IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Before Steyn J on 12 September 2019

Case No: 19409/2018

In the matter between: **(1)**

WORLDPAY LLC	Applicant
and	
FIRSTRAND BANK LIMITED	First Respondent
THE TRUSTEES FOR THE TIME-BEING OF THE JHYHDE INTERNATIONAL TRUST	Second Respondent
ADELAKUN, JYDE	Third Respondent

Case No: 3484/2019

In the matter between: **(2)**

WORLDPAY LLC	Applicant
and	
ADELAKUN, JYDE AREMU BREIMMO N.O.	First Respondent
DUBE, THANDIKHAYA MICHAEL N.O.	Second Respondent

In their capacities as the trustees for the time being of the JHYHDE INTERNATIONAL TRUST

Case No: 3485/2019

In the matter between: **(3)**

WORLDPAY LLC Applicant

and

ADELAKUN, JYDE AREMU BREIMMO Respondent

JUDGMENT DELIVERED: 6 JANUARY 2020

STEYN J

INTRODUCTION

1. The three matters before me are related to one another. The **first** matter (case **19409/2018),** where First Rand Bank Limited, (referred to as 'First Rand') is the first respondent, relates to an interim anti-dissipation interdict/order that was provisionally granted on 5 November 2018 by **Nuku J**. The order related to funds in accounts in the names of the other two respondents, as cited. First Rand did not oppose the granting of the interim order and it does not oppose a final order. The other two respondents in the first matter opposed an interim order and are opposing final relief. The **second** and **third** matters before me, (cases **3484/2019 and 3485/2019**) are postponed return dates of provisional sequestration orders granted by **Mantame J** on 28 March 2019. Mr Jyde Adelakun, 'Adelakum' is a respondent in all three matters.

THE CONDUCT OF ADELAKUN

2. Where I refer to '*respondents*' in plural, I refer to the second and third respondents in case **19409/18** and first and second respondents in case **3484/19**. (Adelakun and the Trust.) These matters have a history over an extended period of

time characterised by, *inter alia*, postponements, condonation and interlocutory applications and orders, mostly requested by respondents, where the numerous sets of representatives of the respondents withdrew with monotonous regularity, often at the doors of the court. Adelakun, the controlling mind and the main/only driver of the defence to the orders sought in the applications, appeared on his own in some instances or filed papers personally, often electronically, indicating a clear lack of understanding of the importance of following prescribed court procedures. His conduct exhibited disrespect for prescribed court rules and an abuse of court processes and the justice system.

3. *Inter alia* Adelakun bombarded my office with mostly irrelevant and incomprehensible documents, delivered in person or electronically, even while represented, before and after the final hearing of the sequestration matters on 12 September 2019, causing confusion and distraction, creating the impression that his reliability and credibility were questionable. As an example, I attach an inappropriate e-mail, marked '**E 1',** received on 23 September 2019, while Adelakun was represented, that was nonsensical and incomprehensible. He falsely accused me of conversing with the representative of the applicant in my chambers, days before the 12 September hearing. (An aspect not mentioned during the hearing.) The representative of applicant on 12 September at the hearing was an advocate from Johannesburg, who I had never met previously.

4. Adelakun's Heads of Argument were often late or absent and affidavits were filed out of time or sequence regularly. Unauthenticated copies of foreign documents and incomprehensible notes were delivered or e-mailed to my registrar from time to time. Eventually when the matters were argued on behalf of Adelakun by his legal

representative on 12 September 2019, the argument bore little resemblance to the Heads of Argument that had been filed belatedly.

5. Understanding the history of the matters and numerous applications, some urgent, some interlocutory, some since abandoned, contained in the seven voluminous files, was challenging. I suggested on 28 August 2019, when the matters were postponed at the request of Adelakun, who was yet again not ready to proceed, that a document be prepared setting out relevant aspects of the chronology of the matters. This document, prepared by applicant's representative, is very useful, and its contents were not challenged by the respondents. The Applicant's Consolidated Chronology under the relevant case numbers places the history of the conduct and orders in the matters in perspective.

THE ISSUE

6. The main issue to be decided in all the matters is whether applicant, 'Worldpay' has proved that respondents, Adelakun and or the Trust or its representative(s), are indebted to it in a very substantial foreign liquidated amount based on the massive scale of cyber fraud committed by these respondents.

THE PARTIES

7. Worldpay is a limited liability corporation incorporated in Delaware USA, with its headquarters in Ohio, USA. It is a global payment processing company operating internationally that offers services to enable merchants to accept and process credit, debit and prepaid payments received from customers. The second respondents in the first two matters are referred to as 'the Trust'. It was cited as it appeared to be a party, with Adelakun, to the fraud committed against Worldpay. The Trust's bank account was allegedly and ostensibly an account through which the moneys misappropriated

by Adelakun were *'laundered'*. The Trust owns immovable property and conducts business in Cape Town.

8. Adelakun is an international businessman who is allegedly resident in South Africa, in Cape Town, from time to time. He states in his affidavit in case no 19409/18 that he has interests in various countries including South Africa and that he is the CEO of TOF Energy Corporation and Touch of Fame Group Company, operating in the USA. He also stated that he is of Nigerian descent and is a Nigerian National, who has residency in Nigeria and South Africa. He is cited as he appeared to be and was ostensibly an account holder of at least one of the bank accounts held with First Rand into which misappropriated funds were transferred. It was alleged that he was the architect and controlling mind relating to the fraud suffered by Worldpay, as it was through his network of companies and trusts, including the Trust before me, that the fraud was committed. I later deal with the gist of the documentation.

THE INTERDICT (Case **19409/2018**)

9. In the first application, launched in October 2018, Worldpay, the applicant, sought and was granted urgent interim relief placing a hold on, or 'freezing', two bank accounts held with First Rand into which it was suspected that misappropriated moneys had been channelled by the perpetrators of massive fraud. It was suspected that the perpetrators of the fraud were the respondents. After hearing the matter on 5 November 2018, Nuku J ordered that First Rand should disclose information and details pertaining to the relevant suspicious accounts, to Worldpay's representative. An advocate/facilitator was appointed for the purpose of receiving and facilitating inspection of the relevant bank accounts. The interim anti-dissipation order, related to funds in stipulated accounts, was granted. The return day of the order was postponed

to 6 December 2018, with a timeline relating to the further conduct of the matter by the parties.

10. The steps the respondents were ordered to take were ignored. On 6 December 2018 Meer J ordered, after hearing the representative of Worldpay and Adelakun, in person, that the application was postponed to 2 May 2019. The rule *nisi* of the interim anti-dissipation order was extended. Worldpay was ordered to institute legal proceedings. Respondents were ordered to pay the costs. A timeline for the further conduct of the matter was ordered. Respondents' undated answering affidavit was filed weeks late. Adelakun blamed his then former attorneys and his business dealings in Dubai for the lack of compliance with that court order. On 29 April (shortly before the return day of the orders) his attorney at that time withdrew, after Adelakun had filed a supplementary affidavit without leave and ostensibly without the input or assistance of his attorney.

THE SEQUESTRATION APPLICATIONS

11. Worldpay applied in March 2019, in two applications, cases **3484/**2019 and **3485**/2019, to sequestrate the estates of Adelakun and the Trust. Adelakun, who opposed the orders, was legally represented. Provisional sequestration orders were granted by **Mantame J,** as noted, returnable on 2 May 2019. She refused leave to appeal the said provisional orders. I later deal with the crux of these matters and the basis of the orders granted.

12. On **2 May 2019 Sher J** heard the parties on the return day of the provisionally ordered sequestration applications, Adelakun appearing in person. The return days in the two matters were postponed and the rule *nisi's* extended to **28 August 2019**. Shortly thereafter Adelakun, despite agreeing to the postponement order, filed an

application for leave to appeal this order. He was advised by the office of the Judge President that the application was misconceived. I was later advised that the leave to appeal application would not proceed.

13. Also, on 2 May 2019, Hlophe JP, after hearing Adelakun in person, ordered that matter **19409/18**, the interim anti dissipation order/interdict, would be postponed and heard simultaneously with the two sequestration applications on the return day of the provisional orders. The rule *nisi* was extended accordingly.

BACGROUND

14. It was alleged, argued and shown that a company of which Adelakun admitted that he was the CEO, namely TOF Energy Corporation, '*TOF*', entered into a 'Bank Card Merchant Agreement' or 'BCMA' with Worldpay, who had to provide TOF with payment processing services under a BCMA. In the papers before me it was alleged that between August and September 2010, TOF purportedly made and/or represented to Worldpay that it had made sales to customers of more than $46 million. As a consequence, Worldpay paid $15 million, plus to an account stipulated for payment by TOF, being an account held at an American bank, with the unusual name of Fifth Third Bank or 'FTB', with account number provided. But, before Worldpay had reconciled the sale transactions presented by TOF, it became aware of a large number of '*rejected transactions*' in the account of TOF. It was allegedly shown, in brief, that transactions had been rejected of TOF's alleged customers, either as there were no such customers, or the customer accounts had not authorised the payments or the transactions were rejected as invalid account numbers had been provided.

15. During subsequent investigations Worldpay ascertained that all the sales processed through the TOF accounts were fictitious and that it had fallen victim to

'*sophisticated*' internet, currency transfer, fraud. Worldpay located and recovered funds that had been transferred to the FTB account in an amount of nearly $3 million. Further funds were recovered, allegedly through the intervention of the Nigerian Economic and Financial Crimes Commission after an order had been obtained in the Federal High Court in Lagos, against *inter alia*, Adelakun. An interim hold over accounts in Nigeria, where some misappropriated funds had been transferred to, was allegedly obtained. This resulted in some voluntary repayments from third parties, resulting in the total unrecovered loss by Worldpay, as a result of the fraud committed against it, of about $12.4 million. (According to my calculations, at present, the amount constitutes more that R182 million.)

16. When Worldpay '*followed the money*' transferred from the FTB account, it established that a substantial portion of fraudulently procured funds had been transferred to a company related to TOF into a second account held at FTB and that the TOF Group, at the instance of Adelakun, had transferred in excess of $2 million in seven payments to an account in South Africa, at First Rand Bank Limited, held under the name of the Trust, at a branch of the bank in Sea Point, Cape Town, referred to as the primary FNB account. An amount in excess of R 29.7 million, emanating from the funds fraudulently misappropriated from Worldpay, was allegedly transferred to this FNB account, with number 62366951012, where the balance of about R500,000 remained at the time when the applications were launched.

17. It also appeared that transfers had been made from the said FNB account to Adelakun's personal account at FNB, Sea Point, under account number 6236289306 and that an amount of R3.3 million, emanating from the misappropriated funds of

Worldpay, had been transferred to Adelakun's FNB account with a balance of about R2.6 million when the applications were launched.

18. It is alleged that substantial sums of misappropriated funds have now been traced in other named bank accounts in foreign jurisdictions, including the USA, Nigeria, Sierra Leone and the UAE, to persons related to or linked to Adelakun or TOF. Steps have allegedly been taken to freeze the funds in some of the said foreign accounts.

19. As alleged, argued and shown, Adelakun has not explained the payments made into the FTB account in the USA and has never suggested a legitimate source for the payments, undoubtedly as the funds were misappropriated from Worldpay through fictitious sales presented through the payment system of Worldpay. Even during his appearances in this court Adelakun has not explained the providence of the funds and the movement thereof into, or from hís accounts, or accounts connected to him, with First Rand or FNB in Cape Town. The evidence demonstrating the fraud and the extent thereof is damning, as argued, when regard is had to the contents of bank statements provided and the lack of attention to, or meaningful explanation of these statements by Adelakun.

20. Adelakun's (and/or the Trust's) opposition proposes that Worldpay is pursuing a vendetta against him/them and has fictionalised the claims of fraud against the respondents. Instead of focussing on substantiating the allegations of denial, Adelakun resorts to an attempt to bolster his case by a series of ill-conceived and meritless '*in limine*' objections and points, such as lack of authorisation, lack of locus standi, non-joinder claims, applications for leave to appeal, even of interim orders, an application to have matters live video recorded in court, etc. Some threatened

applications, such as applications for security for costs, were merely not proceeded with. I am not surprised that Worldpay maintains that Adelakun is attempting to obfuscate the real issues, conduct that Adelakun resorted to throughout the conduct of these applications in various ways, as noted, disdainful of court rules and procedures.

21. As pointed out by Mantame J in her provisional sequestration ruling on 28 March 2019, after hearing argument in the matters, with Adelakun then legally represented, Adelakun did not meaningfully or at all address in his papers, and I add, nor in argument, whether Worldpay was entitled to the relief it sought. Respondents merely denied their involvement in fraud without acceptable substantiation. It appears to be their view that the applicant must prove its allegations. I agree with the conclusion reached by Mantame J that the applicant had succeeded in showing and proving the flow of funds from its accounts into accounts that could be and were accessed by the respondents, as represented by the controlling mind, Adelakun. The provisional sequestration orders were justifiably and duly granted. Despite the fact that argument was finalised and judgment reserved in respect of the applications for final sequestration orders, I note, from e-mails sent to my chambers by Adelakun, that he is forwarding documentation to me and even to Mantame J, complaining about the justice system.

22. I am satisfied that the terms of the orders granted by Mantame J have been complied with, that the requirements for final sequestration orders in terms of the provisions of s 12 (1) of the Insolvency Act of 1936, have been complied with and that the applicant has shown on a balance of probability that it has a liquidated claim against Adelakun or/and the Trust in excess of R 100, 00 (s 12(1)(a) of the Insolvency

Act). In fact, the claims against the respondents by Worldpay have been shown to amount to substantial amounts, comprising millions of Rand.

23. I was referred to a relevant authority, *Premier Western Cape and Others v Parker and Mohammed and Others* [1999] 1 ALL SA 176 (C) at 182, and the judgments referred to therein, where the court rejected an argument that applicant's claim could not be regarded as liquidated because the full extent of the theft perpetrated against him had not been finally established, as aspect that was regarded as of '*no consequence'* in the reported judgment relied upon.

24. It has been shown that Worldpay has suffered significant losses, due to the fraudulent conduct of Adelakun, in relation to himself personally and with respect to the Trust that he represents. Accordingly, sufficient evidence has been presented that applicant has a liquidated claim conferring *locus standi* upon Worldpay in the sequestration applications in terms of the relevant sections of the Insolvency Act, (s 12(1)(a)).

25. It has been shown categorically that the respondents are factually insolvent and that they have committed acts of insolvency. Worldpay has demonstrated claims of about R33 million against the respondents. The identified assets of Adelakud, frozen in an FNB account, is R 2.6 million. The assets of the Trust are worth R 574,428.27, also frozen in an FNB account. The Trust is the owner of an immovable property in Cape Town valued at approximately R5 million. Neither of the provisional sequestration trustees have found further assets, allegedly as Adelakun has adopted a belligerent and non-co-operative stance towards their investigations.

26. It was argued and shown that the activities described with regard to Adelakun's and the Trust's accounts, when analysed with the TOF Oil bank statements, that are linked to Adelakun, show dispositions of property, which have or would have the effect of prejudicing creditors in terms of the provisions of s 8(c) of the Insolvency Act, or the removal of property, with the intent to prejudice creditors, notably Worldpay, or to prefer creditors over Worldpay, as contemplated by the provisions of s 8(d) of the Act. It is on this basis that Worldpay argues that it has satisfied the court, on a balance of probability, that the respondents are insolvent or have committed acts of insolvency.

27. In any event, in this matter, as argued, there does not appear to be a *bona fide* or genuine dispute of fact on relevant issues. The issues raised by Adelakun in his answering affidavits in respect of both sequestration applications demonstrate that there is no defence to the proceedings and that the purported grounds of defence, that he raises, are unreasonable, improbable and in bad faith, such as the unsubstantiated allegation that Worldpay has fabricated its claims and is abusing court process.

28. The applicant has established from the bank statements made available, the flow of funds from Worldpay to the Trust and Adelakun, tracing funds from, for example, the second FTB account to the primary FNB account and from the latter to Adelakun's FNB account as well as transfers to and from the TOF Oil account that is linked to Adelakun. How the transfers were traced, has been explained in detail. The admissibility of the computer-generated information, that was corroborated by other evidence, has been argued and established and in any event, it is in the interests of justice that the relevant account statements be admitted. *Inter alia,* applicant's representative provided the court with an extensive document titled Analysis of Flow of Funds, that was very useful, the contents of which were not persuasively or at all

disputed; no compelling reason was proposed by respondents why the reflected, relevant statements were not credible or should be disregarded.

29. As noted, no *bona fide* or reasonable grounds of defence of any substance have been raised by respondents to resist their sequestration. There is no merit in any points raised, be it *in limine* or otherwise belatedly raised, on relevant issues, to substantiate a defence. The points raised *in limine* are devoid of any merit.

30. I am persuaded that it will be to the advantage of Adelakun's and the Trust's creditors that the respondents be finally sequestrated. Millions of Rand are unaccounted for and Worldpay has set out in its affidavits why it would be to the benefit of creditors for the estates of the respondents to be sequestrated and insolvency enquiries conducted to establish the whereabouts of assets that may be available to creditors. The only response of the respondents to these evident conclusions is a bald assertion that they do not have creditors, which must be and has been shown to be, patently untrue. The conduct of Adelakun in relation to these matters indicate fraudulent dealings with far-reaching consequences that justify investigation and interrogation and the final winding up of the estates, to establish the advantage to creditors.

31. When applicant had established the flow of funds relating to *'rejected transactions'* from its accounts, some funds having been transferred to accounts of Adelakun with FNB in Cape Town, it obtained an order in this court on 6 December 2018 freezing the accounts with FNB that Adelakun had access to, as referred to above. It also obtained relief that its representatives may inspect the bank statements relating to these accounts, which provided interesting insights. The Trust's Primary FNB account reflected a balance of R376.57 in August 2018 before the

misappropriated funds were transferred into the account. After 16 August 2018, when the fraud had been detected, an amount in excess of R29 million was transferred into this account in seven payments, referring to the Touch of Fame Group, (referred to by Adelakun as a company he was involved with) as transferor. The connexion of this account with Adelakun has been established.

32. Further outbound transfers and card purchases were indicated and shown from the said account in vast amounts, while finally, on 20 October 2018, only the amount of about R570,000 remained in the account. Some transfers in vast amounts, exceeding R 3.3 million, were allegedly linked by date and amount to Adelakun's personal FNB account that had reflected a nought balance on 15 August 2018, before the fraud and before the misappropriated funds were transferred to this account. Transfers were effected via internet, mobile banking apps, or ATM transfers. A proper assessment of the account reflects that large sums of money remain unaccounted for, as it could not be established where the funds had been on-transferred to. Needless to say, the reason for these transfers of vast amounts of money, into and out of accounts linked to respondents, remain unexplained.

33. Further details relating to information obtained from representatives of FNB, of an application brought by another entity, related to Adelakun to uplift a hold that had been placed on two other accounts linked to Adelakun, that had been frozen, after Worldpay's funds were traced to the accounts, do nothing to persuade me of the *bona fides* or innocence of the respondents. A different application, not before me, is involved in this other matter that also allegedly indicates and demonstrates transfers of funds and ostensible money laundering on a large scale.

34. Having considered the evidence before me holistically and in context, both as provided by applicant in support of its claims and as presented by respondent(s) in their defence, I am satisfied that the requirements for final orders of sequestration have been met and accordingly that the provisional sequestration orders should be confirmed.

35. Case **19409/2018**, the interim anti-dissipation order, was postponed on 12 September 2019, and the *rule nisi* later extended, to 3 February 2020, when the matter will be dealt with and hopefully finalised.

ORDER

1. Final sequestration orders are granted in cases **3484/19 and 3485/19**.

2. The costs of the sequestrations, including reserved costs in respect of any extensions of return days or postponements, save where orders in this regard have already been made, will be costs in the sequestrations.

E STEYN

Judge of the High Court
Cape Town