Neutral Citation Number: [2014] EWHC 3124 (Comm)

Case No: 2014-730

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE COMMERCIAL COURT

Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Date: Thursday 28th August 2014

BEFORE:

THE HONOURABLE MR JUSTICE POPPLEWELL

BETWEEN:

ICICI BANK UK plc

Claimant

- and -

DIMINCO NV

Defendant

Digital Transcript of Wordwave International, a Merrill Communications Company
101 Finsbury Pavement London EC2A 1ER
Tel No: 020 7421 6131 Fax No: 020 7421 6134
Web: www.merrillcorp.com/mls Email: mlstape@merrillcorp.com
(Official Shorthand Writers to the Court)

MR ADAM SOLOMON (instructed by **DWF LLP**) appeared on behalf of the Claimant

The Defendant did not appear and was not represented

Approved Judgment

No of words: 6832
No of folios: 95

1. **MR JUSTICE POPPLEWELL**: This is the return date in an application which was for a worldwide freezing order, including an order for disclosure of assets worldwide, pursuant to section 25 of the Civil Jurisdiction and Judgments Act 1982 in aid of a claim made in Belgian proceedings. A worldwide freezing order was made *inter partes* by Eder J on 18 July 2014 without any asset disclosure provision. The freezing order was unusual in that the operative freezing provisions recited in the order were undertakings given to the Court by leading counsel who was then instructed by the Defendant.

2. The freezing order included reference to four identified bank accounts, held at banks in London, as assets falling within the scope of the freezing order. On 7 August 2014 Andrew Smith J made an order that the Defendant must file and serve any evidence upon which it intended to rely at this hearing by 4pm on 14 August 2014. The Defendant did not do so. Instead, it wrote a letter to the Court sent on the evening of 17 August in which it said:

> "Diminco, after careful consideration, has decided not to serve any evidence in the English proceedings or to take any further active part in them. Diminco is already having to deal with proceedings in Belgium and elsewhere at the same time as managing its day-to-day business and simply does not have available the necessary management and legal resources to deal with yet further proceedings in England. Diminco proposes, nevertheless, to summarise in this letter its objections to the relief which your client (the Bank) is seeking in the English proceedings. Please ensure that this letter is shown to the Court at the hearing of any application which the bank may make."

3. Insofar as the letter then sought to put evidence before the court, I decline to take any account of it because the Defendant has failed to comply with the order of Andrew Smith J. In any event the letter recorded the Defendant's decision not to serve evidence or to play any active part. Nevertheless, it is right that I should take account of the two arguments advanced in the letter why the court should decline the relief sought by the Claimant. They are, first, that there is no evidence of a real risk of dissipation of assets; and, secondly, that it is inexpedient to grant relief against the Defendant, over which this Court has no territorial jurisdiction.

4. The Claimant, to whom I shall refer to as "the Bank", is an English bank. It is the wholly owned subsidiary of ICICI Bank Limited, one of the largest banks in India. ICICI Bank Limited operates in 19 countries around the world, either itself or through subsidiaries such as the Bank. In this case, ICICI Bank Limited's banking operations in Belgium are conducted by a branch of the Bank, and accordingly the relevant party to the Belgian proceedings, which I shall describe in a moment, is the Bank, operating through its branch in Antwerp. The Bank provides the services of a deposit-taking bank, and is authorised for those purposes in the United Kingdom by the relevant regulatory authorities. The Bank's branch in Belgium focuses on corporate banking and is located in the diamond district of Antwerp.

5. The Defendant is a distributer of diamonds based in Antwerp. It is a subsidiary of Digico Holdings Limited which is incorporated in Hong Kong and claims to be one of

the largest integrated diamond and jewellery manufacturers and retailers in the world. Its directors include Mr Chetan Choksi, who is the managing director of the Defendant. The diamond trade is a global business, and Digico claims to operate in diamond distribution in eight countries, mainly USA, Japan, Hong Kong, China, India, UAE, Italy and Belgium. Its diamond distribution arm is operated through the Defendant as its subsidiary.

6. The Defendant does not appear to have substantial real property in Belgium. The operation of diamond distribution does not require substantial premises or a large workforce; the Defendant has approximately 11 employees and, according to the Bank's evidence, only about $100,000 worth of diamonds believed to be the property of the Defendant have so far been located in Belgium. They are to be found at a transport company and in four cardboard boxes stated to contain rough diamonds, the value of which is unclear, located at the offices of the Defendant.

7. Since December 2004 the Bank has provided working capital facilities to the Defendant through a series of facility agreements. The agreements were entered into in Belgium and governed by Belgian law, but written in English. The most recent amendment to the amount of the facility between the Bank and the Defendant dated 18 September 2007 raised the credit line to $25,000,000, which was drawn down in full by the Defendant. The Defendant's obligations under the facility agreement are guaranteed by Digico and Mr Choksi. The Bank's evidence is that from April 2010 onwards the Defendant started to default on its obligations under the facility agreement. Essentially the default was twofold: first, the Defendant failed to maintain sufficient securities and allowed the value of the diamonds pledged to the benefit of the Bank to fall below 111.11 per cent of the outstanding loan, in breach of the facility agreement as amended; and, secondly, the Defendant failed to pay interest on the outstanding loan. As regards the first failure, the Bank was first obliged to give the Defendant notice of its failure to comply, which it did by notice of default on 13 December 2011. No response was received to this correspondence, and on 27 January 2012 the bank declared that the amount of $25,000,000 plus interest was immediately due. Payment was also demanded from Digico and Mr Choksi pursuant to the guarantees. On 3 February 2012 the Defendant, together with Digico and Mr Choksi, responded, alleging that making the credit immediately due and payable would amount to a breach of contract. The Bank subsequently issued further notices of default on 17 July and 21 December 2012 and 13 February 2013. By 13 February 2013 the amount outstanding was US$25,721,088.14, to which I shall refer as "the debt".

8. In early 2013 the Defendant requested a new credit facility from the Bank. There were a number of discussions in relation to that possibility but the request was ultimately rejected once discussions ceased at the end of January 2014. On 10 February 2014 the Defendant, together with other parties which included Digico and Mr Choksi, brought a claim against the Bank in Belgium. By that claim the Defendant alleges that the Bank "created the impression that during negotiations an additional credit line would be granted". The Defendant also advanced a claim based on sums which were paid to the Bank by the Defendant pursuant to various derivative transactions between 2006 and 2008. The Bank brought a counterclaim in the Belgian proceedings against the Defendant for recovery of the debt.

9. On 28 and 29 April 2014 at an *ex parte* hearing the Belgian court granted permission for the Bank to attach immovable and moveable goods in the amount of US$25,644,503.84, to which I shall refer as "the attachment order". In giving its reasons, the Belgian court observed from the evidence adduced by the bank that it appeared *prima facie* that the Defendant was no longer fulfilling its obligations under the facility agreement. Those decisions were upheld at a hearing on notice on 5 June 2014. Following the attachment order being upheld, it was served on ten banks in Belgium. The information which was disclosed by those banks revealed that at only one of the banks were the Defendant's accounts in credit, and that only to the extent of some €2,600 in aggregate after setoffs. I am satisfied that the Bank has, putting it at its lowest, a good arguable case that the Defendant is indebted to it for the amount of the debt.

10. The relief sought in the original application, which has been modified in the course of oral argument before me in a way which I shall identify in a moment, was for a freezing order over the Defendant's assets worldwide, other than in Belgium, and for disclosure on affidavit of details of all the Defendant's assets worldwide exceeding £10,000 in value; and for a complete set of bank statements for all the Defendant's accounts at all banks worldwide from 13 December 2011 to date.

Risk of dissipation

11. The evidence establishes a clear and real risk of dissipation of assets in the absence of freezing order relief. The Defendant's latest published accounts, for the year ending 31 March 2013, disclose a turnover of just over US$300,000,000, yet its bank accounts in Belgium where it carried on business have been found to retain credit balances which in aggregate are no more than approximately €2,600. The Defendant has chosen not to provide evidence responding to or rebutting the evidence advanced by the Bank that the natural inference to be drawn is that moneys have been deliberately channelled through accounts outside Belgium to avoid the effect of the attachment order. Moreover, the Defendant's conduct in commencing the Belgian proceedings is suggestive of an attempt to avoid its obligations by improper tactical manoeuvring. The Bank's evidence is that the claims made by the Defendant are meritless and "frankly absurd". The Defendant has chosen not to respond to that evidence in these proceedings nor to seek to rebut it.

"Inexpedient"

12. I turn to the question whether it is expedient to make the order sought in the modified terms, which are advanced in oral argument. Section 25 of the Civil Jurisdiction and Judgments Act 1982 empowers the court to grant all forms of interim relief in aid of foreign courts unless "in the opinion of the Court, the fact that the Court has no jurisdiction apart from this section in relation to the subject-matter of the proceedings in question makes it inexpedient for the Court to grant it".

13. It is necessary to consider a number of the authorities which are concerned with the exercise of the jurisdiction under section 25 of the 1982 Act and to seek to identify the principles which they establish. It is convenient to start with the decision of the Court of Appeal in ***Rosseel NV v Oriental Commercial Shipping (UK) Ltd*** [1990] 1 WLR 1387. That was not a case in which relief was sought under section 25, but it was

considered in subsequent section 25 cases. In that case the plaintiffs applied *ex parte* to Hirst J for leave to enforce a New York arbitration award under section 3 of the Arbitration Act 1975, which was the relevant provision then in force giving effect to the New York Convention. The plaintiffs also applied at the same time for a worldwide Mareva injunction. The Defendants, or at least some of them, were resident in England. One at least had a name which suggests it was domiciled in England, and it appears from what Millet LJ later said in ***Credit Suisse Fides Trust SA v Cuoghi*** [1998] QB 818 that the Defendants as a whole could be described as resident in England.

14. Hirst J granted leave to enforce the award and granted a domestic Mareva injunction over assets within England and Wales, but declined to extend the Mareva injunction to assets outside England and Wales. He said: "I am not persuaded to enforce a New York arbitration award beyond England and Wales. The appropriate court is the New York court or the foreign court where assets are to be found. Therefore I will not carry this order beyond [the jurisdiction]. I will order an affidavit of all the UK assets."

15. The Court of Appeal, consisting of Lord Donaldson of Lymington MR and Parker LJ, upheld that decision. Lord Donaldson MR said:

> "That was an exercise of discretion, and that of course is an obstacle to any appeal against the judge's decision, but I am bound to say that in my view he was abundantly right. I say that because, as it seems to me, there is all the difference in the world between proceedings in this country, whether by litigation or by arbitration, to determine rights of parties on the one hand, and proceedings in this country to enforce rights which have been determined by some other court or arbitral tribunal outside the jurisdiction.
>
> Where this court is concerned to determine rights then it will, in an appropriate case, and certainly should, enforce its own judgment by exercising what would be described as a long-arm jurisdiction. But where it is merely being asked under a convention or an Act of Parliament to enforce in support of another jurisdiction, whether in arbitration or litigation, it seems to me that, save in an exceptional case, it should stop short of making orders which extend beyond its own territorial jurisdiction. I say that because, if you take a hypothetical case of rights being determined in state A and assets being found in states B to M you would a find very large number of subsidiary jurisdictions, in the sense that they were merely being asked to enforce the rights determined by another jurisdiction, making criss-crossing long-arm jurisdictional orders with a high degree of probability that there would be confusion and, indeed, resentment by the nations concerned at interference with their jurisdictions. It seems to me that, apart from the very exceptional cases, the proper attitude of the English courts – and, I may add, courts in other jurisdictions – is to confine themselves to their own territorial area, save in cases in which

> they are the court or tribunal which determines the rights of the parties. So long as they are merely being used as enforcement agencies they should stick to their own last."

16. In ***S & T Bautrading v Nordling*** [1997] 3 All ER 718 the plaintiff was seeking a worldwide Mareva injunction against a Defendant in aid of enforcement of a German form of document which comprised an acknowledgment of debt. The injunction was granted worldwide at the *ex parte* stage, but at the *inter partes* hearing was varied to confine its effect to England. The form of order confining its effect to England was confirmed on appeal on the grounds that the order was being sought to enforce a right which arose in Germany. The jurisdiction being invoked by the plaintiff in that case was section 25 of the 1982 Act. Saville LJ, who gave the judgment of the two-man court, applied the principles in ***Rosseel*** confirming the application of those principles by the judge below.

17. In ***Credit Suisse Fides Trust SA v Cuoghi*** [1998] QB 818 the plaintiff sought a worldwide Mareva injunction against a Defendant who was domiciled in England in support of proceedings in Switzerland. The application was brought pursuant to section 25 of the 1982 Act. The order was granted at first instance and upheld by the Court of Appeal. The leading judgment was given by Millett LJ, who said at page 827B-D:

> "It is a strong thing to restrain a defendant who is not resident within the jurisdiction from disposing of assets outside the jurisdiction. But where the defendant is domiciled within the jurisdiction such an order cannot be regarded as exorbitant or as going beyond what is internationally acceptable. To treat it as such merely because the substantive proceedings are pending in another country would be contrary to the policy which informs both Article 24 and s. 25.
>
> Where a defendant and his assets are located outside the jurisdiction of the court seized of the substantive proceedings, it is in my opinion most appropriate that protective measures should be granted by those courts best able to make their orders effective. In relation to orders taking direct effect against the assets this means the courts of the state where the assets are located; and in relation to orders *in personam*, including orders for disclosure, this means the courts of the state where the person enjoined resides."

18. Millett LJ commented upon ***Rosseel*** at page 828 in the following terms:

> "Finally, Mr Cuoghi submits that it is established by authority that the English courts should make orders having extra-territorial effect in aid of substantive proceedings being carried on abroad only in 'very exceptional circumstances'. For this

> proposition he relies on an observation of Lord Donaldson MR in Rosseel…"

Having set out the part of the judgment from ***Rosseel*** which I have quoted above, Millett LJ continued at pages 828F-829E:

> "I find the decision surprising, given that the court was being asked to exercise its enforcement jurisdiction against defendants resident in England and who were amenable to the provisions of RSC order 48 and the inherent jurisdiction to compel disclosure of assets abroad: see ***Maclaine Watson & Co Ltd v Dept of Trade and Industry, Re International Tin Council*** (No 2) [1989] Ch 286. I would not for my part accept that the English court was being asked to exercise a long-arm jurisdiction; indeed, I think that an order of the New York court might well have qualified for this description. The explanation, to my mind, is that no or no sufficient regard was paid to the fact that the defendants were resident in England… [***Rosseel***] was not concerned with s 25, but it was followed in [***S & T Bautrading v Nordling***]. In that case substantive proceedings were pending in Germany. The defendants were domiciled in this country. The plaintiffs applied for worldwide Mareva relief. The judge limited the order to assets in England and Wales and this court upheld his decision. No consideration appears to have been given by the court to the terms of s 25(2) or to the question whether the making of a worldwide order would have been inexpedient, and no account appears to have been taken by the court of the fact that the defendants were domiciled in England or of the absence of any question of conflicting jurisdictions…
> Where an application is made for *in personam* relief in ancillary proceedings two considerations which are highly material are the place where the person sought to be enjoined is domiciled and the likely reaction of the court which is seized of the substantive dispute. Where a similar order has been applied for and has been refused by that court it would generally be wrong for us to interfere."

19. Lord Bingham of Cornhill, the Lord Chief Justice, gave a concurring judgment at pages 832E-833B. He considered that ***Rosseel*** could be regarded as correctly decided, notwithstanding the fact that the defendants in that case were domiciled within the jurisdiction, on the grounds which Lord Donaldson MR identified as being that the grant of relief might obstruct or hamper the management of the case by the primary court or give rise to a risk of conflicting, inconsistent or overlapping orders.

20. In ***Motorola Credit Corporation v Uzan and others (No.2) (CA)*** [2004] 1 WLR 113 a worldwide freezing order was sought in support of proceedings in New York pursuant to section 25 of the Act. The second, third and fourth defendants were not resident in England and the second and third defendants had no assets in England. Nevertheless, a worldwide freezing order was granted at first instance. It was upheld on appeal

against the first and fourth defendants but was discharged against the second and third defendants. Potter LJ, who gave the judgment of the Court, identified the point of principle in paragraph 2 of his judgment in the following terms:

> "The point of principle which lies at the heart of the appeals is whether a world-wide freezing order should be made under section 25 of the 1982 Act in support of an action in another jurisdiction in circumstances where the defendant in question is neither domiciled nor resident within the jurisdiction and there is no substantial connection between the relief sought and the territorial jurisdiction of the English Court."

21. The Court's conclusion was that a world-wide freezing order could be made in those circumstances, taking account of a number of discretionary factors which were listed in paragraph 115 of the judgment as follows:

> "As the authorities show, there are five particular considerations which the court should bear in mind, when considering the question whether it is inexpedient to make an order. First, whether the making of the order will interfere with the management of the case in the primary court e.g. where the order is inconsistent with an order in the primary court or overlaps with it. That consideration does not arise in the present case. Second, whether it is the policy in the primary jurisdiction not itself to make worldwide freezing/disclosure orders. Third, whether there is a danger that the orders made will give rise to disharmony or confusion and/or risk of conflicting inconsistent or overlapping orders in other jurisdictions, in particular the courts of the state where the person enjoined resides or where the assets affected are located. If so, then respect for the territorial jurisdiction of that state should discourage the English court from using its unusually wide powers against a foreign defendant. Fourth, whether at the time the order is sought there is likely to be a potential conflict as to jurisdiction rendering it inappropriate and inexpedient to make a worldwide order. Fifth, whether, in a case where jurisdiction is resisted and disobedience to be expected, the court will be making an order which it cannot enforce."

22. What was said at paragraph 114 is also of some significance. There Potter LJ said:

> "The issue in this case arises because, on the face of it, the only fetter placed upon the otherwise apparently unlimited powers which the court has as a result of the combination of s.37 of the Supreme Court Act 1981, s.25 of the Civil Jurisdiction and Judgments Act 1982 and CPR Rule 6.20 is its power to refuse to grant relief if its absence of jurisdiction apart from s.25 makes such grant 'inexpedient'. It is plain that, in relation to the grant of worldwide relief, the jurisdiction is based on assumed personal jurisdiction; as such it has the potential for extra-territorial effect in the case of non-residents with assets abroad.

> Thus it is likely that the jurisdiction will prove extremely popular with claimants anxious to obtain security against defendants in disputes yet to be decided where they cannot obtain it in the court of primary jurisdiction or the court of the defendants' residence or domicile, which courts are the natural fora in which to make such applications. There is thus an inherent likelihood of resort to the English jurisdiction as an 'international policeman', to use the phrase employed by Moore-Bick J, in cases of international fraud. We would do nothing to gainsay, and indeed would endorse, the observations of Millett LJ in ***Cuoghi's case*** [1998] QB818 to the effect that international fraud requires courts, within the limits of comity, to render whatever assistance they properly can without the need for express provision by an international convention requiring it. However, even in the case of Article 24 of the Brussels Convention it has been made clear that:
>
> > 'The granting of provisional or protective measures on the basis of Article 24 is conditional on, inter alia, the existence of a real connecting link between the subject matter of the measures sought and the territorial jurisdiction of the contracting state of the court before which those measures are sought.' (see ***Van Uden Maritime BV (trading as Van Uden Africa Line) v Kommanditgesellschaft in Firma Deco Line*** (Case C-391/95) [1999] QB 1225, 1227, para 40).
>
> Further, in so far as 'police' action is concerned, policing is only practicable and therefore expedient if the court acting in that role has power to enforce its powers if disobeyed. In that respect the principle in ***Derby & Co Ltd v Weldon (No. 3 and 4)*** [1990] Ch 65, already quoted, plainly has application and is apt to be applied in cases of this kind."

23. The reference to ***Derby v Weldon*** was a reference to the passage quoted at paragraph 109 of the judgment in which Lord Donaldson MR had said at page 81 of the report of that case:

> > "only if there is doubt about whether the order will be obeyed and if, should that occur, no real sanction would exist… the court should refrain from making an order which the justice of the case requires."

24. The result in ***Motorola v Uzan*** was that in the case of the second and third defendants, who had no assets here and were not resident here, the worldwide order was set aside. The reasons are set out at paragraphs 125 and 126 and include (1) comity, (2) a tenuous or non-existent connection with this country, and (3) the absence of any available sanction if the order were disobeyed.

25. The last authority I must mention is the decision in the Court of Appeal in ***Banque Nationale de Comercio Exterior SNC v Empresa de Telecommunicaciones de Cuba***

SA (British Telecommunications Plc Intervening) [2008] 1 WLR 1936. In that case the claimant obtained a judgment from the Italian court and sought domestic and worldwide freezing orders in support from the English court. The Italian judgment had been registered in England under the judgment regulation, but its recognition was subject to challenge in the Commercial Court at the time at which the argument and decisions in relation to freezing order relief were being adjudicated upon.

26. At first instance a domestic and worldwide freezing order were granted. On appeal, the worldwide freezing order was discharged on the grounds that it was not expedient for it to be granted. The jurisdiction invoked was again section 25 of the Civil Jurisdiction and Judgments Act. Tuckey LJ, giving the judgment of the court, quoted the passage from the judgment of Millett at page 827, which I have referred to above, and went on in paragraph 29 to say:

> "The worldwide order is only directed at assets outside the jurisdiction. There is therefore no connecting link at all between the subject matter of the measure sought and the territorial jurisdiction of this court. It is not suggested that the worldwide order should be made in order to assist the Italian court or any of the other courts of the member states which have been involved in enforcement proceedings."

27. Drawing the strands together, I derive the following principles as applicable when the court is asked to grant a freezing order in support of foreign proceedings under section 25.
    (1) It will rarely be appropriate to exercise jurisdiction to grant a freezing order where a defendant has no assets here and owes no allegiance to the English court by the existence of *in personam* jurisdiction over him, whether by way of domicile or residence or for some other reason. Protective measures should normally be left to the courts where the assets are to be found or where the defendant resides or is for some other reason subject to *in personam* jurisdiction.
    (2) Where there is reason to believe that the defendant has assets within the jurisdiction, the English court will often be the appropriate court to grant protective measures by way of a domestic freezing order over such assets, and that is so whether or not the defendant is resident within the jurisdiction or for some other reason is someone over whom the English court would assume *in personam* jurisdiction.
    (3) Where the defendant is resident within the jurisdiction, or is someone over whom the court has *in personam* jurisdiction for some other reason, a worldwide freezing order may be granted applying the discretionary considerations which were explained in the ***Cuoghi, Motorola*** and ***Banque Nationale*** cases.
    (4) Where the defendant is neither resident within the jurisdiction nor someone over whom the court has or would assume *in personam* jurisdiction for some other reason, the court will only grant a freezing order extending to foreign assets in exceptional circumstances. It is likely to be necessary for the applicant to establish at least three things:
        (a) that there is a real connecting link between the subject matter of the measure sought and the territorial jurisdiction of the English court in the sense referred to in ***Van Uden***;

(b) that the case is one where it is appropriate within the limits of comity for the English court to act as an international policeman in relation to assets abroad; and that will not be appropriate unless it is practical for an order to be made and unless the order can be enforced in practice if it is disobeyed; the court will not make an order even within the limits of comity if there is no effective sanction which it could apply if the order were disobeyed, as will often be the case if the defendant has no presence within the jurisdiction and is not subject to the *in personam* of the English court;

(c) it is just and expedient to grant worldwide relief, taking into account the discretionary factors identified at paragraph 115 of the ***Motorola*** case. They are (i) whether the making of the order will interfere with the management of the case in the primary court, e.g. where the order is inconsistent with an order in the primary court or overlaps with it; (ii) whether it is the policy in the primary jurisdiction not itself to make to make worldwide freezing/disclosure orders; (iii) whether there is a danger that the orders made will give rise to disharmony or confusion and/or risk of conflicting, inconsistent or overlapping orders in other jurisdictions, in particular the courts of the state where the person enjoined resides or where the assets affected are located; (iv) whether at the time the order is sought there is likely to be a potential conflict as to jurisdiction rendering it inappropriate and inexpedient to make a worldwide order; and (v) whether in a case where jurisdiction is resisted and disobedience may be expected the court will be making an order which it cannot enforce.

Assets within England & Wales

28. There is evidence that the Defendant has assets in England and Wales in the form of bank accounts at London branches of four banks. The Bank was aware of the existence of these accounts as a result of its dealings with the Defendant and Mr Choksi and as a result of documents supplied previously by the Defendant to the bank. Statements for one of those accounts at the Bank of Baroda in London for periods in 2012 show credit balances at that time measured in hundreds of thousands of US dollars. The order of Eder J identifies the numbers of the accounts at the London branches of the banks because the details were supplied by leading counsel then acting for the Defendant. There is no evidence available to the Bank or to this Court as to whether any of those accounts are now in credit, but that is no obstacle to treating them as indicative of the existence of assets within the jurisdiction. They may or may not have credit balances, and evidence of the Defendant's trading suggests that there may be other bank accounts in London which exist and have been used. Moreover, in ***Third Chandris Shipping Corporation v Unimarine SA*** [1979] QB 645, at a time when the Mareva jurisdiction was in its infancy and it was thought necessary to establish the existence of assets within the jurisdiction, it was held that evidence of a bank account held by a foreign company in London which was overdrawn, together with the absence of any evidence from the defendant that there was no collateral security for the overdraft, was sufficient evidence of assets within the jurisdiction. The existence of those accounts, and the inference that there are assets in England and Wales, justifies an order under section 25 of the Civil Jurisdiction and Judgments Act extending to all the defendants assets within England and Wales in support of the Bank's claim in the Belgian proceedings. In my view, it

also justifies an order for disclosure which is ancillary to such freezing relief. That disclosure will extend first to all the current assets in England and Wales of the Defendant insofar as they exceed in value £10,000. Secondly, it will extend to disclosure of bank statements for the bank accounts held by the Defendants at any bank within England and Wales since 13 December 2011. That relief is justified because the source and destination of payments into and out of any such accounts may assist the bank in identifying current assets within England and Wales which properly fall within the scope of the freezing relief being granted. Thirdly, and for similar reasons, disclosure will extend to all assets held by the Defendant within the jurisdiction since 13 December 2011, which would cover, for example, diamonds. I was initially hesitant about extending the disclosure relief to such historic assets on the grounds that disclosure might be unduly onerous, but I have been persuaded by Mr Solomon that the evidence suggests that that is not so. Such relief is again justified because the identification of those historic assets within the jurisdiction may assist the bank in identifying current assets within England and Wales by enabling them to make investigations as to what has happened to those assets or by drawing inferences by reference to the nature, location or dealing with those historic assets.

Foreign Assets

29. I turn to the position in relation to foreign assets. I was able to give advance warning to Mr Solomon of the principles which I have endeavoured to summarise from the authorities, because they were contained in a judgment which I gave in private in a case last August. In the light of those, Mr Solomon, who has argued the Bank's case with conspicuous skill, indicated that the Bank no longer sought worldwide freezing relief; but the Bank maintained its application for disclosure in relation to all the Defendant's assets worldwide.

30. In my view, such relief is inexpedient and inappropriate for the same reasons as render it inexpedient and inappropriate to grant a freezing order extending to assets abroad. The Defendant is a Belgian company which has no presence within the jurisdiction. The existence of assets here in the form of bank accounts or other assets does not render it subject to the territorial or *in personam* jurisdiction of the court. So far as concerns assets located within England and Wales, there is a real connecting link, in the sense explained in ***Van Uden***, between a freezing and disclosure order and the territorial jurisdiction of the Court. In relation to assets outside England and Wales, there is no such real connecting link. The Court is being asked to order disclosure of assets abroad of a foreign company over which it has no territorial or *in personam* jurisdiction. Moreover, the fact that the Defendant is not resident here and is not subject to the *in personam* jurisdiction of the Court or to this Court's enforcement processes makes it inexpedient to grant an order in relation to foreign assets; the court has no ability to enforce compliance with such an order and there is nothing which makes it appropriate for the English Court to act as the international policeman in relation to assets abroad because there is no effective sanction which the Court could apply if the order for disclosure in relation to foreign assets were disobeyed.

31. Mr Solomon drew my attention to the order granted by Mance J in ***Cuoghi*** and upheld by the Court of Appeal, which in that case required disclosure of assets abroad. But

that was a case, unlike the present, in which worldwide freezing relief was granted against Mr Cuoghi because he was resident and domiciled in England.

32. Mr Solomon submitted that a disclosure order is less intrusive and less draconian than a freezing order, and that the court should be prepared to use its powers to assist the Bank in securing assets abroad through foreign process by requiring the disclosure of such assets. In my view, that submission faces a number of difficulties. First, an order for disclosure of assets, in conjunction with a freezing order, is an order which is made because it is ancillary to the freezing relief which is being granted. Disclosure orders are made in order to enable the court and the Claimant to police the freezing relief and to render the freezing relief more effective, notwithstanding that the disclosure relief may be more valuable (see Steyn LJ, as he then was, in ***Grupo Torras SA v Sheik Fahad Mohammed Al-Sabah*** citing what he described as the seminal work of Mr Laurence Collins, as he then was). If it is not expedient for the English court to grant freezing relief over assets abroad because such would involve an exorbitant exercise of jurisdiction, then there is, in my view, no warrant for a disclosure order, which cannot be justified as ancillary to an order which the court ought not to make. Secondly, the ***Van Uden*** case indicates that jurisdiction under section 25 should only be exercised where there is a real connecting link between the relief sought and the territorial jurisdiction of the court. But there is no greater connecting link in relation to an order for disclosure of assets abroad than there is in relation to an order freezing assets abroad, where the Defendant is not subject to the *in personam* jurisdiction of the court. Thirdly, as I have already explained, this court is in no position to enforce any order for disclosure of assets abroad because of a lack of *in personam* jurisdiction over the Defendant.

33. Mr Solomon points out, correctly, that the same is equally true of an order for the disclosure in relation to assets within the jurisdiction, but such an order can properly be justified as ancillary to a domestic freezing order, notwithstanding any lack of sanction if it is not complied with. By contrast, a freestanding disclosure order in relation to assets abroad requires justification for the English court to be acting as the appropriate court for granting relief aimed at securing assets internationally, and rendering itself to that extent the appropriate international policeman. There is no such justification if this court has no *in personam* jurisdiction which would enable it to enforce such an order.

34. Mr Solomon submitted that the disclosure relief sought in relation to assets abroad was being sought to support the ability of the Belgian court to render its processes more effective because it would enable a judgment of the Belgian court to be enforced. The difficulty with that submission is that the processes of the Belgian court are confined to giving judgment on the merits of the dispute and enforcing the dispute and enforcing any such judgment over assets within Belgium. I say that subject, of course, to any enforcement process which may be available pursuant to conventions, but the Belgian court has no standing to enforce its judgment over assets outside Belgium, nor does it have power, according to the evidence before me, to grant any provisional and protective measures by way of freezing relief or disclosure relief in relation to assets outside Belgium. Accordingly, if this Court were to grant an order for disclosure of assets outside England and Wales and outside Belgium, it would not, in truth, be assisting the Belgian court in relation to any process of the Belgian court which that court is capable of exercising.

35. For those reasons I decline to make an order for disclosure of assets outside England and Wales.