



IN THE HIGH COURT OF JUSTICE
COMMERCIAL COURT
[2012] EWHC 602 (Com)

2011/1457

Royal Courts of Justice
Friday, 9th March 2012

Before:

MR. JUSTICE POPPLEWELL

BETWEEN:

THE STATE OF LIBYA

Claimant

- and -

CAPITANA SEAS LIMITED

Defendant

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MR. G. MITCHELL QC (instructed by MS Legal) appeared on behalf of the Claimant.

THE DEFENDANT did not attend and was not represented.

J U D G M E N T

(Approved)

MR. JUSTICE POPPLEWELL:

1. I am satisfied that that this is a case in which I should give judgment pursuant to CPR.12.4 in terms that, subject to the consent from Her Majesty's Treasury, the defendant is to convey, or cause to be conveyed, the legal estate in the property at 7 Winnington Close, Hampstead Gardens Suburb, London N2 0UA, registered at HM Land Registry, under the number NGL256694, to the claimant within 14 days of the date of the order. Paragraph 2 will be as per the draft order. I will assess summarily the costs of the claim at £120,000 to be paid to the Claimant, by the Defendant, within 14 days of the date of this order.
2. I am satisfied that it is appropriate and that justice requires the grant of the relief in that form for the following reasons. In relation to declaratory relief, Neuberger J (as he then was) said, in *EIC Services Limited v. Phipps* [2003] 1 WLR 2360, at para.209, that the relevant question, when the court was exercising its discretion as to whether to grant a declaration, was that:

"... the court should bear in mind justice to the parties, the extent to which a declaration would serve a useful purpose, and whether there are any special reasons, in favour or against granting a declaration. In effect, the discretion is one whose exercise depends very much on the particular facts of the particular case."

Although I am not, in the event, being asked to grant a declaration, in my view, the same considerations apply in relation to exercising my discretion under CPR.12.4 in relation to relief to which there is no automatic entitlement to judgment in default of acknowledgment of service.

3. The relevant factors in this case are these. I am satisfied, on the evidence which has been put before me, that Saadi Quaddafi is the sole ultimate beneficial owner of the Defendant company. I am satisfied, on the evidence before me, that the property was wrongfully and unlawfully purchased with funds belonging to the Claimant. In those circumstances, the beneficial interest in the property is held by the Defendant, for the Claimant, as constructive trustee.
4. I am also satisfied, from the evidence I have been shown, that Saadi Quaddafi is aware of these proceedings and is aware of the present application, such that he could have intervened, and the Defendant could have taken steps to resist the claim and to oppose the present application, should either the Defendant or Saadi Quaddafi have chosen so to do. It is clear to me that a decision has been

taken both by the Defendant and by Saadi Quaddafi, as its ultimate beneficial owner, not to contest the proceedings or to resist the relief which is sought.

5. In any event, the order which I make will afford a further opportunity to the defendant to resist the claim by making an application pursuant to CPR.13.3 in accordance with those provisions.
6. Moreover, I am satisfied therefore that it is unlikely that there will be any further evidence from the Defendant beyond that which is currently before me at any subsequent stage of the proceedings.
7. This is a case in which the substantive relief sought is a claim to property, and the relief sought is simply the appropriate and necessary relief in a form to enable the property to be transferred.
8. In those circumstances, I will make the order in the form which I have indicated.
