

**INJUNCTION ORDERS : TO CONTINUE OR NOT?**

**GLOSSARY**

Beckton Arms, a leasehold property in East London	<b>The Property</b>
Valbonne Estates Limited, a company owned by members of the Ultra-Orthodox Jewish Community in North London and intended purchaser of the Property	<b>VEL</b>
Cityvalue Estates Limited, also a company owned by members of the Ultra-Orthodox Jewish Community aforesaid and the leasehold owner of the Property	<b>CEL</b>
An agreement for sale made in January 2015 between VEL and CEL whereby VEL would buy the Property from CEL for £495,000 with completion of sale due 27.02.15.	<b>The Contract of Sale</b>
The freehold owner of the Property, being the London Borough of Newham	<b>Newham</b>
The permission needed from Newham as landlord to enable the Contract of Sale to be completed	<b>The Consent</b>
The dispute which then arose between VEL and CEL in relation to: 1) The failure by CEL to obtain the Consent and 2) Whether the Contract of Sale was still valid and enforceable by VEL – or whether it had been terminated (that is, rescinded)	<b>The Dispute</b>
The Beth Din of the Union of Orthodox Hebrew Congregations, being a Rabbinical Court within the English legal jurisdiction and applying Judaic law	<b>The Beth Din</b>
United Homes Limited, Third Party Buyer	<b>UHL</b>
The separate agreement between CEL and UHL made in 2017 whereby CEL gave an option to UHL (a non-Jewish buyer) to buy the Property for the considerably higher sum of £2,000,000	<b>The UHL Option</b>
Following the referral to it of the Dispute, the Beth Din decision on 01.10.20. This decided that the Contract VEL – CEL was enforceable and that VEL should pay completion funds within 28 days. On receipt CEL were then to transfer the Property to VEL.	<b>The First Award</b>
The failure by VEL to pay the completion funds within 28 days	<b>The Breach by VEL</b>
On 04.11.20 the sale by CEL to UHL of the Property	<b>The Sale to UHL</b>
The further arbitration award made by the Beth Din arising from the Breach by VEL. This was oral. It was made on 19.11.20. It directed that VEL should pay to the Beth Din £500,000. This sum represented the moneys required to complete on the purchase of the Property. On receipt of the £500,000 CEL was in turn required to transfer the Property to VEL (by way of Form TR1).	<b>The Second Award</b>

The failure by CEL at the hearing on 19.11.20 to disclose to the Beth Din the Sale to UHL.	<b>CEL's failure to disclose the sale to UHL</b>
The deposit by VEL of £500,000 with the Beth Din on 23.11.20	<b>The Deposit</b>
The subsequent dispute VEL – CEL as to the terms on which the Deposit was to be released to CEL	<b>The Completion Funds Dispute</b>
The disclosure [of the Sale to UHL] to the Beth Din and to VEL on or about 29.11.20	<b>The Information</b>
The return of the Deposit to VEL on 01.12.20 of the Deposit by reason of the Information	<b>The Return of the Deposit</b>
The subsequent decision of the Beth Din on <b>03.12.20 effectively affirming the Sale to UHL</b> and stating that it had no power to enforce “ <i>anything in this matter</i> ”. The further statement from the Beth Din that <b>VEL could sue both UHL and CEL in the secular courts</b> (save that any claim for damages against CEL had to be pursued in the Beth Din).	<b>The Third Award</b>
The application to the Court by VEL on 10.12.20 (without notice) seeking to restrain both CEL and UHL from any further dealings with the Property.	<b>The Injunction Application</b>
The terms of the Injunction Order providing effectively that <b>CEL should not in any way sell or deal with the Property and prohibiting UHL from acquiring any interest therein.</b>	<b>The Injunction</b>

An Injunction Order is the third most serious category of directive that an English Civil Court may make. The first is committal to prison for contempt; the second is the sequestration (that is, seizure) of a person's assets to satisfy a Judgment debt; and the third is the Injunction Order.

The purpose of such is to maintain the status quo or prohibit undesirable consequences which might render empty and valueless the outcome of a trial. For instance, a Court may order that the subject matter of a dispute should be preserved until its true ownership can be decided. A Court may direct that one party cease some troublesome actions or conduct pending resolution of the dispute at trial.

An Injunction may either be mandatory in character (directing a party to do something – for instance delivering up a valuable item into the custody of a third party to be held until the dispute is resolved) or prohibitory (preventing undue interference or conduct which may lead to irremediable consequences).

These matters fell to be considered within the case of *Valbonne Estates Limited (VEL) v. Cityvalue Estates Limited (CEL) and United Homes Limited (UHL)* [2021] EWHC 544(Ch).

#### 1. *The Facts*

The brief facts were these. On 10<sup>th</sup> December 2020 the Court granted VEL pre-action injunction. It was prohibitory. It restrained CEL from selling or otherwise dealing with property in East London known as The Beckton Arms (“the Property”).

The Injunction also restrained UHL from acquiring any interest in the Property.

Both CEL and UHL were prohibited from seeking to register any dealings in the Property at HM Land Registry – and thus frustrating VEL's claims.

The hearing on 19<sup>th</sup> and 20<sup>th</sup> February 2022 was for the Court was to decide whether or not the Injunction granted in favour of VEL should be continued until trial.

CEL and UHL argued that it should not because VEL had failed to disclose to the Court important facts and in any event were the injunction to continue it would be ineffective: this was because a sale by CEL to UHL had been completed before the grant of the injunction; that UHL had not been joined as a party and VEL's case did not disclose any legitimate proprietary interest in the Property.

## 2. *The kernel of VEL's case*

In January 2015 VEL and CEL had exchanged contracts for the purchase of the Property. The price agreed was £495,000. Completion had been set for 27<sup>th</sup> February 2015. One of the conditions for completion was that permission to sell (i.e. assign) the remainder of the lease should be obtained from the freeholder, the London Borough of Newham. There were difficulties in getting Newham's consent.

This in turn led to a dispute between VEL and CEL. VEL, in an attempt to protect their interests, registered a Special Restriction against the title to the Property (a Unilateral Notice) which effectively put any third party buyer on notice of the contract for sale between VEL and CEL.

In 2018, without having resolved their differences, VEL and CEL agreed that the dispute should go to arbitration before the Beth Din (a Rabbinical Court of Judaism).

## 3. *Option Agreement : CEL/UHL*

Before the Beth Din had decided the arbitration it emerged that in 2017 CEL had made an Option Agreement with UHL (a non-Jewish buyer) giving the latter an option to buy the Property for the appreciably higher sum of £2,000,000. VEL only learned of this during the Beth Din arbitration process.

## 4. *The Beth Din decision : The First Award*

On 1<sup>st</sup> October 2020 the Beth Din found that VEL was entitled to complete its purchase and had to provide completion funds within 28 days. CEL were then to transfer the Property to VEL. This was the First Award.

## 5. *Funds*

For various reasons the funds were not transferred by VEL to CEL within 28 days. There followed a further hearing before the Beth Din. They made a Second Award (oral) which directed that VEL should

pay to the Beth Din £500,000 (by way of completion funds) after the which CEL was required to provide VEL with the requisite form enabling VEL to become the leasehold owner (TR1).

6. *Third Award*

There was a Third Award: this recorded that CEL had notified the Beth Din that a TR1 had been signed in favour of a non-Jewish buyer and that accordingly the Rabbinical Court had no power to enforce “*anything in this matter*”. On that footing the Beth Din stated that VEL could bring proceedings against both UHL and CEL in the secular courts, but that any claim for damages against C had to be pursued in the Beth Din.

7. *Non-disclosure by CEL*

At the hearing on 19<sup>th</sup> November 2020 CEL had failed to inform the Beth Din that it had already signed a Transfer form (TR1) on 4<sup>th</sup> November 2020 purporting to transfer the ownership of the Property to UHL.

8. *The Injunction Application*

By reason of these events, VEL applied for an Injunction Order against both CEL and UHL to restrain any dealings with the Property. In support they produced evidence of the arbitration agreement but failed to disclose the existence of either the Second or indeed Third Award.

9. *VEL’s arguments*

At the hearing VEL argued that the proposed sale of the Property (from CEL to UHL) could take place at any time; that VEL was unable to put material before the Court as might disclose an arguable basis on which CEL could resist its claims; that the Property was owned by CEL (not VEL or UHL) and that VEL were unaware of any counter-argument that might be raised by either CEL or UHL to contradict this assertion.

10. *Contents of the Injunction Order*

This effectively prohibited both CEL and UHL from having any dealings in the Property.

11. *Questions for the Court*

There were essentially two questions for the Court to decide:

- (1) Whether VEL had committed material breach of its obligation to make full and frank disclosure when applying to the Court for its Injunction Order;
- (2) If VEL was in breach, whether the Court should in any event employ its discretion to continue the Order or (if discharged) re-impose the Injunction immediately thereafter.

11. *Duty of full and frank disclosure : the Law*

It is well established that when applying for a 'without notice' Injunction the duty of full and frank disclosure requires the Applicant to draw the Court's attention to:

*"significant factual legal and procedural aspects of the case"*.

The authority for this proposition is *Tugushev v. Orlov [2019] EWHC 2013 (Comm)*.

It follows that where there has been a material and significant failure by the Applicant to give full and frank disclosure, the general rule is that an injunction obtained on that basis should be discharged and without renewal. There are two sound policy reasons for this approach: the first is to deprive the wrongdoer of an advantage improperly obtained; the second is to serve as a deterrent to others.

12. *Residual discretion*

The Court retains a residual discretion nonetheless. It may decide to continue the Order or to grant a fresh one – notwithstanding a failure to disclose. However, that discretion should be exercised sparingly but with the overriding consideration that the interests of justice are paramount.

13. *Material breaches : the present case*

The Court found as follows:-

- (1) It was said that the Second Award constituted a written decision handed down by the Beth Din on 30<sup>th</sup> November 2020. This assertion was comprehensively inaccurate. The Second Award was given on 19<sup>th</sup> November 2020. It was a purely oral decision. It was never committed to writing (whether in Hebrew or English). Moreover – as VEL knew when applying for the Injunction – the terms of that oral Second Award were disputed.
- (2) There were additional allegations in which it was asserted that there was never a formal Second Award; where it was denied that the Second Award was to replace the First.
- (3) The Court found that the Court had been seriously misled into what it had been told about the Second Award. The terms of the Second Award were critical to VEL's application. If VEL had failed to comply with the 28-day time limit imposed by the First Award, then *prima facie* it had no basis to bring a claim to enforce the UHL Option.
- (4) VEL's substantive claim against CEL only got off the ground if the 28-day time limit in the First Award had been formally and validly extended.
- (5) On applying for the Injunction, the Court had been told that VEL had funds available to complete its intended purchase. In fact it was said that VEL had deposited the requisite sum of £500,000

with the Beth Din in compliance with the Second Award. No mention was made of the fact that this amount had been returned to VEL (at VEL's request) 8 days later.

- (6) VEL had also failed to mention that it had been told (on 29<sup>th</sup> November 2020) that the Property had in fact already been sold to UHL. This was a highly material fact: as VEL knew, CEL's assertion that the Property had already been sold to UHL was the express basis for the Third Award – permitting VEL to bring its civil claim.

**The very premise of the application for the injunction was the contention by CEL that a transfer to VEL could no longer take place because UHL were already the new owner.**

#### 14. *Summary*

The Court decided that VEL's non-disclosures and inaccurate representations related to:-

- (1) The nature and content of the Second Award;
- (2) The fact that completion funds for the Property had been returned by the Beth Din to VEL;
- (3) The fact that VEL had been told that the sale to UHL had already completed; and
- (4) The failure to disclose alleged connections both between CEL and UHL and UHL and a potential further buyer ("BDL")

The Court stated that these were all substantial items which should have been notified to the Court at the time of asking: the more so when taken together. The Court decided that the breaches of duty of full and frank disclosure were neither inadvertent nor accidental, and that the starting point must be the discharge of the Injunction Order.

#### 15. *To continue or re-grant the Injunction*

The Court decided that it should not exercise its discretion to continue or re-grant the Injunction, even allowing for the serious breaches which had occurred. VEL had failed to demonstrate that injustice would result.

On the facts, the sale CEL - UHL (prohibited by the Injunction Order) had completed on 4<sup>th</sup> November 2020 and had been registered at HM Land Registry on 10<sup>th</sup> December 2020. Accordingly, the sale which the injunction sought to prohibit had already taken place.

The case for re-grant or renewal was fatally undermined by the fact that VEL was unable to establish any proprietary claims against the Property.

Accordingly the court decided that the injunction should be discharged and would not be re-granted.

#### 16. *General*

This case if at all emphasises the strict and onerous duty of providing to the Court at the outset all information which may be of importance or inform the Court's deliberations on the question as to whether an Injunction should be granted or not and whether or not (having been granted) it should continue. Failure so to comply may result in immediate discharge, non-renewal and unpalatable costs consequences.

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