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Case No: BL-2025-BHM-000120

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS AT BIRMINGHAM
BUSINESS LIST

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Date: 23 December 2025

Before:

HER HONOUR JUDGE WATSON

- -

Between:

JLA 79 LIMITED	**Applicant**
- and -	
MR JEFFREY IAN LERMER	**Respondent**

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- -

MR MARTIN LANGSTON of Counsel appeared for the **Applicant**
MR NICHOLAS LEAH (instructed by **Griffin Law**) for the **Respondent**

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APPROVED JUDGMENT

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HER HONOUR JUDGE WATSON:

1. This is an application for a worldwide freezing order. The claimant intends to bring claims against the respondent and others arising out of a share sale agreement under which the claimant bought 90% of the shares of two companies from, amongst others, the respondent. Proceedings have not been issued yet and there are no draft particulars of claim but, as I understand it, the potential claim is a claim for misrepresentation and/or breach of warranty arising out of the share sale agreement.

2. This application has been issued on short notice. It was issued on Friday 19 December. It is today 23 December, so effectively only one clear day has been given. I say one clear day because I understand the application was served out of hours on Friday. The respondent has had no opportunity to prepare evidence in response.

3. The application of course could, and commonly would, have been made without notice. Indeed, I think this is the first time I have ever been asked to make a freezing order on notice to the respondent.

4. It is not clear why the application, which is made on notice, was so urgent that it needed to be listed on such short notice and particularly just before Christmas, today being the last sitting day before the Christmas break. I am mindful, as Mr Leah points out, that the respondent has had no opportunity to respond with evidence as a result of the short notice. The claimant, of course, has an ongoing duty of full and frank disclosure and that applies notwithstanding the fact that the respondent is represented by counsel today in circumstances where notice was short and the respondent has not had an opportunity to put in evidence.

5. There was a point about service of the application. It is probably a moot point now and it is not actively pursued. However, part of the additional reason for the respondent having, as Mr Leah put it, to scurry around in the last 48 hours to deal with this application is because it was not clear initially whether or when the application had been issued. The affidavit in support of the application was not, in fact, sworn until last night. It is not clear why that is.

6. The respondent's solicitors agreed that they would accept service, but they made clear that, to do so, they expected to have a sealed notice of the application and a sworn affidavit. Those were not produced until later. I believe, in relation to the sealed application notice, that that may have been because it was not available from court but it is not clear why the affidavit was not sworn earlier than it was. In any event, nothing really hangs on that other than to reinforce the need for full and frank disclosure on the claimant's part and to explain the respondent's inability to put in evidence in response to the application despite having had some notice of it.

7. The first thing I need to consider is whether there is a good arguable case. We spent quite a lot of time on this in the hearing, partly because, having read the witness statement and tried to read through the 650-odd pages in the bundle, most of which were the exhibit to the witness statement which was not in any way cross referenced to the witness statement with page references, I have been trying to work out, and have failed to work out, exactly what the claim is, how it will be put and what the quantum might be. Therefore, we have spent quite a lot of time going through that with Mr Langston explaining the claimant's potential case. It would have certainly

helped if there had been some draft particulars of claim or a clearer letter before action.

8. It is not entirely clear from what I have before me whether this is a claim for rescission of the contract based on fraudulent and/or negligent misrepresentation. It is thought probably not. Probably it is more likely to be a claim for damages. The claimant will say the value of the asset which it acquired is close to nil, as the company it acquired was effectively valueless, possibly borderline insolvent. As I understand it, it is likely to be a claim for damages for the difference between the value of the shares the claimant acquired and the value of the shares if the warranties had been true or the alleged misrepresentations not made. However, that is not spelled out. It not clear from the evidence before me. What I have is simply an assertion in argument that the company acquired is worthless, or next to worthless, and that it may have been trading while insolvent. There has been no real attempt to explain how that correlates with the specific matters complained of which the claimant says are examples of either breach of warranty or misrepresentations.

9. I note there is an entire agreement clause in the contract which, as is entirely standard in contracts of this type, states that the agreement is the entire agreement, supersedes and extinguishes all agreements, promises, assurances, warranties, representations and understandings, whether oral or written, relating to the subject matter. So it seems that any claim is likely to have to be based on the terms of the agreement and not any other representations that are not replicated in the agreement. Therefore, I would have expected, for an application of this type, if not formal pleadings because of the urgency of the matter, at least a clearer explanation of the clause of the contract said to have been breached and how it was breached or the terms of the representation made that is said to have been untrue and how it was untrue, together with what effect that had, if any, on the value of the shares of the company acquired by the claimant. None of those things do I have, at least, in any formal form before me.

10. Therefore, I did ask Mr Langston to go through the more important elements of the claim on which the claimant wished to rely so that I could understand what the nature of the claim is and why I should conclude that there is a good arguable claim.

11. The first issue advanced is the treatment in the accounts of prepayments as earned income. As I understand it, although it is not very clearly explained, the allegation is that, rather than treating prepayments by clients as money held on account, the company treated them as income to which the company had a right on receipt. This is said to have led to the prepayments appearing in the accounts as income and therefore going to the profit and loss account and increasing the profits of the company, whereas in fact it was only money to which the company became entitled when it had done work and invoiced for it.

12. My frustration was in understanding how that affected the profitability of the company because it is said that this allegedly incorrect accounting practice goes back for years. It seemed to me, and still seems to me that, apart from the possibility of the profit appearing slightly higher in one year and lower in another year depending on how many prepayments were taken in any particular year, if that policy has been consistently applied, it would not affect the overall apparent profitability of the company. Although there might be an overstatement of income in a particular year resulting from the treatment of payments on account, there would also be receipts that

had been treated in the same way in the previous year that ought properly have been treated as income in the year when the work was done and invoiced but had instead been treated as income the previous year. Having explored it at some length with counsel, I still remain of the view that the policy is unlikely significantly to affect any understanding of the profitability of the company, unless the extent to which prepayments were treated as income before work was done and invoiced it had changed significantly between the years.

13. The claimant argues that the second aspect of this treatment of prepayments is that it may overstate or understate the liabilities of the company, because some of the cash in the bank is not the company's money but is money that the company is potentially liable to return to customers, or in respect of which it must do work before the money belongs to the company, so the obligation to repay it or to do work should show as a liability in the company's accounts. There is no accounting evidence before me, but I am going to assume that that is right. It sounds likely to be right, but at the moment it is no more than an assertion, there being no accounting evidence. I find it quite surprising, given that the parties have apparently been working for months on the completion accounts for the sale and purchase and I assume that accountants will have been involved in that process, that there is no evidence from an accountant explaining what is wrong with the accounts of the company and why the balance sheet is alleged to be overstated. However, at this time, it seems to me that it is at least possible that the balance sheet is overstated in the year if receipts have treated as belonging to the company before they can properly be billed to the customer, but what is not clear is by how much. Nor does there appear to be any supporting evidence in relation to that. There are no documents supporting it the assertion. I am asked to rely on the letter of claim. That is, of course, an assertion. It is not evidence that its contents are true.

14. The evidence acknowledges that there was work in progress. There is an assertion, without evidence to support it, that the work in progress was low. There are figures in the claimant's draft completion accounts, but I note that they are the claimant's draft accounts. There is no explanation as to how they have been drawn up, no supporting documentation and I have not got the respondent's response to the draft accounts. So it is really no more than a number at the moment. There was no way for me to verify that in any way and nor do I have any accounting evidence to support it.

15. Therefore, there may well be something in the claimant's complaints, particularly in relation to the balance sheet being overstated, but currently it is impossible for me to say by how much, what effect it had or whether this was replicated in previous years and whether correcting it really does reduce the balance sheet as suggested. It seems to me it is at least possible that it might. Of course, I am mindful of the fact that the threshold for an interim injunction, is not a particularly high hurdle that I have to be satisfied that there is a good arguable case, not that the claimant will certainly win at trial or even that it is more likely than not to succeed.

16. The next element of the claim relied on by the claimant is a failure to discharge a charge. The respondent acknowledges, as I understand it, that there is an outstanding charge that needs to be discharged by the respondent as part of the agreement. I think it is a debenture registered against one of the two companies. It is not clear what, if any, loss that company or its shareholder will suffer. There is no evidence before me that the debenture has been called in, that there was or is any risk to the company that the charge will not be discharged by the respondent. It is not clear to me how the fact

that that charge has not been discharged affects the value of the shares at completion, if at all. This may well be a separate claim for breach of contract because the obligation is to discharge the mortgage or the debenture after completion, so whether or not it has been discharged may well not affect the completion accounts. It may instead be a separate claim, if it ever materialises, but it is not clear how the fact that the respondent is late in discharging a charge necessarily causes loss to the claimant or if it does, how much.

17. There is also an allegation that the respondent failed to disclose claims against the company. The first and most significant example of that is a claim for a potential liability of £800,000 for tax advice by Future Fabrics. The applicant's position is that, had it been aware of that claim, it probably would not have bought the shares of the company and may have structured the purchase as an asset purchase rather than a share purchase. It claims this affects the value of the shares that it bought.

18. First, there is no evidence before me as to exactly what that liability is or the likelihood of it crystallising and resulting in any actual loss in the form of a payment by the company, which would obviously affect the value of the company. The disclosure letter in relation to the sale and purchase agreement did refer to this claim and refers to it as a claim that is uninsured because there is an allegation of fraud, which the company denies. There is nothing in the disclosure letter putting any value on the limit on the claim. So it is not clear to me at the moment why it is said that there was a misrepresentation or a breach of warranty in relation to this claim. It appears to me that the potential claim was disclosed. It was not quantified and it may be that the claimant says that it should have been. I do not know. However, it appears that the potential liability was disclosed and, as far as I am aware, the applicant did not ask for more information, at least, there is no evidence before me that it asked for more information as to how much that liability might be or that that question was not answered or was answered inaccurately. In relation to that element of the possible claims, I am struggling still to see it is not excluded by the fact it was disclosed in the disclosure letter.

19. There is reference to a claim by a Mr Ucko for around £7,000. The significance of this is not that it is particularly significant in value (because it is only £7,000, whereas the price of the company was £1.7 million – £1.9 million, subject to adjustments following the completion accounts) but whether this was a claim for a payment that arose in the normal course of business or not.

20. Again, there is no evidence before me from any accounting expert, or even a reference to any law that I could look up to satisfy me that paying out a claim of that sort of value, or of that type, is not in the ordinary course of business. It seems to me a relatively insignificant sum. If it is said that the nature of it was such that it was outside the normal course of business, I would have expected some evidence to support that.

21. There is also a claim for a failure to give quarterly payment advice to customers. My understanding in relation to this is that the disclosure letter referred to two such claim by clients. As I understand it with a little help from Mr Langston, the argument here is that, although other claims have not actually been intimated, a review of the company suggests that about £100,000 or more of potential liability exists because the company did not do what it should have done by giving the advice it should have

done as part of its retainer with clients. However, in the absence of any claims by those clients, it is far from clear to me how that results in, or is likely to result in, any loss. The fact that there may have been bad practice, or that there may even have been negligence, does not necessarily mean that the company will suffer loss. Nor is it clear, if it does, how that loss may affect the value of the company if it eventually does lead to some claims.

22. The final example of claims identified during submissions is a claim in relation to a person who worked at the company. There is a suggestion that his conduct led to complaints by other employees and it is said that this is something that should have been disclosed. Again, there is no evidence as to any loss to the company or the effect that has on the value of its shares. In answer to my question, I was told that the individual concerned who was causing the problems had left the company. There is no evidence as to how his departure is a problem or caused any loss or how that would result in any claim. Again, in short, it is unclear what the claim is really for, how much it is for, or how it affects the share valuation.

23. Although there are other claims intimated, those are the ones that have been focused on in submissions.

24. The evidence in support of there being a good arguable case is extremely vague, unparticularised, unquantified and almost wholly lacking in any supporting evidence and so I really struggle, despite the fact that the threshold is quite low, to say there is a good arguable case here. There are assertions of claims by the claimant and insufficient evidence before me to get any real feel for whether there is anything in them or not.

25. I will turn now to dissipation of assets because, of course, for the purpose of a freezing order, the court must be satisfied of a risk of unjustified disposal of assets. Sale of assets in the ordinary course of business or in the ordinary course of family life is not evidence of dissipation in itself. It all depends on whether that conduct appears to be unjustified and cause a concern that assets may be being put beyond the reach of the court to avoid the effect of the likely litigation.

26. Turning then to the evidence in support of that part of the test, there is an assertion of the claimant's director's belief that the proceeds of sale were used to pay off mortgages, as he puts it, of various family members including Mrs Lermer, who it is understood the respondent is currently in the process of divorcing. This assertion is unsupported by any statement as to the source of the information or documentary evidence to support it. Contrary to the requirements of a deponent giving evidence, the source of the information not within his own knowledge is not given. (That is true of many of the assertions in the affidavit, despite including the usual wording that, where not within the witness's knowledge, the source of information is given. Indeed, some of the assertions were given through counsel.) My understanding is that the claimant suggests that this information has come from the respondent himself.

27. Assuming that the claimant's director is correct in his assertion as to the use of the proceeds of sale, the fact that the respondent is the source of that information is not entirely consistent with the assertion that it demonstrates that the transfers are outside the usual course of business or family life so that it shows with a risk of dissipation with a view to defeating the claimant's claim. If the the respondent has provided that

information willingly to the claimant's director, it is not evidence that causes the court concern that the respondent has embarked on a scheme to dissipate assets so as to defeat the claim. There is no real explanation from the claimant as to why paying off family members' mortgages should cause alarm. It seems to me that, having realised an asset by selling a company for £1.9 million (or whatever proportion of that sum the respondent was entitled to, because he was not its sole shareholder, as I understand it) there is nothing particularly unusual about paying off family debt with the proceeds of sale.

28. It is suggested that this is particularly concerning because the claimant believes that the respondent and his wife are getting divorced. If that is true, it is not at all unusual for property to change hands when parties are divorcing. Nor does it appear to me to be a particularly likely method of method of putting assets beyond the reach of a creditor to give them to an estranged wife as part of a divorce. A possible transfer of assets as part of a divorce does not immediately ring an alarm bell as evidence of dissipation to defeat a claim.

29. The claimant also raises a concern that two properties have been sold by a company which is described in the witness statement as a company that holds assets for the respondent, possibly on some sort of trust. I struggled with this and am no clearer as a result of the submissions as to what that is supposed to mean. There is a suggestion, without any evidence in support of it, that in some way the assets in this company are held on trust for its shareholder. It is beyond my current understanding as to why assets would be held in that way because it is said that the shareholder holds 100% of the shares in the company. Therefore, I do not understand why the claimant believes that this company holds assets in trust for its shareholder, as opposed to the shareholder just owning the company which owns the assets it holds.

30. In any event, it is not in dispute that the company in question has sold two properties. They appear to be investment properties, as far as I can understand. However, there is no evidence before me that it has done so to defeat this claim. It appears that the transaction postdates the completion account dispute but predates the letter before action relating to the claim that is the subject of this application that is said to need to give rise to the need for protection through this application. The fact that a company has sold two properties, even of significant value, does not alone cause any alarm. It may have done so for any number of reasons. It may have wanted to reduce debt. I do not know whether there was any debt secured against those assets it may have wanted to reallocate assets in another way.

31. There is no evidence before me that any of the money realised from those sales has been removed from the company or passed to its shareholder (the respondent) and no evidence that the sales have reduced the assets of the company or of the respondent. In fact, it may increase them, if there is debt secured against them. The sales alone do not in themselves give rise to concern, without more evidence.

32. I am asked to find it is inherently likely that there is something untoward about these transactions because of the alleged fraudulent misrepresentation by the respondent. I have already explained that it is far from clear to me that there was any fraudulent conduct on behalf of the respondent. There is an assertion that the accounts of the company do not give a true and fair view. That has not been evidenced; it is not accepted by the respondent. The assertion of a claim for fraudulent or negligent

misstatement or for breach of warranty is not on its own evidence that there is dishonesty as alleged, so that ought to be concerned. It is simply an assertion, without evidence in support of it.

33. Further, as I explored with counsel for the claimant, I note with real puzzlement why the claimant, who apparently believes that the respondent is a fraudster, and it is put his assertions in those terms in correspondence, has left the respondent in control as the sole director of the company of which the claimant now owns 90%. I find that absolutely baffling. If I thought somebody was defrauding me, the first thing I would do would be dismiss them as a director, and most certainly as the sole director, of a company I owned. Instead, the claimant has left the alleged fraudster in complete control of his company. There is something about the decision to do that does not sit well with asking me to conclude that the respondent is a fraudster who is liable to dissipate assets to defeat the claim. The claimant is content to leave the respondent in sole control of the company, not only potentially leading to risk to the claimant but, importantly, dealing with the company's clients and conducting client audits. I am genuinely baffled why the claimant would do that if he has the concerns outlined in the application.

34. The claimant further relies in support of his case as to the risk of the dissipation of assets the fact that it appears that the respondent is trying to sell what I understand is the building from which the company operates, a £1m property in Lytton Road. The claimant argues that this is evidence that the respondent is doing something inappropriate, because it belongs to one of the companies of which the claimant acquired 90%. The evidence on this point is, it seems to me, equivocal. The accounts of the relevant company show that, although it had significant assets in 2022, it had no meaningful amount of fixed assets in 2023 or 2024 which it most certainly would have had if it owned a third of a £1 million property.

35. There is no explanation as to why, if the claimant understood that the company it acquired owned 30% of a £1 million property, the value of that asset was shown at nil in the balance sheet of the company. The documents relied on in terms of the contractual documents also seem to me to be equivocal because:

    i) they refer to discharging a mortgage or a loan (although on asking questions of Mr Langston it transpired that that actually was not a mortgage secured only against a property but a debenture against the company's assets, which seems to me rather different);

    ii) there is reference (I think it is in the disclosure letter) to the fact that the landlord of the building from which the company operates is Mr Lermer (the respondent) as an individual, and two others and does not mention the company as the owner of the property; and

    iii) on the other hand, there is a reference in the contract itself to the property being owned by the company and those two individuals.

36. My understanding is that the respondent's position may be that the company was holding an interest in the property in trust for him the respondent personally and that he equitably owned a share of the property. In fairness, Mr Langston concedes that there is some documentary evidence that a stamp duty payment was made in 2022,

which might be consistent with that equitable interest having been transferred from the company.

37. In any event, it seems to me likely that, whether rightly or wrongly, the respondent believes he is free to sell what he believes is his equitable interest in the property. It seems to me that I cannot rely on his intention to sell that interest as evidence of dissipation because it is clear that, whether he is right or wrong (which may be a matter for trial and argument and legal interpretation of the nuances of the contractual documentation and how they should be construed), his attempt to sell a property he believes he owns equitably is not evidence of an intention to dissipate assets to defeat the claim or of impropriety by the respondent.

38. Of course, the test for a freezing injunction is not that the claimant's director feels uneasy about what he sees but whether, objectively, there is evidence that there is a risk of dissipation so that the court, or an objective observer, would feel that sense of unease. There must be some evidence of a real risk of dissipation. The purpose of a freezing injunction is not to give security for claims. It is to prevent wrongful dissipation of assets to defeat enforcement.

39. It seems to me that there is simply no real evidence that there is a risk of dissipation. There is no evidence that the respondent is taking money out of the jurisdiction or that he is putting it beyond the reach of the court. The only evidence (which is unsupported by any source) is that he may have paid off some family debt, which I do not consider is evidence of trying to defeat a claim. It may be thought to be quite normal behaviour after you have sold a valuable asset, releasing cash, to pay off family debt.

40. For the reasons I have given, obviously, the application fails but I am going through all the factors just in case I am wrong on any of them. The final issue is whether it is just and convenient to impose a freezing order. I note that there is an offer of a cross-undertaking in damages from the claimant. However, there is no evidence at all before the court of the claimant's means to honour that undertaking. It is usual in a freezing order application for accounts to be offered, whether statutory accounts or at least management accounts or some evidence of the means of the company that offers a cross-undertaking, so the court can be satisfied that there is a meaningful protection for the respondent.

41. Although Mr Langston gave some figures that he was reading out from a balance sheet that he had obtained from his client, that is not evidence before the court, it was not provided to the respondent so he had not had an opportunity to consider it and I am completely unable to satisfy myself that the claimant is able to meet the cross-undertaking in damages if I were to grant the application. That alone, I think, even without the other factors which I have spent some time on, would have most likely caused the application to fail.

42. Finally, I have already mentioned the fact that it is quite unusual for an application for a freezing injunction to be made on notice, even short notice, and in this case not only was it made on notice but it was foreshadowed in correspondence before the application was actually made, or at around the time the application was made. In the context of the balance of convenience, if the claimant were so concerned of the risk of dissipation, it is very unclear to me why the warning was issued. That would have

given the respondent a greater opportunity to dissipate assets, if he was inclined to do so.

43. Usually, an application for a freezing order is made without notice because there is a genuine concern of the risk of dissipation between the time the respondent becomes aware of the application and an order being made. As I have said, it is unclear why this application was brought on one clear day's notice on the last working day before Christmas when obviously solicitors are more busy in the run up to the break and it is harder to deal with urgent matters. It is not at all clear why, if it was appropriate to give notice, such short notice was given.

44. The claimant is of course under an obligation to provide full and frank disclosure. That requires a fair and balanced assessment of the evidence put before the court. In my view, what I have before me are assertions as to the company's financial situation and the claims, rather than real evidence.

45. Purely by way of example, and it is just an example, the evidence rather gives the impression that the company faces intimated claims of £100,000 for failing to give quarterly advice but, in fact, it transpires that the only intimated claims are those that were disclosed in the disclosure letter and this claim relates to the claimant's assessment of a risk of further claims that have not actually been intimated. That is the sort of example of where the court expects there to be open-handedness and clarity as to strength of the claim against the respondent.

46. I am uncomfortable about the way that the application has been approached and the approach to the obligation to give full and frank disclosure.

47. For all those reasons, this application has failed on every limb of the test for a freezing order, in my judgment. The application is dismissed.

(For proceedings after judgment see separate transcript)

48. Given the nature of the application, two things: (1) I always think on an application like this type, whether costs are awarded on an indemnity costs or on the standard basis is probably pretty academic because it probably does not really make any real difference; and (2) in relation to counsel's costs, the nature of this was that it was brought at such short notice and there was no opportunity for the respondent to put in any evidence, so counsel had the additional burden of dealing with it without any evidence.

49. Therefore, I have to look at the costs as a whole and it seems to me that they are entirely reasonable when you consider the amount of work, the fact that it is a well-known fact for anyone who has been in practice that it is more work to do things urgently. It takes longer to do things when you are doing them in a hurry for an urgent hearing.

50. The respondent has done all it possibly could to try and resolve this without the need to come to court today by putting forward a perfectly sensible suggestion and that offer was not accepted, so it seems to me that the costs are entirely reasonable and should be assessed as per the draft.

(For proceedings after judgment see separate transcript)

(This Judgment has been approved by HHJ Watson.)

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