Neutral Citation Number: **[2024] EWHC 1511 (Ch)**

Case No: **HC-2016-002798**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **10 June 2024**

Before :

Mr Justice Michael Green

- -

Between :

Ras Al Khaimah Investment Authority	**Claimant**
- and -	
Farhad Azima	**Defendant**

- -
- -

Thomas Plewman KC, Hugo Leith and Frederick Wilmot-Smith (instructed by **Burlingtons Legal LLP**) for the **Defendant and Counterclaimant**

Hearing dates: **10th June 2024**

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JUDGMENT

Mr Justice Michael Green **Monday, 10 June 2024**
(**12:49** pm)

Judgment by **MR JUSTICE MICHAEL GREEN**

1. This is an application for a worldwide freezing order that has been made in private and without notice by Mr Farhad Azima against the Ras Al Khaimah Investment Authority ("RAKIA"). I was the assigned judge to this extraordinary long-running litigation and have delivered a number of judgments where I have set out the background facts in detail. I will not repeat any of this now.

2. As before, Mr Thomas Plewman KC leading Mr Hugo Leith and Mr Frederick Wilmot-Smith have appeared for Mr Azima. I had thought the proceedings were at an end with Mr Azima having settled against the additional defendants, namely Dechert, Mr Gerrard and Mr Buchanan, and RAKIA, as from June 2022, taking no further part in the proceedings with various judgments being entered against it, including the setting aside of previous judgments of the High Court and Court of Appeal that were in favour of RAKIA but were found to have been procured by fraud.

3. Mr Azima is presently owed over £20 million by RAKIA in relation to those judgments, including the costs and interest orders that were made and he now applies for post-judgment freezing orders to try to enforce against RAKIA. Because of the nature of the application, no notice has been given to RAKIA and I have heard the application in private.

4. The particular application is made in this way and urgently because Mr Azima has got wind of the fact that a wholly owned subsidiary of RAKIA, Ras Al Khaimah Georgia LLC ("RAKIA Georgia"), which until 30 May 2024 owned the Sheraton Grand Tbilisi Metechi Palace Hotel in Tbilisi, Gerogia. That hotel has purportedly been sold for approximately $45 million. It is, however, unknown if the consideration for the sale of the hotel has been paid and whether the funds have been retained by RAKIA Georgia. It appears as though the hotel may have been sold to a related party; a new company, Tbilisi Hotel Holdings LLC, was incorporated in Georgia on

24 May 2024, that is two weeks ago. It has the same directors as RAKIA Georgia, appears to be owned by a Ras Al Khaimah entity and the transfer document was signed by the same person on behalf of both purchaser and seller.

5. RAKIA also held 15% of the share capital in a company called Poti Free Industrial Zone LLC which is also a Georgian company. Apparently the shares in this were transferred to a third party in May 2024 for no consideration.
6. The requirements for a worldwide freezing order are well known and I am entirely satisfied as to all the requisite elements.
7. First of all is the requirement to show a good arguable case on the merits, and Mr Azima has obtained many judgments, as I have said, against RAKIA in this matter and there are substantial money sums outstanding.
8. In October 2023 I made an order which gave effect to my judgment of 21 August 2023 whereby I granted summary default judgment against RAKIA on its hacking counterclaim. That order ordered RAKIA to pay Mr Azima a sum of £8,442,744.20 and £16,495.50 together with interest, and both such sums remain unpaid.
9. In March 2024, I ordered, having granted judgment in default on the claim to set aside the previous judgments on the grounds of fraud that RAKIA should therefore pay the sums of £6,226,742.99 and $1,431,388.17. Those sums remain unpaid.
10. There are also entitlements in those orders to costs, interim payments of costs, and Mr Azima is entitled to seek detailed assessment of his costs. He has not yet done so, but the previously submitted cost schedules calculate Mr Azima's costs for the hacking counterclaim, at £11,256,992.26, and in relation to the rescission counterclaim, a sum of £1,842,433. So those are substantial judgments coming to over £20 million together with the potential large sums of costs due. So the first item of good arguable case on the merits is clearly established by those orders.

11. As to the second element of assets within and/or outside the jurisdiction I have already referred to RAKIA Georgia and the other Georgian company. That, it seems to me, is sufficient to satisfy this limb.

12. The third element is risk of dissipation. RAKIA has behaved dishonestly and fraudulently, obtaining judgments from this court by fraud and mounting a full scale operation to hack Mr Azima's private and confidential information. Its behaviour throughout the case has been shown to be dishonest and since it has backed out of the proceedings it has failed to pay any of the orders made against it, despite it saying that it will ensure that any judgments entered against it are satisfied.

13. It appears that RAKIA is taking steps to make itself judgment-proof. The sale of the hotel can only have taken place with its permission under RAKIA Georgia's articles of association which Mr Plewman took me to. Under those articles, RAKIA has full control over significant decision-making and the sale could not have taken place without its consent, and it may be that the sale itself is a sham. The urgency and risk in this matter revolves around the proceeds of sale which Mr Azima wishes to secure so far as possible before they disappear.

14. I am entirely satisfied that there is a serious risk of dissipation. It could be said that any such assets will already have been dissipated by now given what we know about RAKIA, but, as Mr Plewman submitted, the “horse has bolted” argument is no reason not to make an order if there is some chance that assets remain.

15. The fourth element is justice and convenience, and this is where some wider considerations enter into the equation, including in particular the fact that the hotel was owned by RAKIA Georgia, not RAKIA itself, that there are proceedings in Georgia, questions as to the actual enforceability of such an order there, and also whether there has been some delay in the making of this application.

16. In relation to the proceedings that are going on in Georgia, it is somewhat remarkable that the relevant authority in this area comes from another case involving RAKIA and assets in Georgia. That case is *RAKIA v Bestfort Development*, the Court of Appeal citation for which is [2018] 1 WLR 1099, but there was also the first instance decision of Mrs Justice Rose, as she then was.
17. In that case, RAKIA had unsuccessfully applied for a worldwide freezing order under section 25 of the Civil Jurisdiction and Judgments Act 1982, so the issues were different there and the court was concerned principally with whether there would be some interference in foreign proceedings by the making of such an order and the expediency test in section 25. It was important to the refusal of the injunction, which is what Mrs Justice Rose did and which was then upheld by Lord Justice Longmore in the Court of Appeal, that the substantive relief was being sought in Georgia, not here, and RAKIA had not provided clear evidence as to what it was doing in Georgia. It was also the case that RAKIA had actually obtained a form of freezing order in Georgia, although some such relief had also been refused.
18. It seems clear that what concerned Mrs Justice Rose and the Court of Appeal was that this jurisdiction may not have been the correct one for the resolution of those issues and that the proceedings in Georgia were the more appropriate forum for those matters to be ventilated. In this case, however, the substantive relief was obtained here in England in the form of the proceedings brought originally by RAKIA against Mr Azima and the judgments now against RAKIA.
19. Furthermore, Mr Azima's evidence in the form of two witness statements from Ms Alexa Pearson, a partner in his solicitors, Burlingtons Legal LLP, have described fully the up-to-date details of the steps that have been taken in Georgia by Mr Azima and the apparent refusal of relief there on an ex parte basis because of prematurity and the failure to provide certain materials.
20. I should explain what I understand to be the position in Georgia as updated by Mr Plewman.

21. Mr Azima first applied for orders recognising and enforcing my orders in Georgia on 29 March 2024. This was not actually ordered by the Georgian court and instead it appears to have left the matter in an unconsidered state.

22. A further application was then made on 28 May 2024 for recognition of the orders, but having heard of the sale on 31 May 2024, an urgent application was then made on behalf of Mr Azima on 5 June 2024 to the court in Tbilisi and the decision was handed down late on Friday, 7 June 2024. A translation of that decision was obtained over the weekend, and Mr Plewman took me through it. The application was for an injunction protecting the proceeds of sale. RAKIA Georgia and the purchaser, Tbilisi Holdings, are the respondents, together with RAKIA. The basis for the application is contemplated proceedings asserting that the sale was a sham because it was to a related party.

23. The decision was made on 7 June 2024, as I have said, to refuse the injunction and, from going through the translation of the decision, it appears that that decision was based on the high threshold test for such an injunction to be granted in Georgia before proceedings have been formally started. It is unclear what the court would have made of the application if proceedings had in fact been started by that stage, but that was not the case last week, and so the decision is based, as I have said, on that high threshold test, and it found that it had not been met; it was not a sufficiently exceptional case for the grant of such an injunction at that stage prior to proceedings being issued.

24. So it is clear that Mr Azima's aim in both jurisdictions is to enforce his judgments against known available assets of RAKIA, but there are substantial differences in the proceedings both here and in Georgia. In particular, this application is only against RAKIA which has already submitted to the jurisdiction and against which Mr Azima has substantial judgments. There was only limited relief that was being sought against RAKIA itself in the Georgian proceedings.

25. Furthermore, any order that I make will not interfere with the Georgian proceedings or cut across them. They are both intended to be complementary.

26. In my view, there are, therefore, no issues of comity, and nor do the concerns expressed by Mrs Justice Rose in the *Bestfort* case really arise here - and of course that application in the *Bestfort* case was under section 25 whereas this is not. There were substantive proceedings in this jurisdiction, and the relief is sought on the back of those.

27. As to delay, Mr Azima only heard about the sale of the hotel at the end of May. He sought to have this application heard last week but I was not available, so I do not think that delay is a credible factor, nor do I think that it can be successfully prayed in aid by RAKIA should it decide to defend this application or seek to set aside the order that I am going to make.

28. Accordingly in my view the justice and convenience of the case are on Mr Azima's side, and I will grant the order.

29. I was taken through the draft order by Mr Plewman, and he quite properly explained the differences from the standard form order in the Chancery Guide, and most of them I do not need to comment on. They arise as a result of this being a freezing order granted post-judgment, and the main issues are in relation to the definition of assets because what Mr Azima seeks to do is to enjoin the proceeds of sale of the hotel, should they still exist, possibly in a bank account of RAKIA Georgia in Georgia, and the way to do that is by relying upon the control that RAKIA is able to exercise over RAKIA Georgia.

30. RAKIA itself does not own or did not own the hotel, nor does it own the proceeds of sale. Those are owned or were owned by its wholly owned subsidiary, RAKIA Georgia. So what Mr Plewman suggested including in paragraph 4 of the draft order in addition to the normal wording in relation to a worldwide freezing order is a subparagraph (3) which is in the following terms:

> "In respect of bodies corporate which are directly or indirectly owned and/or controlled by the Respondent, procure or permit those bodies corporate to dispose of, deal with or

diminish the value of any of their respective assets whether inside or outside England and Wales up to the same value."

31. So specifically in relation to RAKIA Georgia that would include RAKIA Georgia within its definition and comes about because, as I have indicated, the articles of RAKIA Georgia contain clear provisions placing control over any significant decisions in the hands of its 100% shareholder, RAKIA. But the clause is not limited in terms to RAKIA Georgia and I raised with Mr Plewman the possibility that it is too widely drawn because it includes any bodies corporate which are directly or indirectly owned and/or controlled by the Respondent.

32. Mr Azima is not presently aware of any such other bodies, and it may be that there are no other such bodies other than RAKIA Georgia, but it does seem to me that in the circumstances of this case it is appropriate to leave the wording as drafted by Mr Plewman to potentially catch any other such bodies that may exist. If RAKIA considers that that wording is far too wide and it would be unfair for the order to extend that far it is of course able to apply on relatively short notice to have that clause varied, but at this stage it does seem to me in the light of what has happened that Mr Azima is entitled to the fullest protection possible and that it is appropriate therefore to include that somewhat wide wording there.

33. That wording is then picked up in paragraph 5 which further defines the assets that are caught by the injunction and to which there has been added in the parenthesis in the third sentence (underlined):

> "The Respondent is to be regarded as having such power if a third party <u>(which shall include any bodies corporate owned directly or indirectly owned and/or controlled by the Respondent)</u> holds or controls the asset in accordance with its, her or his direct or indirect instructions."

34. So the intention is quite clear that this order, which is obviously binding on RAKIA, would require it to ensure that its wholly owned subsidiaries do not do anything with their assets over which RAKIA has effective control and to preserve them pending payment of the judgment sums. I am satisfied that it is appropriate to include that additional wording in the draft order.
35. The other item that I should mention is in the undertakings that are being offered by Mr Azima.
36. The first thing to say is that I am satisfied that it would be inappropriate to require Mr Azima to fortify his cross-undertaking. RAKIA owes Mr Azima over £20 million, and that is amply sufficient to cover any loss that might be suffered by RAKIA from the grant of this injunction.
37. In paragraph 10 of the undertakings schedule the usual undertaking in relation to a worldwide freezing order is in the following terms:

> "The Applicant will not without the permission of the Court seek to enforce this order in any country outside England and Wales [or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets]."

38. Mr Plewman said to me that, because they are only interested at the moment in the asset in Georgia and there have been proceedings in Georgia, that it is unnecessary and inappropriate to have this clause.
39. While I can see that that is correct so far as Georgia is concerned, I think that the undertaking should remain as regards any other jurisdiction that has not yet been identified as potentially holding assets of RAKIA.
40. So I think that undertaking should be amended to exclude Georgia. The undertaking should be in there, but proceedings or enforcement in Georgia should be excluded from requiring any further permission of this court.
41. I should also say that the order includes the usual disclosure of assets provisions, and I am satisfied, even though this is post-judgment, that given what has happened and the reasons for the freezing order that it is important that any other assets that RAKIA has are identified as soon

as possible so that enforcement steps and this order itself can be properly policed. So I will require RAKIA to disclose its assets in accordance with paragraphs 8 and 9, that is within 72 hours of service of the order must make such disclosure and that that needs to be put in the form of an affidavit within five working days.

42. I should add finally that, as is entirely proper on an application of this sort, there has been full and frank disclosure set out in both Ms Pearson's witness statement and in Mr Plewman's skeleton argument. They largely refer to some of the matters that I have already addressed, in particular whether RAKIA would have any sort of argument in relation to delay, and I have said what I need to say in relation to that, but I do not think delay is at all an issue here. But to put it properly on the record I have taken into account all those matters that have been disclosed by way of full and frank disclosure.

43. So I will make the order in those terms.