EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. BVIHC (COM) 149 OF 2011

BETWEEN:

DALEMONT LIMITED

Claimant

and

(1) ALEXANDER GENNADIEVICH SENATOROV
(2) RIGGELS ENTERPRISES LIMITED

Defendants

Appearances: Mr Mark Forte and Ms Tameka Davis for the Claimant
Mr Ray Ng and Ms Claire Goldstein for the Defendants

JUDGMENT

(2013: 2, 4 July)

(Receivers by way of equitable execution – whether proposed to appoint over property or over a mere power – whether just and convenient to appoint – CPR 51.3 considered)

[1] On 22 January 2013 I gave summary judgment in favour of the Claimant, Dalemont Limited ('Dalemont'), against the first Defendant, Mr Alexander Gennadievich Senatorov ('Mr Senatorov'). The judgment was founded upon judgments which Dalemont had obtained in the Courts of the Russian Federation against Mr Senatorov in sums together exceeding US$40 million.

[2] At around the same time as the Russian judgments were obtained, Mr Senatorov caused the shares of some 18 companies which were held by the second Defendant, a BVI registered company called Riggels Enterprises Limited ('Riggels'), a company solely beneficially owned by Mr Senatorov, to be transferred into the indirect ownership of a Foundation set up pursuant to the Foundations (Jersey) Law 2009 ('the Foundation', 'the 2009 Law'). These companies own the substantial assets in Russia against which Dalemont is

currently attempting to enforce the Russian judgments ('the Russian assets'). Mr Senatorov claims that the consequence of the transfer to the Foundation is that he has ceased to have any interest, direct or indirect, in the Russian assets, which belong, he says, exclusively to the Foundation. Dalemont has commenced proceedings in the Royal Court in Jersey with a view of either 'piercing the veil' of the Foundation, so that its assets are treated as the assets of Mr Senatorov, or obtaining an order setting aside the transfers to the Foundation as a fraud on creditors. Those proceedings were originally due to be heard in April of this year, but have subsequently been adjourned to begin on 30 September 2013.

[3] In the present proceedings here in the BVI there is a claim against Mr Senatorov and Riggels for conspiracy arising out of the matters which are complained of in the Jersey proceedings. It was agreed between the parties just before the hearing of 22 January 2013 came on that the BVI proceedings should be stayed pending the outcome of the trial in Jersey. At the end of the hearing I heard submissions as to whether execution of the BVI judgment should also be stayed and decided that in light of the fact that it was then uncertain whether there were any assets here other than the shares in Riggels, which were then considered worthless, I decided to stay execution for the time being, while giving permission for Dalemont to apply.

[4] By the present application Dalemont asks for the stay on execution to be lifted and for the appointment of receivers over the shares in Riggels and in two other BVI companies, Setra Ventures Limited ('Setra') and Pintor Consulting Limited ('Pintor'), which also belong beneficially to Mr Senatorov and which, for all the evidence shows, are equally without assets. The shares in each of Riggels, Setra and Pintor are in the legal ownership of individual Cypriot bare trustees for Mr Senatorov.

[5] The object of seeking these appointments is to enable the receivers, once appointed, to take the following steps:[1]

> (1) to call for the nominee shareholders to transfer the Riggels, Setra and Pintor shares to the receivers;
>
> (2) that done, to replace the current directors of the companies with their own nominees;
>
> (3) to cause the new directors to replace the current nominees of Riggels and Setra as nominee members of the Foundation's

[1] what follows is a simplification of the steps outlined in paragraphs 25 to 36 of the third affidavit of Nicholas Ractliff sworn in support of the application, but I believe to it be a fair summary of the broad lines of what is proposed

Council (its governing body) and the nominee of Pintor as its Guardian with appointees of the receivers' choosing; and then

(4) either

(a) to seek to persuade the third and only remaining member of the Foundation's three member Council (an independent professional authorized under the 2009 Law and whose consent would be required to such a course) to make distributions to the only specified 'beneficiary' of the Foundation, Mr Senatorov, which could then be levied in execution by Dalemont; or

(b) to pass a majority resolution of the Foundation's Council to enable it to make an application for the winding up of the Foundation, which, if granted, would result in its surplus assets being distributed to Mr Senatorov, with the same consequences; or

(5) procure the asset holding Russian companies to abandon their objections to enforcement within Russia.

[6] Mr Ng, who has appeared together with Ms Goldstein for Mr Senatorov, submits that Dalemont is in reality attempting to obtain the appointment of receivers over a mere power – the power to take the steps set out above, or steps of a similar nature or to attempt to induce others to exercise powers of their own to the same effect – which is not property and which cannot be levied in execution. I do not think that that is right. Dalemont seeks the appointment of receivers over the shares in, respectively, Riggels, Setra and Pintor, assets which Mr Senatorov undoubtedly owns beneficially. Legal ownership of those shares would carry with it the ability to cause the steps outlined in (2) to (4) above to be taken, but the property over which the appointments would be made would be the beneficial interest in the shares. The receivers would be entitled to make what use they could of the rights appurtenant or ancillary to or consequential upon having the beneficial interest in that property, just as receivers appointed by way of equitable execution over the entire issued capital of a company which owned a lease would be entitled to cause the company to use its powers, or rights, to forfeit or extend the lease. It does not follow that the receivers in such a case would have been

appointed over the power to forfeit or extend. In neither case is the appointment itself over anything other than property of the judgment debtor.

[7] It is true that the outcome of the envisaged process is uncertain. For example, obtaining the legal title to the shares would require the consent of the current nominee shareholders. They might not wish to comply with a request from receivers appointed by this Court without, at least, court granted authority. The documents establishing the nomineeships, however, are subject to the laws of Cyprus and confer exclusive jurisdiction on the Cypriot Court. It might, therefore, be necessary for receivers to seek recognition from the Courts of Cyprus and to request their assistance in ensuring that the nominees executed the transfer documents. Similarly, the consent of the independent member of the Foundation's Council is required for all distributions. It is not clear whether that consent is equally necessary in the case of distributions made in a winding up of the Foundation as it is for distributions in the ordinary course, but even assuming that it is, it would seem to me that at worst the independent member would, if it was uncertain how to respond, seek directions from the Royal Court. If necessary, I would have thought that receivers, if appointed, could themselves bring the question before the Royal Court. It is pointless to speculate how either the Cypriot Court or the Royal Court might respond to such applications, but it cannot be assumed that they would either direct the legal owners of the shares not to transfer them to validly appointed receivers or encourage the independent member of the Foundation's Council to resist requests for distribution made by Court appointed receivers standing in the shoes of the persons entitled to appoint the majority of the members of the Council.

[8] The existence of these uncertainties would not, in my judgment, mean that the receivership itself would be in any way precarious or that the property over which the appointments had been made was not property of Mr Senatorov. The receivership might not achieve its aims, but that is so in many cases of receivership. It is not a reason, unless the position is so fragile that a receivership would be pointless, for refusing to make the appointment if it would otherwise be just and convenient to do so. In this case I am satisfied that the nature of the appointments sought falls within the currently established parameters of appointments by way of equitable execution.[2]

[9] I therefore turn to the question whether such appointments would be just and convenient. Mr Ng, for Mr Senatorov, complains that Dalemont is now attempting to branch out upon a new enforcement process when enforcement in Russia is all

[2] **Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Co (Cayman Ltd and others** [2012] 1 WLR 1721. [2011] UKPC 17

but complete. That may be so, but the judgment remains largely unpaid and the fact is that Mr Senatorov is still opposing execution. It is plain that Mr Senatorov is equipped with all necessary means to cause assets to be realized and the judgments to be satisfied, but he resists at every stage, as he has done on this application. The remedy against the incurring of further cost and expense is, as it has been from the outset, in his own hands.

[10] I have had concerns, however, about the interrelationship between the proceedings currently on foot in Jersey and the proposed receiverships.

[11] First, the Jersey proceedings, as I understand their thrust, are designed to attack the validity of the Foundation as an asset holding entity. The proposed receiverships, by contrast, will be asserting the Foundation's validity as an asset holding entity and relying upon and seeking to enforce its structures and mechanisms. This was not a point raised by Mr Ng and I have decided that it is not something about which I need be concerned. However this may play out in the context of the proceedings in Jersey, it is irrelevant to the question facing this Court, which is whether or not Dalemont shows that it is just and convenient for receivers to be appointed over the beneficial interests in the shares of Riggels and the other companies in support of the judgment which it has obtained here in the BVI. Dalemont does not adopt inconsistent positions before this Court and I do not think that I need be further concerned on that score.

[12] The other concern which I have had relates to costs. Mr Senatorov is already defending substantial proceedings in Jersey. It might be asked why he should be further subjected to the costs of defending efforts by Court appointed receivers to obtain satisfaction of Dalemont's judgment debt by another route. In my judgment, however, this is the illusion of hardship. It is only by advancing the proposition that he has some inherent right to thwart enforcement of the judgments that Mr Senatorov manages to cast himself as a victim. Mr Senatorov can make arrangements tomorrow for the realization of sufficient assets from the Foundation to discharge the judgment, in which case any receivers need do nothing. If that happens, the Jersey proceedings will likely fall away. Mr Senatorov will be able to address the Royal Court on the question of the costs of those proceedings and the Royal Court will make whatever order it considers just in all the circumstances. In my judgment, there is nothing in the costs point.

Conclusion

[13] These considerations persuade me that it is both just and convenient to appoint receivers by way of equitable execution over the Riggels, Setra and Pintor shares. Indeed, it would seem to me to be neither just nor convenient to prevent Dalemont

from having resort to and from exploiting as best it can property belonging to Mr Senatorov situated within this jurisdiction in furtherance of its efforts to obtain payment of the judgment debt which it is owed.

[14] Before I can do that, however, the Rules oblige me to have regard to the amount likely to be obtained by the receivers; the amount of the judgment debt; and the probable costs of appointing and remunerating the receivers. In my judgment, these requirements are not to be taken too literally. They do not require the Court to work out in cents and dollars what will be the likely recovery or the expenses of the receivership. They are directing the attention of the Court to the need for it to be satisfied that the proposed appointment will be proportionate in all the circumstances. I am entirely satisfied that it will be. The unpaid amount of the debt easily outweighs the likely costs of the receivership and it seems to me that the prospects of recovery by the proposed route are sufficient to justify the probable expense.

[15] That leaves the question whether the stay should be lifted. The fact, not to put too fine a point upon it, is that it had not occurred to Dalemont when the stay was imposed that it might be possible to exploit the shares in the manner now proposed. For reasons given elsewhere in this judgment, however, it seems to me that no injustice will be caused to Mr Senatorov if it is lifted and that is what I propose to do.

[16] I will wish to hear Counsel on the handing down of this judgment on the precise terms and form of the order. The present draft appears, if I may say so, unduly prescriptive.

Commercial Court Judge
5 July 2013