



Neutral Citation Number: [2022] EWHC 1203 (TCC)

Case No: HT-2022-000104

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 19/05/2022

Before:

MRS. JUSTICE O'FARRELL

Between:

NICHOLAS JAMES CARE HOMES LTD

Claimant/Applicant

- and -

LIBERTY HOMES (KENT) LIMITED

Respondent

Mr Laurence Page (instructed by Thomson Snell & Passmore LLP) appeared for the
Claimant/Applicant

Mr Michael Levenstein (instructed by Furley Page LLP) appeared for the
Defendant/Respondent

Hearing date: 9th May 2022

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

“This judgment was handed down by the judge remotely by circulation to the parties’ representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Thursday 19th May 2022 at 10:30am”

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MRS JUSTICE O'FARRELL DBE

MRS JUSTICE O'FARRELL:

1. On 21 April 2022, on an application without notice brought by the applicant, Nicholas James Care Homes Limited (“NJCH”), the court ordered an interim freezing injunction against the respondent, Liberty Homes (Kent) Limited (“Liberty Homes”).
2. This is the return date, where both parties are represented, at which NJCH applies to continue the interim freezing injunction pending determination of the adjudication enforcement hearing listed on 15 June 2022. NJCH’s position is that it has a good arguable case that it is entitled to enforce an adjudication award in its favour, Liberty Homes has assets within the jurisdiction, there is evidence that it has dissipated assets and there is a real risk that Liberty Homes has a continuing intention to dissipate assets which would render its relief nugatory.
3. NJCH relies on: (i) the affidavit of Kanagaratnam Rajakanthan, the managing director of NJCH, sworn on 20th April 2022; (ii) the witness statements of Christopher Kirby-Turner, of Thomson, Snell & Passmore LLP, solicitors for NJCH, dated 29 March 2022 and 29 April 2022 respectively; and (iii) the witness statement of Douglas Skilton, of Thomson, Snell & Passmore LLP, dated 5 May 2022.
4. The application is opposed by Liberty Homes. It seeks the discharge of the interim order on the basis that it should not have been made in the first place because there was inordinate delay in applying for the order, the criteria for a freezing injunction were not satisfied and the application amounted to misuse of an equitable remedy. Further, the freezing order should not continue because it is oppressive and the undertaking in damages offered by NJCH is inadequate.
5. Liberty Homes relies on (i) the affidavit of David Caulfield, managing director of Liberty Homes, sworn on 3 May 2022; (ii) the witness statement of Cameron Sunter, of Laytons LLP, solicitors advising on the restructuring of the Liberty Group, dated 3 May 2022; and (iii) the witness statement of Kevin Foster, Chartered Accountant of RPG Crouch Chapman, dated 3 May 2022.

Background

6. The parties have a long commercial relationship and friendship dating back to 2002. The applicant, NJCH, is beneficially owned by Mr Rajakanthan and acted as a developer in respect of a number of care homes. The respondent, Liberty Homes, is ultimately beneficially owned by Mr and Mrs Caulfield and was a contractor in respect of those projects.
7. Between 2002 and 2020 the parties worked together on a number of projects, including the development of a care home, Beacon Hill Lodge, at Beacon Hill, Herne Bay, on which work started in about 2018.
8. On 19 March 2020 Mr Rajakanthan sent Mr Caulfield a spreadsheet, setting out his understanding of the interim on account payments made in respect of Beacon Hill Lodge, **indicating an overpayment of £1.13 million approximately:**

“Please see attached a spread sheet produced by my head office staff as the payments made to Liberty Homes reference to

Beacon Hill Lodge project. I did tell you on our last meeting that our account is showing as paid money in advance. I am not 100% sure all these payments are correctly recorded. Please check and confirm that you received these payments and also if any of the amount paid shouldn't have been allocated to Beacon Hill Lodge project.

I am aware that we haven't completed the previous work payments fully and I want to sort it out within a week or two of receiving some information from you. I know that your account keeping is better than ours and we are struggling to confirm the payment details correctly. Lingam has left the company and we can't ask him to come back to office to explain. Soori is trying to put together the payment details piece by piece and it is taking long time to complete the puzzle. Please do me a very big favour and forward me our payment receipts to you. Once you provide me this information I will be able to settle your accounts in full within two weeks. The trouble is we paid to you from 29 care homes, three of my personal accounts and Dover Marina Hotel accounts. Your help in this matter will be much appreciated.

I am aware that the build cost of £3,969,145.00 will be increasing when we add the vat and additional work cost we previously requested, such as change to the front image..."

9. On 18 June 2020 a further spreadsheet was given by Mr Rajakanthan to Mr Caulfield, indicating an estimated overpayment of £1.49 million approximately across a number of projects, including Beacon Hill Lodge. Mr Caulfield disputed the alleged overpayments and this resulted in a breakdown of trust between the parties. **The First Adjudicator found that Liberty Homes ceased to work on or around 10 July 2010 at Beacon Hill Lodge.**
10. On 28 July 2020 Mr Rajakanthan sent a further email to Mr Caulfield, stating:

"Please see attached statement with details of all our payments and invoices towards the work carried out by Liberty Homes Limited. Please check the amount in your bank statement and confirm that our payment records are correct. Currently according to our work out, we have over paid £1,399,968.64 into Liberty Homes Limited account. We were expecting that you would have completed the building work by now. You now need you to agree or disagree the figures and hand over the necessary documents amicably and move on still as friends.

If you disagree with any amount then we need to know for what reason. I am not sure if someone who has access to your bank account has taken any money from his account. Sometimes you may be focusing on the wrong person and may totally trust someone else who could turn out to be a crook. If you have lost money then I am hoping we got nothing to do with it. We met more than two weeks ago to discuss this matter and you said that

you will check the paperwork and reply to me within two weeks. You have been accusing me for a long time saying we are behind in payment but in fact we were so much in upfront. If my statement is not true then please let me know where did I make a mistake?

Please let me know if I have missed any invoices towards the payment. We have been paying for most of the additional work including architect and KCC, electricity and may be water bills as well. You may have allocated some of the expenditures within your valuation report. Please check and adjust the valuation reports.

Once you are satisfied that our statement is true then, please forward the refund asap.”

11. On 30 July 2020 Liberty QS, a firm of quantity surveyors appointed by Liberty Homes sent to NJCH a schedule, setting out valuations and payments in respect of a number of projects, including Beacon Hill Lodge, indicating an outstanding sum due to Liberty Homes of £617,201.
12. By letter dated 29 September 2020 Furley Page LLP, acting for Liberty Homes, set out its case that Liberty Homes was entitled to interim applications for payment numbers 23 and 24 in respect of Beacon Hill Lodge in the sum of £274,698.04 plus interest.
13. On 2 November 2020, Liberty Homes issued an adjudication notice in respect of unpaid sums due pursuant to interim applications for payment for work at Beacon Hill Lodge: (i) interim application number 23 dated 1 July 2020 in the sum of £97,503.11; and (ii) interim application number 24 dated 3 August 2020 in the sum of £177,197.93. The basis for the claim in the adjudication was that NJCH had failed to issue either a payment notice or pay less notice in respect of those interim applications.
14. On 2 December 2020 the adjudicator, Robert Stevenson, issued his decision, directing NJCH to pay Liberty Homes the sum of £274,698.04, together with interest and the adjudicator's fees.
15. The adjudication award was not paid by NJCH and on 4 January 2021 Liberty Homes commenced proceedings to enforce the adjudication award. On 28 January 2021, those proceedings were settled, pursuant to which NJCH paid Liberty Homes the sum of £290,567.28.
16. By a pre-action letter of claim dated 14 July 2021, Liberty Homes set out its case against NJCH and other proposed defendants, including Mr Rajakanthan, that outstanding sums in the total of £1,151,082 were due and owing to Liberty Homes in respect of a number of projects, including Beacon Hill Lodge.
17. By letter dated 20 August 2021, NJCH responded to the claim, asserting an entitlement to recover overpayments, including overpayments in respect of Beacon Hill Lodge, in the sum of £2,642,587.85.

18. On 21 October 2021, NJCH issued a 'true value' adjudication in respect of the value of work carried out at Beacon Hill Lodge as at the date of interim application 24, seeking repayment of £2,387,005 together with interest. Dr Cyril Chern was appointed as the adjudicator.
19. On 18 February 2022, Dr Chern issued his decision in which he found that the true value of the application for interim payment number 24 was £2,584,685, the total amounts on account paid by NJCH to Liberty Homes were £5,174,423; accordingly, the sum due and owing to NJCH was £2,589,737.76. The adjudicator ordered Liberty Homes to repay to NJCH that balance of £2,589,737.76, together with interest and the adjudicator's fees.
20. The sum awarded by the adjudicator was not paid by Liberty Homes and on 29 March 2022, NJCH issued Part 7 adjudication enforcement proceedings together with an application for summary judgment. On 1 April 2022, this court issued a standard order in adjudication enforcement claims, abridging time for acknowledgment of service and requiring Liberty Homes to serve any evidence in response by 19 April 2022. Liberty Homes has served evidence in accordance with the court's order, identifying matters relied on in opposition to the application for summary judgment.
21. The hearing of the adjudication enforcement application is listed for 15 June 2022.

The application

22. On 21 April 2022 NJCH obtained a freezing injunction without notice, namely that until after the return date or further order of the court, Liberty Homes must not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of its assets which are in England and Wales up to the value of £2,903,755.60.
23. This hearing is the return date at which NJCH seeks to continue the interim freezing injunction, until after the determination of the adjudication enforcement application or further order.

The applicable test

24. Section 37 of the Senior Courts Act 1981 provides:
 - (1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
 - (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just."
25. Although the court has inherent jurisdiction to make a freezing injunction, section 37(3) of the Senior Courts Act 1981 clarifies that:
 - "The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in

cases where he is not, domiciled, resident or present within that jurisdiction.”

26. The test that the court must apply when an application for a freezing injunction is made is well-established and summarised in *Broad Idea International Limited v Convoy Collateral Ltd* [2021] UKPC 24 by Lord Leggatt (with whom Lord Briggs, Lord Sales and Lord Hamblen agreed) at [101]:

“In summary, a court with equitable and/or statutory jurisdiction to grant injunctions where it is just and convenient to do so has power - and it accords with principle and good practice - to grant a freezing injunction against a party (the respondent) over whom the court has personal jurisdiction provided that:

- i) the applicant has already been granted or has a good arguable case for being granted a judgment or order for the payment of a sum of money that is or will be enforceable through the process of the court;
- ii) the respondent holds assets (or ... is liable to take steps other than in the ordinary course of business which will reduce the value of assets) against which such a judgment could be enforced; and
- iii) there is a real risk that, unless the injunction is granted, the respondent will deal with such assets (or take steps which make them less valuable) other than in the ordinary course of business with the result that the availability or value of those assets is impaired and the judgment is left unsatisfied.”

27. A useful summary of some of the key principles applicable to the question of risk of dissipation was set out in *Fundo Soberano de Angola v dos Santos* [2018] EWHC 2199 (Comm) (subject to the minor correction made by Haddon-Cave LJ in *Lakatamia Shipping Company Ltd v Toshiko Morimoto* [2019] EWCA Civ 2203) by Popplewell J (as he then was) at [86]:

- “(1) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer.
- (2) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.
- (3) The risk of dissipation must be established separately against each respondent.

- (4) It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets [may be] dissipated. It is also necessary to take account of whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty.
 - (5) The respondent's former use of offshore structures is relevant but does not itself equate to a risk of dissipation. Businesses and individuals often use offshore structures as part of the normal and legitimate way in which they deal with their assets. Such legitimate reasons may properly include tax planning, privacy and the use of limited liability structures.
 - (6) What must be threatened is unjustified dissipation. The purpose of a freezing order is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it judgment proof. A freezing order is not intended to stop a corporate defendant from dealing with its assets in the normal course of its business. Similarly, it is not intended to constrain an individual defendant from conducting his personal affairs in the way he has always conducted them, providing of course that such conduct is legitimate. If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment. That would be contrary to the purpose of the freezing order jurisdiction because it would require defendants to change their legitimate behaviour in order to provide preferential security for the claim which the claimant would not otherwise enjoy.
 - (7) Each case is fact specific and relevant factors must be looked at cumulatively.”
28. It is not necessary to establish that the respondent is likely to act with the object of putting his assets beyond reach but it is necessary to show that the respondent is dealing with assets in a manner other than in the usual or ordinary course of business, or life, so as to render enforcement more difficult or impossible: *AH Baldwin and Sons Ltd v His Excellency Sheikh Saud bin Mohammed bin Ali Al-Thani* [2012] EWHC 3156 (QB) per Haddon-Cave J (as he then was) at [31].

29. Even where the above test is satisfied, the court has a discretion in such cases. It must be satisfied that it is just and convenient in all the circumstances of the case to grant the relief.

Parties' submissions

30. Mr Page, counsel for NJCH, submits that there is evidence that Liberty Homes has taken, and will continue to take, unless restrained by a court order, steps to dissipate its assets, that will prevent satisfaction of a judgment in this case.
- i) NJCH has the benefit of an adjudication award in its favour and therefore has a good arguable case that it will obtain judgment for the sum claimed.
 - ii) Since August 2020, after the dispute arose between the parties, Liberty Homes has established a number of new corporate entities, namely Liberty Holdings (Kent) Limited (incorporated on 25 August 2020), Liberty Investments (Kent) Limited (incorporated on 3 November 2020), Liberty Trade Holdings Limited (incorporated on 24 February 2022) and Liberty Investment Holdings Limited (incorporated on 24 February 2022). Mr and Mrs Caulfield, the directors of Liberty Homes are also joint directors and/or beneficial owners of the additional corporate entities.
 - iii) From its audited accounts, as at 31 October 2020 Liberty Homes had stocks of £5,764,597 and total assets less current liabilities of £4,628,413. From its recent unaudited accounts, as at 31 October 2021 Liberty Homes had stocks of £150,000 and net liabilities of £201,535. It now has no assets in excess of £10,000.
 - iv) Mr Page submits that the timing of the transfers of assets out of Liberty Homes was calculated to remain secret from NJCH for as long as possible. The respondent's financial year-end for the year 2019-2020 was 31 October 2020, which enabled it to avoid disclosure of any transactions made after that date in its filings at Companies House by 31 July 2021. Further, it has now extended its first accounting period from year ending 31 August 2021 to 31 October 2021, delaying its filing deadline until 31 July 2022, after the adjudication enforcement hearing.
 - v) The transactions by Liberty Homes have not been made in the proper and ordinary course of its business.
 - vi) There is a gross disparity in the value of the work for which Liberty Homes sought payment up to interim application 24 and the true value of that work as determined by the adjudicator, from which an inference of misconduct can be drawn.
31. Mr Levenstein, counsel for Liberty Homes, submits that the freezing order should not have been made, and should not be continued.
- i) NJCH delayed inordinately in applying for the freezing order, long after the dispute arose between the parties in or around mid-2020. The factual basis advanced by NJCH to justify this delay as at the hearing on 21 April 2022

omitted reference to important documents, including those publicly available at Companies House, during the relevant period relating to changes in ownership of the respondent in addition to incorporation of new companies within the Liberty Group.

- ii) There is no evidence of dissipation of assets. The transfers of assets identified by NJCH formed part of an intra-group restructure as explained by Mr Foster in his witness statement. The properties previously held by Liberty Homes were transferred to Liberty GB Limited and Liberty Investments (Kent) Limited. Although the transfers for the relevant properties when lodged with HM Land Registry were stated not to be for monetary value, they were not for nil consideration or at undervalue; rather, payment, at book value, took the form of distribution of dividends in specie.
- iii) The purpose of the corporate restructure of the Liberty Group is not to dissipate assets so as to frustrate enforcement of any judgment. The first restructuring exercise was started in May 2020 to permit Mr and Mrs Caulfield to retire and concentrate on property investment. Mr Caulfield has been diagnosed as suffering from terminal cancer and a further restructuring exercise is for the purpose of succession planning.
- iv) The restructures are based on the advice of RPG Crouch Chapman LLP, the accounting firm, and Laytons LLP, specialist corporate solicitors, acting for Liberty Homes, whose evidence is not challenged, and the proposals have received HMRC approval.
- v) Insofar as the assets of Liberty Homes have been validly transferred to other corporate entities, the objective of NJCH's application for the order to be continued can no longer be realised without unwinding a legitimate corporate restructure. As such, the order would provide no relevant utility and would be oppressive.
- vi) The extent of the cross-undertaking in damages provided by NJCH is inadequate.

Delay in making the application

- 32. The court starts by considering whether the application should be dismissed for delay and/or non-disclosure by NJCH as submitted on behalf of Liberty Homes. Although the dispute between the parties arose in mid-2020, the relevant date for this purpose is the date from which NJCH knew, or should have known, about any risk of dissipation.
- 33. Mr Levenstein draws attention to evidence that Mr Rajakanathan knew about the existence of Liberty Holdings (Kent) Limited as early as 30 October 2020, through reference to the holding company in the adjudication. Further, by 5 September 2020 there was public notification of the holding company's ownership of Liberty Homes and its status as a person of significant control (owning 100% of the share capital of Liberty Homes). However, as is clear from the authorities set out above, the mere fact of a complex corporate structure is not sufficient evidence of unjustifiable dissipation of assets.

34. Although Mr Rajakanthan and NJCH knew, or should have known, about the formation of the holding company and/or restructure of the Liberty Group in 2020, there is no evidence that they knew, or should have known, that in November 2020 Liberty Homes divested itself of most of its assets. By letter dated 16 December 2020 NJCH's solicitors raised concerns about Liberty Homes' intention to transfer assets to the holding company, having identified the formation of Liberty Holdings (Kent) Limited in August 2020, but no details were forthcoming from Liberty Homes or its solicitors. Knowledge of the asset transfers was only acquired in March and April 2022, following investigations by NJCH's solicitors, as explained by Mr Rajakanthan in his affidavit. In those circumstances, the court is satisfied that the application should not be dismissed for delay on the part of NJCH.

Good arguable claim

35. As set out in the earlier *ex tempore* judgment given at the hearing on 21 April 2022 (see judgment [2022] EWHC 1071 (TCC)), the court is satisfied that the applicant has a good arguable case in relation to the substantive adjudication enforcement claim. It is well-established that the court's approach to adjudication enforcement is a robust one. The applicant has the benefit of a 'true value' adjudication decision in its favour for a substantial sum of money. Generally, the court will enforce such adjudication decisions, even where it can be shown that there are errors of fact or procedure. The only defences that will usually succeed are a breach of the rules of natural justice or the absence of jurisdiction on the part of the adjudicator.
36. The court notes that Liberty Homes has put in evidence and seeks to defend the adjudication enforcement claim. The points raised by Mr Crofton-Martin of Furley Page LLP in his witness statement dated 19 April 2022 include alleged inconsistencies in the evidence of Mr Rajakanthan, the adjudicator's improper request for payment of his fees as a pre-condition to issuing the adjudication decision, arguments that the total payments allocated to Beacon Hill Lodge had already been determined in the first adjudication and alleged failures on the part of the adjudicator to take into account material evidence relied on by Liberty Homes.
37. It must be emphasised that the court is not deciding the merits of the adjudication enforcement claim; it is defended and the court has not had the benefit of considering the evidence or hearing argument from both sides in respect of that claim. For that reason, it would be inappropriate for the court to infer any misconduct on the part of Liberty Homes simply by reason of the disparity between the sums claimed and sums determined in the adjudication. But NJCH does not have to satisfy the court that it will be entitled to summary judgement in order to show that it has a good arguable case. NJCH has an adjudication award in its favour for a substantial sum and Liberty Homes has not identified a knock-out blow for the purpose of this application. On the basis of the material and arguments before the court on this application, I am satisfied that NJCH has a good arguable case that it will succeed on its adjudication enforcement claim.

Risk of dissipation of assets

38. Mr Caulfield's evidence is that he first contacted solicitors to seek advice on restructuring the business on 21 May 2020 and the first steps of the restructuring exercise were taken on 25 August 2020:

“Liberty Holdings (Kent) Limited was incorporated on 25 August 2020. Pauline and I then transferred our shares in Liberty Homes (Kent) Limited to Liberty Holdings (Kent) Limited on 25 August 2020 in exchange for shares in Liberty Holdings (Kent) Limited. This share for share exchange was a matter of public record as at 1 September 2020 when a confirmation statement was filed at Companies House. This information has remained publicly available since and is accessible free of charge.

On 5 September 2020, a further public notification was filed at Companies House recording that Liberty Holdings (Kent) Limited was a person with significant control effective from 25 August 2020, holding more than 75% of the shares-and thus ownership-in Liberty Homes (Kent) Limited. This information has again remained publicly available since then and can be accessed free of charge...”

39. In November 2020 a number of properties held by Liberty Homes were transferred to third party, but related, corporate entities for no stated consideration:
- i) on 10 November 2020, 10 Page Heath Lane, Bromley, with a value of £3.69 million, was transferred to Liberty Holdings (Kent) Limited;
 - ii) on 12 November 2020, Courtways, Holwood Park Avenue, Orpington, with a stated value of £1,663,790, was transferred to Liberty GB Limited;
 - iii) on 19 November 2020, 12 Page Heath Lane, Bromley, with a value of £910,000 was transferred to Liberty GB Limited;
 - iv) on 19 November 2020, 136 Main Road, Biggin Hill and land next to 134 Main Road, Biggin Hill was transferred to Liberty GB Limited;
 - v) on 25 November 2020, Knoll Court, 18 Station Road, Orpington was transferred to Liberty Investments (Kent) Limited; and
 - vi) on 25 November 2020, Flat 2, Page Heath Court, Bromley, with a value of £413,924 was transferred to Liberty Investments (Kent) Limited.
40. Liberty Homes retains ownership of property at 55 Longdon Wood, Keston and Liberty Mews, 17 Station Road, Orpington, although Mr Caulfield’s evidence is that they are of minimal, residual value.
41. Mr Caulfield has explained the basis on which the properties were transferred out of Liberty Homes:

“The properties previously owned by Liberty Homes (Kent) Limited were transferred to Liberty GB Limited, Liberty Investments (Kent) Limited and Liberty Holdings (Kent) Limited. Payment for the properties, which were transferred at net book value, took the form of distribution of dividends in specie (assets instead of cash). As part of the First Restructure

Liberty Homes (Kent) Limited's reserves were paid to Liberty Holdings (Kent) Limited along with the transfer of any associated debt and even directors' loan accounts to ensure there was no depletion of assets. The asset base remained the same and there has been no dilution.”

42. Mr Foster has explained in his witness statement that the transfers of property amounted to dividends in specie, as an alternative to cash payments. However, Mr Page submits with some force that a company may make a distribution only out of profits available for the purpose and that a dividend, whether in specie or in cash, cannot be declared where that includes monies that should be set aside for liabilities or charges which are likely to be incurred: *BAT Industries plc v Sequana SA* [2019] EWCA Civ 112 per David Richards LJ at [22]; [60]-[63] & [215]-[225]. If, on analysis, there was no consideration in respect of the asset transfers, and they were not valid dividends in specie, Liberty Homes would retain a beneficial interest in those properties or be entitled to unwind the transaction pursuant to section 423 of the Insolvency Act 1986. For that reason, the court does not accept Mr Levenstein’s submission that no useful purpose can be served by continuation of the freezing injunction or that it is oppressive.
43. Liberty Homes has adduced evidence that there was no improper motive behind the corporate restructure exercise and/or transfer of assets. In his affidavit, Mr Caulfield’s evidence is that:

“Any transfer of assets and properties by Liberty has purely been the result of a commercial restructure and reorganisation, based on professional advice from Liberty's accountants RPG Crouch Chapman and its solicitors, Streathers Solicitors in Clapham and Laytons LLP, a firm of solicitors in the City of London. We have only taken steps our advisors have recommended for which prior clearance was sought and duly obtained from HMRC. Any restructuring took place in full public view and all matters were readily discoverable as a matter of public record.”
44. However, in May 2020, when the proposed restructuring of the business was considered, it must have been clear to Mr and Mrs Caulfield that very substantial sums were being claimed by NJCH as overpayments in respect of the development projects carried out by Liberty Homes.
45. It is common ground that Liberty Homes transferred assets, with a total value of almost £6 million, to related third party entities in November 2020, despite knowing at that time that NJCH claimed an entitlement to re-payment of very substantial sums from Liberty Homes.
46. NJCH does not have to establish that Liberty Homes intends to deal with its assets with the purpose or object of ensuring that any judgment will not be met. The test is an objective one of assessment of the risk that a judgment may not be satisfied because of a risk of an unjustified dealing with assets.
47. The evidence has established that Liberty Homes has divested itself of a substantial value of assets, with the effect that there is a very real risk that it would be unable to satisfy any judgment against it. It has not sought to justify the dealings with its assets

as part of an existing pattern of dealing or as part of its usual business. Therefore, the court concludes that such dissipation of assets is unjustified.

Undertaking

48. Although the cross-undertaking in damages given by NJCH is criticised, it is in acceptable terms and NJCH's accounts demonstrate that it is a going concern with substantial assets.
49. Mr Levenstein submits that the losses suffered by Liberty Homes extend beyond this dispute; continuation of the freezing injunction would stifle its ability to pursue its final account litigation against NJCH and other defendants. However, the adjudication enforcement hearing will take place in just under one month. In those circumstances, there is no real risk that other claims would be stifled.

Conclusion

50. By reason of the matters set out above, the court is satisfied that there is sufficient evidence of a real risk of dissipation so as to satisfy the court that it would be just and convenient in all the circumstances for the court to grant the relief sought.
51. Accordingly, the freezing injunction ordered by the court on 21 April 2022 will be continued until after the adjudication enforcement hearing on 15 June 2022, or further order. Costs will be reserved to the judge hearing the adjudication enforcement claim.