

BRITISH VIRGIN ISLANDS  
EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
COMMERCIAL DIVISION

CLAIM NO: BVIHC(COM) 47 of 2010

BETWEEN:

KRASSIMIR PETROV GUERGOV

Applicant/Claimant

and

DEYANA DEMITRIOVA MARCHEVA  
EQUIP LIMITED  
WISSINGTON LIMITED  
SMP PARTNERS LIMITED

Respondents/Defendants

**Appearances:** Mr Malcolm Arthurs for the Claimant  
Ms Tana'ania Small and Ms Akilah Anderson for the Defendants

## JUDGMENT

[2010: 1, 2, 8 June]

(Permission to serve out of the jurisdiction – whether real issue to be tried between Claimant and anchor Defendants – expert evidence of foreign law)

- [1] **Bannister J [ag]:** The Claimant ('Mr Guergov') is a Bulgarian national who is involved in media and advertising through Europe. The first Defendant ('Ms Marcheva') was until 17 October 2009 a partner in a law firm (Karadimov Lawyers Partnership – 'KLP') in Sofia. The second Defendant ('Equip') is a BVI registered company. Its sole registered shareholder is the third Defendant ('Wissington'), which is itself a BVI registered company. The fourth Defendant ('SMP') is an Isle of Man company which provides trust and corporate services and from which KLP purchased Equip in

November 2007. KLP says that the instructions for and the costs of the acquisition and setting up of Equip were paid by Mr Guergov and that is not disputed.

- [2] Wissington executed a declaration of trust over its Equip share[s] in favour of Ms Marcheva shortly after it was acquired through the offices of KLP.
- [3] On 4 May 2010 I was asked, on an ex parte application, to grant interim relief against all four Defendants. The state of the 'evidence' at that hearing (I say 'evidence', because none of it was sworn and, despite undertakings to provide sworn affidavits, none has yet been provided) was that Mr Guergov claimed that Equip belonged to him beneficially; that Ms Marcheva was claiming that it was really hers; that some share transactions involving companies wholly or partly owned by Mr Guergov had been carried out using Equip; and that Equip had the sum of 2.5 million euros standing to the credit of an account with Barclays Wealth at Hans Crescent in London, the mandatories to which were officers or employees of SMP. The source of this credit balance was not then disclosed. It was further stated that on 20 May 2008 Ms Marcheva had executed a 'Nominee Agreement' declaring that she held the Equip shares on trust for Mr Guergov and that on the same day Mr Guergov had executed a so called 'contra letter' in Ms Marcheva's favour, the burden of which was that the Nominee Agreement signed by Ms Marcheva was a sham and that she was, despite its terms, the true owner of Equip ('the Contra Letter').
- [4] At the ex parte application an attempt was made by Counsel then appearing for Mr Guergov to establish jurisdiction to serve Ms Marcheva and SMP out on the basis that there was a dispute regarding the beneficial ownership of the Equip shares, requiring rectification in due course of its register of members. I pointed out that that could not possibly amount to a dispute giving rise to a real issue to be tried between Mr Guergov and Equip, but adjourned the matter overnight to allow Mr Guergov, if he could, to formulate a serious issue as between himself and Equip (or Wissington). On the following day, Mr Guergov's lawyers argued that in circumstances where Equip (on his case) had been effectively stolen from him, there was a real issue between Mr Guergov and Equip on the basis that Equip had found itself unjustly enriched to the tune of 2.5 million euros, a sum which it ought to disgorge to Mr Guergov.
- [5] On this basis, I gave permission to serve out on Ms Marcheva and SMP and granted orders restraining dealings with the shares in Equip; alteration to Equip's officers; and changes to the

authorized signatories on any of its bank accounts. I also made an order freezing the account at Barclays Wealth.

- [6] The matter eventually came back to me on an inter partes basis on 1 June 2010. Ms Marcheva put in some guarded evidence, but that evidence disclosed, among other things, that on 8 March 2008, and thus before Mr Marcheva and Mr Guergov had executed the Nominee Agreement and Contra Letter, a company called Top Tone Media Holdings Limited ('TTMH'), a BVI registered company of which Mr Guergov claims to be the beneficial owner, transferred to Equip a 10 per cent holding in another company called Top Tone Media SA. It also disclosed that on 10 September 2008 the so called financial and management rights in 75% of the transferred shares had been sold back to TTMH for the sum of 2.5 million euros. The payment instructions were for the money to be paid to the Barclays Wealth account at Hans Crescent. The first recital to the latter agreement is as follows:

'Equip is entitled absolutely as beneficial owner to 10% of the share capital of Top Tone Media SA, credited as fully paid up free from all other right, title and interest.'

- [7] In the light of this evidence it became impossible for Mr Arthurs, who appeared at very short notice for Mr Guergov on the return date, to argue that the Top Tone Media SA shares, or the proceeds of their partial sale, had been transferred or paid to Equip by mistake. Any claim based upon unjust enrichment therefore fell away. I ought also to mention, for completeness, that on 18 February 2008 and thus before the transfer to Equip of the shares in Top Tone Media SA, Ms Marcheva had sent an email to one Richard Dixon, who acts on behalf of Mr Guergov, which expressly stated that Equip was her company. Mr Dixon copied this email to Mr Guergov.

- [8] Mr Arthurs attempted to argue that Equip must be a constructive trustee of the money, on the basis that Ms Marcheva was engaged in defrauding Mr Guergov, but he was obliged to accept that the conduct of Ms Marcheva, if it was fraudulent (which has not been established), could not constitute Equip a constructive trustee of its assets. He also accepted that if Mr Guergov was indeed the beneficial owner of Equip, it would be improbable to a degree that Equip would have been holding the Top Tone SA shares (or their proceeds of sale) on trust for him. The likelihood, consistently with the recital to the agreement of 10 September 2008 to which I have referred above, would be

that it would be the beneficial owner of the assets which it held and Mr Guergov would have been relying instead on his beneficial ownership of Equip.

- [9] The result is that Mr Guergov was unable to establish that there was any serious issue to be tried between himself and Equip (or, *a fortiori*, between himself and Wissington). It followed that there is no anchor defendant within the jurisdiction and that, accordingly, permission to serve out under CPR Part 7.3(2)(a) could not be granted. I accordingly set aside service on Ms Marcheva and SMP; struck out the claims; and set aside the injunction.
- [10] Before parting with the case I should add that at a very late stage Mr Arthurs made an application to be allowed to lead evidence of Bulgarian law. His reason for wishing to do that was that he hoped to establish that Mr Guergov is without any remedy in the Bulgarian courts because, so Mr Arthurs submitted, the evidence would show that so far as concerns the internal affairs of corporations, Bulgarian law treats such affairs as governed by the law of the place of incorporation. I pointed out to him that even, as is likely, that is so, no good reason was shown why Mr Guergov could not lead evidence of BVI law in the Bulgarian courts. In any case, the issue was not as to the internal affairs of Equip but as to its beneficial ownership.
- [11] Mr Arthurs further submitted, on the immediate basis of an email from KLP, that Bulgarian law does not recognize trusts. This submission seemed to break down at the first hurdle in light of the fact that the Nominee Agreement and Contra Letter were drafted by Bulgarian lawyers in Bulgaria for two Bulgarian nationals. Mr Arthurs then submitted, on the same basis, that the Bulgarian courts would treat these and any similar documents as subject to BVI law (because their subject matter was shares in a BVI company) and would simply refuse to entertain any dispute centered on such a subject matter. I am unable (even without the benefit of expert evidence) to accept that the Bulgarian courts would have neither the means nor the inclination to settle a dispute between two Bulgarian citizens as to the ownership of disputed assets, whatever their *situs*. I therefore refused Mr Arthurs' application.

[12] Mr Arthurs made this unsuccessful attempt to adduce evidence of Bulgarian law in an attempt to establish that the BVI was the proper forum for the dispute. On the contrary, it seems to me that the real dispute is between Mr Guergov and Ms Marcheva, for which the proper forum is Bulgaria. It is entirely Mr Guergov's own fault that, for whatever reason, he has not brought Ms Marcheva before the Bulgarian courts and has instead chosen to attempt to litigate here, as he had earlier attempted (with similar lack of success) to litigate the same dispute in the Isle of Man.

**Commercial Court Judge**

8 June 2010.