Neutral Citation Number: [2016] EWHC 2868 (Admin)

Case No: C0/3121/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/11/2016

Before :

MR JUSTICE DINGEMANS

- -

Between :

Hussein (Nasser) Ali Sulaiman	**Appellant**
- and -	
Tribunal de Grande Instance, Paris	**Respondent**

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- -

Mark Summers QC (instructed by **Janes' Solicitors**) for the **Appellant**
Amanda Bostock (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 28th October 2016

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Approved Judgment

Mr Justice Dingemans:

Introduction

1. This is an appeal against the order of District Judge Devas dated 14 June 2016 sitting at Westminster Magistrates' Court that the Appellant be extradited to France. The extradition was in respect of a conviction European arrest warrant issued on 19 February 2016 and certified by the National Crime Agency on 29 February 2016. The Appellant had been convicted on 10th February 2015 by the Tribunal de Grande Instance of Paris ("The Tribunal of Paris") of organised fraud and of aggravated money laundering. The Appellant had been sentenced to 3 years imprisonment including a 1 year suspended sentence with a 3 year probationary period.

2. Permission to appeal was granted on the papers by Sir Stephen Silber sitting as a High Court Judge on 25 August 2016 on a number of grounds. After grant of permission to appeal and following consideration of the judgment in *Goulochowski v District Court in Elblag, Poland* [2016] 1 WLR 2665 and consideration of whether threats alleged to have been made relating to the Appellant in Nigeria might provide grounds of appeal, the grounds of appeal were reconsidered.

3. As a result of the reconsideration of the grounds of appeal, and in the light of the oral submissions, it now appears that there are two issues to be determined being: (1) whether the description of the money laundering offence set out in the EAW is a *Zakrzewski* abuse of process, meaning that the Appellant should not be extradited for the money laundering offence; and (2) if the Appellant cannot be extradited for the money laundering offence, whether the Appellant's extradition for the organised fraud is barred by reason of specialty pursuant to section 17 of the Extradition Act 2003 ("the 2003 Act").

4. In order to determine these issues it is necessary to consider the terms of the EAW and the findings of fact made by the Tribunal of Paris.

The EAW

5. So far as is material the EAW provides that the warrant is based on an enforceable judgment given on 10th February 2015 by the Tribunal. The length of sentence is given as "3 years including a 1 year suspended sentence with a 3 year probationary period".

6. The EAW said it related to 2 offences. The description provided: "*Perpetrator of offences committed from January 2009 and May 2009 in London and Paris. It has been established that Hussein Sulaiman voluntarily took an active part in a system consisting in fraudulent manoeuvres, in particular under the guise of the promise made to Mr Van Gysel, a real estate project developer in Dubai, to provide funding of 125 million euros … deceived Mr Van Gysel to convince him to make money transfers for a total of 8 million dollars … Hussein Sulaiman also provided assistance in investing, concealing or converting the direct or indirect proceeds of … an organised fraud, by providing the victim with the details of the bank account of one of his co-defenders to which the victim transferred significant amounts and by giving instructions to have the funds transferred to accounts in different locations …*".

The judgment of the Tribunal of Paris

7. The judgment of the Tribunal identified the public prosecutor, the civil parties and the accused. One of the civil parties was Jean Van Gysel. His full name appears to have been Jean Van Gysel de Meise and I have referred to him as Mr Van Gysel. He appears to have been the main victim of the offences. The accused were identified, and one of the accused was the Appellant.

8. The judgment records the circumstances leading to the offence. It appears that Mr Van Gysel had an opportunity to develop one of the sub-islands in the offshore artificial island known as "the World" in Dubai. It appears that Mr Van Gysel was required to find US $100 million (all references to dollars are references to US dollars) to develop his sub-island. The banking crisis had happened, and although Mr Van Gysel had $8 million he was unable to raise funds through banks. Mr Van Gysel looked to raise monies from private investors, and fell victim to an organised fraud in which the Appellant was a party.

9. Mr Van Gysel met Mr Ali Soobhe Kassem (who was using another name), a co-defendant, at the Hotel Fouquet in Paris on 7th January 2009. Mr Kassem promised to find funds from private investors. Mr Kassem introduced Mr Van Gysel to the Appellant, who pretended to be Simon Gabriel, a businessman from a company called Topway. The Appellant pretended to have funds of $460 million available to invest. Mr Van Gysel was persuaded to pay monies by way of arrangements fees and commission and the like amounting to $2,691.166.12 in 4 transfers to an account set up on London in the name of the appellant's cousin.

10. A third meeting took place with Mr Van Gysel in Amsterdam. The Appellant (still pretending to be Mr Gabriel) handed Mr Van Gysel a cheque for 100 million euros, which could not be cashed for 2 weeks. In the interim Mr Van Gysel transferred a further $1,710,000. A loan agreement was sent to Mr Van Gysel and he was persuaded to transfer 760,000 euros for notary fees in London and $625,000 following a meeting described in the Tribunal's judgment as "entirely pointless".

11. A so-called "Notice of Blocked Funds" was purported to be issued by the Minister of Finance of Nigeria. This led Mr Van Gysel to request the return of his monies. However in the interim the Appellant sent the signed loan agreement, and Mr Van Gysel transferred a further $225,000 to the account of the Appellant's cousin. The Appellant also sent Mr Van Gysel a notice of international transfer from the Zenith Bank in Nigeria. Mr Van Gysel's bank considered the transfer to be authentic. Mr Van Gysel was asked to and did transfer a further $450,000 to prevent a Nigerian politician derailing the operation. That payment was made on 19 March 2009, but 4 days later Mr Van Gysel was told that the transfer had been blocked by the Minister of Finance of Nigeria. Mr Van Gysel then came to London on 24th March 2009 where he met a person pretending to be the Minister of Finance in a hotel. Mr Van Gysel was persuaded to pay an "exit fee" of $500,000 on 31st March 2009 so that he might have access to the funds.

12. Following that payment Mr Van Gysel was told that all of the payments had been made to officials and that further payments would need to be made. He was shown a "Swift" transfer pretending to show that the monies were being sent, and was persuaded to make a final payment of $40,000. Mr Van Gysel, who had exhausted his

own funds, managed to persuade his family to pay over the $40,000. Mr Van Gysel went to hospital with exhaustion, but returned to Europe to chase up his funds. He was handed what were pretended to be diamonds worth $45 million in London, but they were worthless. On 18th May 2009 he reported matters to Serious Financial Crime Office of the French Judicial Police.

13. Defences raised on behalf of the Appellant were rejected.

No *Zakrzewski* abuse of process

14. The Appellant claims that his extradition would amount to an abuse of process as considered in *Zakrzewski v Regional Court in Lodz, Poland* [2013] UKSC 2; [2013] 1 WLR 324 ("a *Zakrzewski"* abuse of process). It is agreed by the Appellant that the EAW provides that the relevant offences occurred in Paris and London, thereby satisfying the dual criminality provisions of section 65(3)(b) of the 2003 Act. However it is said that the judgment of the Tribunal of Paris shows that the aggravated money laundering occurred only in London. Although it appears that money laundering is an offence with extraterritorial effect in France, it was submitted on behalf of the Appellant that the mirror provisions of the criminal law in England and Wales, which are set out in section 327 of the Proceeds of Crime Act 2002 ("POCA"), are (at least so far as relevant to this case) domestic only in reach. Section 327 of POCA provides: "*(1) A person commits an offence if he: (a) conceals criminal property; (b) disguises criminal property; (c) converts criminal property; (d) transfers criminal property; (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland …*".

15. The Appellant's case was that if a prosecution had been brought for money laundering in England in respect of acts which had occurred abroad there would be no offence disclosed. This means that the conduct for which extradition was sought to France would not "*constitute an offence under the law*" of England and Wales, and no extradition could be ordered. This means that, notwithstanding the principles of comity, the Court should look behind the wording of the EAW to the reality of the judgment of the Tribunal of Paris to prevent a *Zakrzewski* abuse. A *Zakrzewski* abuse can occur where: (1) there are particulars which are wrong or misleading (though not necessarily intentionally) in a EAW; (2) the true facts are clear and beyond legitimate dispute; and (3) the error or omission is material to the operation of the scheme.

16. This point was developed in the course of the hearing, and in reply Ms Bostock referred to a passage in Archbold 2017 at 2-37 and *R v Rogers and others* [2014] EWCA Crim 1680; [2015] 1 WLR 1017. Neither the passage in Archbold nor the case had featured in the Skeleton Arguments exchanged for the hearing, and both Mr Summers and Ms Bostock wanted time to consider the point. I therefore directed Mr Summers and Ms Bostock to exchange and lodge supplementary Skeleton Arguments on this point (and another point which arose in the course of argument) by 4 pm on Thursday 3rd November 2016 and both parties filed those documents. I am very grateful to Mr Summers and Ms Bostock for their written and oral submissions.

17. In my judgment there is no *Zakrzewski* abuse of process in this case. This is because it is not clear and beyond legitimate dispute that the description of the money laundering offence as having taken place in Paris and London is incorrect. I say this because it is apparent that the first meeting between Mr Van Gysel and the Appellant

took place in Paris. Following this first meeting with Mr Van Gysel, the Appellant persuaded Mr Van Gysel to transfer monies, which were criminal proceeds because they were the product of a fraud, to a bank account in London. Mr Summers accepted that the Appellant could, as part of a conspiracy to launder money, when in France give Mr Van Gysel the details of a bank account situated in London from which the monies would be transferred or converted. The Appellant would in such circumstances be liable for money laundering even if the proceeds were converted in or transferred from London. On the information in the judgment it seems likely that the details of the London bank account were provided to Mr Van Gysel in Paris, but I accept that those details might have been elsewhere. However I am wholly unable to say that it is clear beyond legitimate dispute that the description in the EAW is wrong or misleading in any material particular.

18. Secondly in my judgment *Rogers* is authority, binding on me, for the proposition that offences of money laundering extend to extraterritorial actions. Mr Summers submitted that the judgment on the extraterritorial aspect of the offence was obiter, meaning that it was only persuasive, and that it was wrong and that I should not follow it.

19. I do not agree that that part of the judgment in *Rogers* on whether section 327 of POCA had extraterritorial effect was obiter. In *Rogers* monies were obtained by fraud and paid into UK bank accounts. The monies were then used to pay expenses of the fraudulent operation and the balance was then transferred to Spain. Rogers was a UK national but resident in Spain and he received the money in accounts controlled by him in Spain. He allowed the fraudsters to withdraw monies from the accounts in Spain. Mr Rogers had been charged with removing criminal property from England and Wales. At the close of the prosecution case a submission of no case to answer was upheld because there was no evidence that Mr Rogers was involved in the transfer of the monies from England. However the Judge allowed an amendment (notice of which had already been given) of the indictment to allege that Mr Rogers permitted receipt of criminal property in his bank accounts in Spain and permitted the withdrawal of the amounts. Mr Rogers was convicted and appealed. On appeal the submission was made that the Courts in England and Wales did not have jurisdiction over the count of which Mr Rogers had been convicted, because all the offending took place in Spain. In paragraphs 31 to 49 of the judgment the Court of Appeal confronted that submission and dismissed it for two reasons.

20. The first reason was the finding that section 327 of POCA created offences which were extraterritorial in scope, see paragraphs 36 and 48 of the judgment in *Rogers*. The second reason was that a Court in England and Wales had jurisdiction over criminal activities occurring overseas where a substantial measure of the activities had taken place in England and Wales, see paragraphs 39 and 50 of the judgment in *Rogers*. Mr Summers has referred me to some interesting academic commentaries on the decision in *Rogers*, but that does not alter the fact that both reasons for the finding made in *Rogers* are binding on me.

21. In these circumstances in my judgment a Court in England and Wales would have had jurisdiction to try the Appellant for money laundering if the activities which had occurred in Paris had occurred in England, and the activities which had occurred in Amsterdam and London had occurred overseas from the United Kingdom. First a substantial measure of the criminal activities had taken place in France and the

laundering of the proceeds through the bank account in London was part and parcel of that substantial measure of criminal activities, compare *Rogers* at paragraphs 39 and 50. Secondly the judgment of the Court of Appeal in *R v Rogers* is authority, binding on me, to the effect that the provisions of section 327 of POCA have extraterritorial effect.

No infringement of principle of specialty

22. In the light of my conclusion on the first ground of appeal, the second ground of appeal does not arise. This is because the Appellant can be extradited for the money laundering offence. However as I have had the benefit of argument on the point I should state my conclusion and my reasons for that conclusion briefly.

23. The evidence establishes that the Appellant, having been convicted of both offences, was sentenced to one sentence of 3 years imprisonment, with one year suspended, with a three year probation period. During the extradition proceedings a point about specialty and whether the sentence could be sub-divided was raised in the evidence served on behalf of the Appellant. The Crown Prosecution Service referred this issue on to the requesting authority, making the point that this was relevant to specialty. The reply from the French authorities confirmed that where a person was found guilty of several concurrent offences a penalty for each offence might be imposed, but where several penalties of a similar nature were incurred only one penalty might be imposed up to the maximum limit. It was said "*Each penalty imposed is deemed to be common to the concurrent offences within the limit of the legal maximum applicable to each one of them*". The evidence confirmed that the sentences "*which cannot be divided, form a one-off punishment for the two offences concerned, which were examined together*".

24. It does seem from this evidence that, notwithstanding the presumption that Part 1 countries will abide by their obligations to avoid infringing the principle of specialty, see *Edutanu v Iasi Court of Law 4th District Trial Court* [2016] EWHC 124 (Admin) at paragraph 129, the evidence in this case shows that if extradited for organised fraud alone the Appellant would serve the single sentence imposed for the convictions for the offences of organised fraud and aggravated money laundering.

25. However Mr Summers did accept that if the sentence must have been for the wrongdoing disclosed only by the offence for which he had been extradited (namely the organised fraud) then the point about specialty would not arise because the Appellant would only be serving a sentence for the offence for which he had been extradited. I do not have any evidence of the approach taken by French courts to sentencing and it is not appropriate for me to comment on the sentences imposed by French Courts. However extradition requires that the offences in the requesting state also be criminal in the state in which the person to be extradited is situated, and it is permissible to identify what is the criminality which has been the subject of the request for extradition. It is apparent that the criminality for which the Appellant was sentenced in this case was the offence of organised fraud. The offence of aggravated money laundering was simply the means by which the proceeds of the organised fraud were dissipated, and was part and parcel of the same criminality. In these circumstances if I had allowed the appeal against extradition for the money laundering offence there would, in my judgment, have been no bar by reason of specialty to prevent the Appellant from returning to France to serve his sentence.

Conclusion

26. For the detailed reasons given above I dismiss the appeal against the order extraditing the Appellant.