relevant account to a cryptocurrency account maintained by the claimant's solicitors who will then convert into fiat currency, transfer the fiat currency to client account or to the court's office direct, whichever is the most speedy and cost effective method then available.

25. The order then makes provision for the issue of an application under CPR rule 72.10 which can then be served in accordance with the directions which have previously been given for the service of documentation in this case, and that application can then be disposed of on its merits.

26. Plainly, what is being ordered until such time as an order is made under CPR rule 72.10, involves the transferring of assets which belong on the face of it to the defendants, albeit caught by the worldwide freezing order as I have explained. In those circumstances, it is a

possibility that the application under CPR rule 72.10 will fail. If that happens, it will be necessary for the funds which have been realised in the way I have described to be transferred back to the direction of the defendants.

27. Inevitably, that will involve ensuring that the costs of converting from crypto to fiat currency to comply with the order and meeting the costs of converting back to crypto, if that is the option of the defendant if the application under rule 72.10 were to fail. Furthermore, there will be other additional and incidental costs as well.

28. When the worldwide freezing order was made in this case, the cross undertaking in damages was removed for the purpose of because it was a post-judgment freezing order as I understand it.

29. I made clear in the course of the argument yesterday that if an order in the terms that I propose to make was to be made, then it will be necessary for the claimant to offer a cross undertaking in damages in case, ultimately, any part of this order comes to be unravelled. Such an undertaking has been offered and is recorded in schedule eight of the draft order. No-one has suggested to me that the claimant is not good for anything that is reasonably, foreseeably likely to fall due under the cross undertaking, and therefore I proceed on the basis that the cross undertaking is a cross undertaking of value.

30. In those circumstances, therefore, what I propose to do is to make the order that is proposed by Mr Connell, subject to the various amendments discussed in the course of the argument.

End of Judgment

Transcript from a recording by Ubiqus
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