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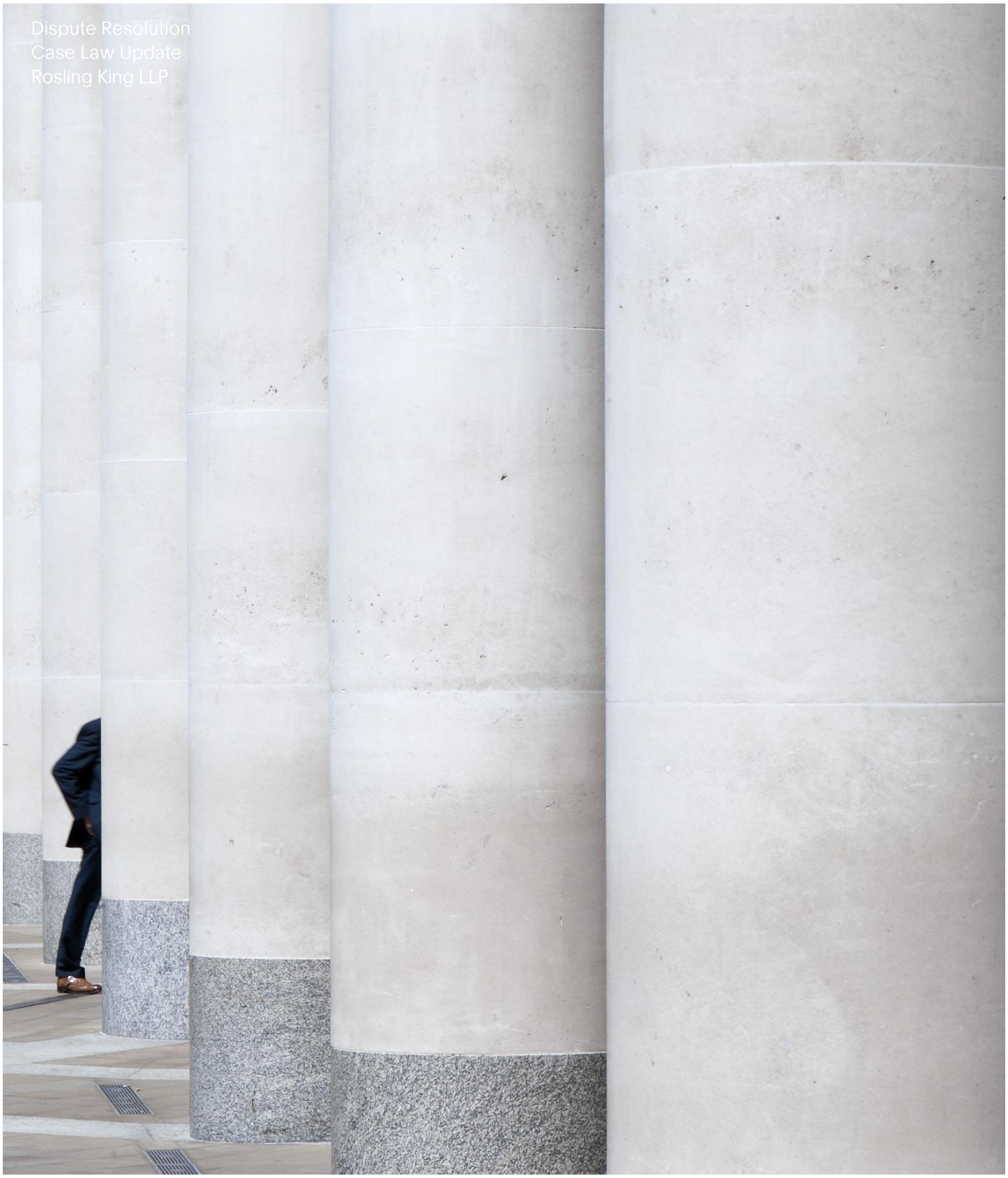

Pharmagona Limited v (1) Mr Sayed Mostafa Taheri and (2) Mrs Bahereh Mohammadi [2021] EWHC 2537 (Ch)

Background

The Claimant alleged that the Defendants, who were employees of the Claimant, had engaged in fraudulent activities involving fake invoices in order to misappropriate funds. The Defendants argued that they were whistle-blowers and that the fraudulent transactions were initiated by the Claimant's director in connection with the illegal export of goods to Iran.

In 2018, a freezing order was granted against the Defendants, which prevented them from removing from the jurisdiction or in any way disposing of, dealing with or diminishing the value of any of their assets in England and Wales up to the value of £500,000. 18 months later, judgment on the main claim was given in favour of the Claimant.

The Claimant subsequently discovered that unilateral notices had been registered against the title of the Defendants' property by two individuals named Mr Orang and Dr Aminnaji. Proceedings ensued and, in witness statements given by Mr Orang and Dr Aminnaji, they explained that they were friends of the Defendants and that in July 2019, the Defendants had approached them asking for money that was urgently needed by members of the Defendants' families. Mr Orang and Dr Aminnaji borrowed £20,000 and £14,900 respectively from financial institutions and entered into loan agreements with the Defendants. The loan agreements recorded that the loans had been paid to the Defendants in those amounts and that the Defendants had agreed to repay the loans with interest. The loans were not repaid so Mr Orang and Dr Aminnaji had registered unilateral notices with a view to taking security for the loans.

The Claimant argued that borrowing money from Mr Orang and Dr Aminnaji for the Defendants to pay to their family members in Iran was a breach by the Defendants of the freezing order, and committal proceedings were issued.

Around July 2020, each of the Defendants was made bankrupt on their own petition and a trustee in bankruptcy was appointed.

Discussion

It was common ground that the application would fail:

- if there was no reasonable prospect of proving the allegations of contempt, for

example because there was no reasonable prospect of proving a breach of the freezing order;

- even if there was proof of a breach, if that breach was only of a technical nature; or
- if the application had been brought for an improper purpose.

The Defendants argued that there was no evidence that the loan monies ever passed into their hands. They also argued that the Court should take judicial notice of the Hawala system, a common informal system for Iranians living overseas, which works on the basis of mutual debits and credits, which meant that it was unlikely that the money ever passed through the hands of the Defendants.

The Judge declined to take judicial notice of the Hawala system, and found that there was a realistic prospect that the Claimant could demonstrate that the Defendants did have the money in their hands at some point. However, the Judge found that the Defendants did not have any intention to dissipate money that beneficially belonged to them. The proper analysis was that the money loaned to the Defendants was not theirs to dispose of freely, and it was therefore arguable as a matter of law that the money would not be caught by the freezing order at all. There was no evidence that the money was borrowed for any purpose other than remission to Iran.

The Judge held that the facts did not give rise to a breach of the freezing order at all; alternatively, if there was a breach, it was only a breach of the most technical type and therefore not an appropriate basis for contempt proceedings.

The Bankruptcies

As mentioned above, the Defendants were made bankrupt around July 2020. The Judge noted that, since the appointment of the bankruptcy trustee, under section 306 of the Insolvency Act 1986, there were no assets at the free disposal of the Defendants upon which the freezing order could be said to bite as the Defendants' respective estates now vested in the trustee. The Judge considered that it was not appropriate for the Claimant to be permitted to pursue a contempt application for the purpose of bringing home to the Defendants the importance of complying with the freezing order in those circumstances.

The Judge considered that if the trustee believes that some application is necessary to preserve the value of the bankruptcy estate, it is a matter for the trustee to seek that relief. As a creditor, the Claimant was able to ask the trustee to take a particular course of action but it was not appropriate for the Claimant, as an individual creditor, to use contempt proceedings as a means of enforcing the freezing order, the continued utility or appropriateness of which was in some doubt given the intervention of the bankruptcy

proceedings.

Commentary

This decision is a useful reminder that the Courts are reluctant to allow contempt applications in respect of mere technical breaches. Where there is bankruptcy involved, the Claimant must take into consideration the fact that the bankrupt's estate is vested in the bankruptcy trustee and thought needs to be given to whether or not the assets in question will be at the bankrupt's free disposal due to the collective nature of bankruptcy proceedings.

For further information, please contact Hannah Sharp or the Partner with whom you usually deal.