Trans-Oil International SA v Savoy Trading LP and Melnykov **[2020] EWHC 57 (Comm)**

Savoy Trading was a Scottish limited partnership with two partners, both of which were limited companies (Cadwell and Intech). It entered into a contract with the applicant which provided for disputes to be settled by arbitration. After it notified the applicant that it could not fulfil its contractual obligations, the applicant served notice of arbitration on both the partnership and Melnykov. Neither responded and no arbitrator was appointed. After the applicant discovered that partnership had been subject to a sequestration award and a trustee appointed, it applied for and was granted a freezing order against the partnership. In these proceedings the applicant sought to add Melnykov to the freezing order or, in the alternative, to have him named personally in the penal notice of that order.

As Melnykov had no presence or assets in the jurisdiction, the applicant sought to found jurisdiction on either CPR PD6B3.1(6)(c) on the basis that he was arguably personally liable on a contract which was governed by English law, or CPR 62.5 on the basis that he was a party to an arbitration agreement. The court held that CPR 62.5 did not give jurisdiction over non-parties, and Melnykov was not a party to the arbitration.

As to personal liability, the court noted that the opinion of the Scottish Advocate given in evidence did not support Melnykov incurring personal liability; indeed that opinion stated that even if an offence (in relation to obtaining credit without the trustee's permission) had been committed, it would prima facie be committed by the partnership, and even if the general partner had committed the offence, that would not render Melnykov personally liable unless the court were to pierce the partner's corporate veil which, on the facts, was unlikely. The Advocate's opinion was that although Cadwell acknowledged in a Norminee Declaration that its ownership of an interest in the partnership was as nominee and in trust for Melnykov, the beneficiary of a trust did not incur concurrent liability on a contract entered into by the trustee on behalf of the trust. The Advocate also noted that although personal liability might arise if Melnykov had contracted as agent for himself as undisclosed principal, there was no evidence that he had. The court concluded that the applicant had entered into a contract with the partnership, and neither the Nominee Declaration nor the fact that Melnykov signed the contract and had a power of attorney for the partnership was sufficient to make him personally liable. Further, even if there had been evidence of an undisclosed agency, the law on the liability of that agent was far from settled. The court therefore concluded that it had no jurisdiction to make a freezing order against Melnykov.

The court held that even if it was wrong on the issue of jurisdiction, a freezing injunction should not be granted because there was no evidence of a real risk of dissipation of assets by Melnykov. It considered that there was little or no real evidence of dishonesty or low standards of commercial morality, beyond the use of the partnership structure which might be for good reasons. Surprisingly, the court also held that there was no evidence of the strength of the Trustee's suspicions as to Melnykov's conduct, even though the trustee had reported those suspicions to the police, and despite the background of the current BEIS inquiry into the misuse of partnership structures, and in particular the Scottish limited partnership structure.

The court also dismissed the alternative claim for an order that Melnykov be named in the penal notice on the grounds that he was a de facto general partner of the limited partnership, a de facto partner was analogous to a de facto director, and CPR 81.4(3) enabled the naming of directors and other officers in an order made against a company or other corporate body. The court held that there was no basis for extending the rule in CPR 81.4 to partners, and therefore no basis for extending it to de facto partners. Although *Lindley & Banks on Partnership* noted that the commercial view of a partnership was to treat it similarly to a company, the nature of a partnership was such that individual partners were personally liable for a breach of an order against the partnership without need for a provision such as CRP 81.4, other than where a partnership had separate legal personality. The latter caveat is another rather surprising feature of this judgment, as is the court's statement that it was unclear whether a Scottish partnership had separate legal personality. In fact, s4(2) of the Partnership Act 1890 states clearly that it does and it is settled law, but it is also well established that Scottish partners do incur personal liability for the obligations of the partnerships (see further Stephen Chan, *A Practical Guide to Partnership Law in Scotland*, Ch 4).

Finally, the court held that even if CPR 81.4 applied, Melnykov was not a de facto partner. In *HMRC v Holland* [2010] UKSC 51 Lord noted that there was no single test for a de facto director but referred to factors such as whether he was held out as a director or purported to act as a director. It was not clear whether such authorities applied to partners, but in any event Melnykov was not held out as a partner and did not act as such. The Advocate's opinion was that Cadwell was the general partner and liable as such, and the court concluded that Melnykov did not act as a general partner but pursuant to a power of attorney.

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