Neutral Citation Number: [2025] EWHC 196 (KB)

Case No: U20190840

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
IN THE MATTER OF s.45 OF THE CRIME AND COURTS ACT 2013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/01/2025

Before :

LORD JUSTICE WILLIAM DAVIS

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Between :

SERIOUS FRAUD OFFICE	**Applicant**
- and -	
GURALP SYSTEMS LIMITED	**Respondent**

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- -

Trevor Archer (instructed by **the SFO**) for the **Applicant**
Simon Farrell KC and Rosa Bennathan for the **Respondent**

Hearing dates: 27th January 2025

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Approved Judgment

This judgment was handed down on 31ST January 2025 by circulation to the parties or their representatives by e-mail.

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LORD JUSTICE WILLIAM DAVIS

LORD JUSTICE WILLIAM DAVIS:

1. On 22 October 2019 Guralp Systems Limited entered into a deferred prosecution agreement ("DPA"). The agreement came into effect on the same day when the court made a declaration pursuant to Schedule 17 of the Crime and Courts Act 2013. The other party to the agreement was the Serious Fraud Office.

2. The Serious Fraud Office now has made an application pursuant to paragraph 9 of Schedule 17 because they believe that Guralp Systems have failed to comply with the terms of the agreement. They invite the court to make a finding that there has been a failure to comply with the terms of the agreement. Given the circumstances of the alleged failure, the proposed consequence is that the court should terminate the agreement.

3. An issue of jurisdiction has been raised. The powers of the court under paragraph 9 may be exercised "at any time when a DPA is in force". Guralp's case is that the agreement has expired. Moreover, it had expired before the Serious Fraud Office took any steps to apply to the court. In those circumstances, at the relevant point there was no agreement in force. It cannot be terminated because it does not exist. The Serious Fraud Office disputes that proposition. They argue that proper analysis of the terms of the agreement demonstrates that the agreement was extant when they applied to the court. The parties agree that it is appropriate for the issue of jurisdiction to be determined as a preliminary point. If the court does not have jurisdiction, it appears that no further action against Guralp will be possible. If there is jurisdiction to consider the application by the Serious Fraud Office, it will be considered at a separate and later hearing.

4. The background to and history of the agreement with which the application is concerned is set out in my judgment of 22 October 2019 setting out my reasons for approving the agreement. As at that date the agreement was the sixth DPA to be approved by the court. There were features of the agreement which were unusual. The agreement required Guralp to disgorge the gross profit from criminal activity alleged against the company, the amount thereof being £2,069,861 but it did not provide for the payment of any financial penalty or any costs. Those matters alone set the agreement apart from every previous DPA.

5. The agreement was concerned with more than simple disgorgement of profits. Guralp were required to review their policies and procedures in relation to compliance with the Bribery Act 2010 and other anti-corruption measures. On an annual basis during the term of the agreement Guralp was to report to the SFO on a wide range of compliance and risk issues.

6. . The most striking feature of the agreement was that no timetable for payment of the disgorged profit was set. In every other DPA which had been approved the court either had required almost immediate payment of any sums due or had set out a timetable for payments on defined dates over the course of the DPA. In the agreement in question, Guralp simply agreed to pay the total due by the fifth anniversary of the date of the agreement. Paragraph 4 of the agreement read as follows:

> "*4. This Agreement is effective for a period beginning on the date on which the Court makes a declaration under Schedule 17, Section 8(1)*

and (3) of the Crime and Courts Act 2013 and ending on or before 22 October 2024, when the financial terms set out in Paragraphs 13-14 below have been fully satisfied (the "Term").”

7. 7. Paragraphs 13 and 14 of the agreement were concerned with the payment of the sum due by way of disgorgement of profits. Paragraph 15 was also relevant to this issue. Those paragraphs were as follows, references to GSL being references to Guralp:

> *“13. The SFO and GSL agree that £2,069,861 is the amount of gross profit unlawfully generated by GSL as a result of the offences alleged in the Indictment and Statement of Facts. GSL agrees that a total of £2,069,861 be disgorged to the SFO for onward transmission to the Consolidated Fund.*
>
> *14. GSL agrees to pay this sum following the Court's declaration under Schedule 17 section 8(1) and (3) of the Crime and Courts Act 2013 and, subject to paragraphs 15 and 17 below, by the date which falls five years from the date of this Agreement. Subject to paragraphs 15 and 17 below, failure to do so will constitute a breach of this Agreement. The £2, 069,861 of profits disgorged is final and shall not be refunded.*
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> *15. Unless the subject of a Court application as described in paragraph 17 below, at the sole discretion of the SFO late payment of the disgorgement amount by up to 30 days will not constitute a breach of this agreement but will be subject to interest at the prevailing rate applicable to judgement debts in the High Court.*”

Paragraph 17 of the agreement provided that, if Guralp assessed in the fourth or fifth year of the agreement that they would not be able to pay the sum identified in paragraph 13, Guralp would propose an alternative payment plan by 22 April 2024. Reference was made in this paragraph to the possibility of the parties to the agreement applying to the court to vary the agreement. Such an application would be pursuant to paragraph 10(1)(b) of Schedule 17.

8. The agreement made provision at paragraphs 25 and 25 for what would happen should the SFO consider that Guralp were in breach of the agreement:

> “*25. In the event that the SFO believes that GSL has failed to comply with the terms of this Agreement, the SFO agrees to provide GSL with written notice of such failure prior to commencing proceedings resulting from such failure. GSL shall, within 30 days of receiving such notice, have the opportunity to respond to the SFO in writing to explain the nature and circumstances of the failure, as well as the actions GSL has taken to address and remediate the situation. The SFO will consider the explanation in deciding whether to make an application to the Court.*
>
> *26. If, following receipt of GSL's response described in paragraph 25 above, the SFO believes that GSL has failed to comply with the terms of this Agreement and that any such failure is not being reasonably addressed, the SFO may apply to*

the court for the Agreement to be terminated and the suspension of draft Indictment lifted thereby reinstituting criminal proceedings."

9. There is no issue in relation to Guralp's compliance and reporting obligations. Guralp have met those obligations. Rather, what is said by the SFO is that Guralp have paid nothing at all by way of disgorgement of profits. It is accepted by Guralp that this is correct.

10. Although the question of jurisdiction must be purely a matter of construction of the agreement coupled with the interpretation of the effect of Schedule 17, Simon Farrell KC appearing on behalf of Guralp took me through the communications passing between Guralp and the SFO from June 2023 onwards. He argued that they provided important context to the jurisdictional issue. On 2 June 2023 Guralp wrote to the SFO to put them on notice that Guralp might not be able to meet their financial obligations under the DPA. It was suggested that an application pursuant to paragraph 10(1)(b) of Schedule 17 might be appropriate. Nothing was said about the terms of any variation. On 10 July 2023 the SFO wrote to Guralp setting out the information that they would need to consider any variation and asking what variation Guralp had in mind.

11. Guralp responded on 27 July 2023. Their letter provided at least some of the information sought by the SFO. It suggested a timetable for the provision of further financial information whereafter the terms of a variation could be suggested. There was no substantive progress until 22 April 2024 when Guralp wrote to the SFO proposing an alternative payment plan. This was for payment of sums at the end of each financial year between 2027 and 2029 which cumulatively would amount to the sum set out in paragraph 13 of the agreement. The SFO replied in a letter dated 4 July 2024. They rejected the proposal made by Guralp. They stated that they would accept part payment by 22 October 2024 with full payment by 22 October 2027. Interest at 8% per annum would accrue on any sum outstanding from 24 November 2024 onwards.

12. The SFO received no reply to this letter. On 18 October 2024 they sent a further copy by e-mail to Guralp. Guralp replied on 21 October 2024 stating that the e-mail of 4 July 2024 attaching the letter of that date had been deleted in error. They said that they would revert to the SFO on the substance of the letter as soon as the directors of Guralp had discussed it. The SFO on the morning of 22 October 2024 informed Guralp that they would apply to the court for a hearing "to deal with the breach" of the agreement. On the afternoon of the same day, the SFO revised their approach. They determined that, in accordance with paragraph 25 of the agreement, they should provide Guralp with written notice of the alleged failure to comply with the terms of the agreement. Guralp were to have 30 days to respond to the notice. The SFO would consider any response before applying to the court. In accordance with that notice, the SFO did not make their application to the court until 21 November 2024.

13. Mr Farrell argued that this chronology was relevant because it demonstrated the understanding of the agreement on the part of both the SFO and Guralp. In June 2023 Guralp considered that steps needed to be taken at that point to deal with the prospect that the company would not be able to meet its obligations under paragraphs 13 and 14 of the agreement. By implication the company had in mind that, were nothing to be done prior to 22 October 2024, the agreement would cease to have effect. That is why a variation of the agreement was mooted. Although the progress of the discussion

thereafter was desultory, the response of the SFO to the variation eventually proposed by Guralp indicated an engagement with the notion of variation. The SFO did not suggest that they could wait until 22 October 2024 and then make an application to terminate the agreement.

14. I do not consider that the negotiations from June 2023 (such as they were) provide any assistance on the question of what was understood by the parties to be the effect of paragraph 5(2) of the agreement. They certainly do not provide any support for the interpretation for which Guralp now contend. On their face the communications from Guralp demonstrated that the company did not believe that it would be able to meet its financial obligations under the agreement. Thus, they sought (albeit in a desultory fashion) to vary the agreement to give them more time to do so. Had they understood that, in the event of non-payment on or before 22 October 2024, the agreement would be unenforceable, one might have expect the company to take no steps at all.

15. . However, this argument was secondary to Mr Farrell's principal submission. He pointed to the terms of Schedule 17. He said that any DPA is based on the statute. The terms of any DPA are governed by Schedule 17. Critically, paragraph 5(2) reads as follows:

> "*A DPA must specify an expiry date, which is the date on which the DPA ceases to have effect if it has not already been terminated under paragraph 9 (breach).*"

Mr Farrell argued that the expiry date in this agreement was 22 October 2024. On that date the agreement ceased to have effect. He relied on the terms of paragraph 11(1) of Schedule 17:

> "*(1) If a DPA remains in force until its expiry date, then after the expiry of the DPA the proceedings instituted under paragraph 2(1) are to be discontinued by the prosecutor giving notice to the Crown Court that the prosecutor does not want the proceedings to continue.*"

By reference to the agreement between the SFO and Guralp, the expiry date was 22 October 2024. The only step open to the SFO after that date was discontinuance of the underlying criminal proceedings. There is no power to take any other step in relation to a DPA. The only circumstance in which a DPA will not be treated as having expired is if an application in relation to breach has been made but not yet determined. That was not the position here. The agreement in this case was governed by Schedule 17, the terms of which were conclusive as to the terms thereof.

16. Mr Farrell invited me to have regard to authorities relating to statutory time limits in other criminal justice contexts. He placed particular emphasis on what was said in *R v Layden* [2023] EWCA Crim 1207. In that case the appellant's original conviction had been quashed on appeal. The Court of Appeal had ordered a retrial pursuant to section 7 of the Criminal Appeal Act 1968. Section 8(1) of the 1968 Act provides as follows:

> "*(1) A person who is to be retried for an offence in pursuance of an order under section 7 of this Act shall be tried on a fresh indictment preferred by direction of the Court of Appeal, but*

> *after the end of two months from the date of the order for his retrial he may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal give leave.*"

The appellant was not arraigned within two months of the order for his retrial. The issue was whether, subject to the Court of Appeal giving leave to arraign out of time, the statutory provision had the effect of removing the jurisdiction of the Crown Court to try the appellant. This was to be determined by reference to the legislative intention of section 8 of the 1968 Act. That required consideration of the ordinary and natural meaning of the words of the section coupled with the legislative purpose which was to ensure that any retrial should take place as soon as possible. The court in *Layden* concluded that the failure to arraign as required by the Act meant that the Crown Court had no jurisdiction to try the appellant. His conviction was quashed. Mr Farrell's argument was that the same principles apply to the interpretation of Schedule 17.

17. In my judgment the starting point for determination of the court's jurisdiction to consider the SFO's application is what is contained in the DPA. As was submitted by Trevor Archer on behalf of the SFO I must look to the terms of the agreement and, subject to any statutory restriction, apply the principles of contractual interpretation. There is a statutory requirement for any DPA to specify an expiry date. However, Schedule 17 says nothing about how this is to be expressed. Paragraph 5(2) states that it is the date on which the DPA ceases to have effect. There is a degree of circularity in that definition. The date on which the DPA ceases to have effect will be dependent on the overall terms of the agreement. The statute says nothing about any other term required to be part of a DPA. Paragraph 5(3) sets out the requirements that may be imposed on a corporate defendant by a DPA. The list of requirements is not exhaustive. It includes financial requirements of different types. Paragraph 5(3) also provides that a DPA may impose time limits within which any requirement is to be met. As I already have observed, the DPA in this case was unusual. It made no provision for a financial penalty. It only required payment of disgorged profit by the date falling five years from the date of the agreement i.e. 22 October 2024.

18. The meaning of any contractual term requires the court to "consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other": *Arnold v Britton* [2015] UKSC 36 at [76]. What is critical is the intention of the parties at the point at which the agreement was made. The approach taken by Guralp and the SFO after the agreement had been in force for nearly three years can have only very limited relevance to their intention in October 2019. In relation to a DPA the surrounding circumstances include the fact that the agreement has to be approved by a court before it can come into force. The process of approval includes a reasoned judgment which considers inter alia the proposed terms of the DPA. What is said in the judgment may assist in the interpretation of the agreement. A further relevant circumstance is that the agreement is intended to further the interests of justice. A DPA provides a corporate entity (which admits criminal wrongdoing) with protection from

prosecution so long as the entity complies with the agreement. The quid pro quo for avoiding prosecution will be payment of a penalty or a confiscatory payment or both. Prima facie the agreement will be interpreted in such a way as to ensure such payment is made.

19. As with any contract a DPA must be construed holistically. If one term is subject to ambiguity, its relationship with other terms in the agreement will be significant. I have set out the terms relating to disgorgement of profits at paragraphs 13 to 15 of the agreement. In paragraph 14 Guralp agreed to pay the relevant sum by the date falling five years from the date of the agreement. That required payment by 22 October 2024. Failure to pay was to constitute a breach of the agreement. Such a breach would not be identifiable until midnight on 22 October 2024. On the face of it Guralp could not be in breach unless the agreement was extant. Were the argument now put forward by Mr Farrell to be correct, paragraph 14 would have no effect. Paragraph 15 of the agreement stipulated that, at the discretion of the SFO, late payment of the disgorgement of profits by up to 30 days would not constitute a breach but would be subject to interest at the judgment rate. Payment of the disgorgement of profits only could be late if it occurred after 22 October 2024. On the argument advanced on behalf of Guralp, the agreement would no longer be in force after 22 October 2024. Thus, no payment of any sum would be due. Late payment could not constitute a breach of the agreement. Paragraph 15 would be redundant. In my judgment a construction of the agreement which renders two significant paragraphs thereof otiose is not consistent with the overall purpose of the DPA.

20. A similar issue arises in relation to paragraphs 25 and 26 of the DPA, the terms of which I have already set out. Paragraph 25 provided that the SFO was to provide Guralp with written notice of any failure to comply with the terms of the agreement. Guralp were then to have 30 days to respond to that notice to explain the failure. The SFO were to consider the explanation in determining whether to make an application pursuant to paragraph 9 of Schedule 17 of the Act. One failure to comply which could arise would be a failure to make payment of the sum representing the gross profit of Guralp's criminality. Such a failure only could arise at midnight on 22 October 2024. On the interpretation of the agreement now advanced on behalf of Guralp the provision for written notice in paragraph 25 would be redundant. There would be no point in any written notice and/or a response to it were the agreement to be unenforceable after 22 October 2024. Moreover, paragraph 26 of the agreement would be meaningless. The SFO could not apply to the court for the DPA to be terminated if it were no longer extant. Again, the interpretation of the agreement proposed by Guralp is inconsistent with the purpose of the DPA.

21. The ambiguity in paragraph 4 of the agreement arises because it stated that the DPA was effective for a period "ending on or before 22 October 2024, when the financial terms set out in Paragraphs 13-14…. have been fully satisfied". The paragraph provided two points up to which the agreement may be effective i.e. 22 October 2024 and when full payment had been made of the gross profit figure. Proper performance of the agreement would mean that the two points would coincide. However, as envisaged elsewhere in the agreement, it could be that payment of the relevant sum would be late so as to attract interest or would not be made at all so as to result in a written notice of failure to perform. In that event, the agreement necessarily would remain effective after 22 October 2024.

22. I gave my reasons for approving the agreement in writing. The draft of my judgment was circulated to the parties in advance of the hearing on 22 October 2024. No objection was taken to the final version of the judgment. At paragraph 41 of the judgment, I noted that the agreement allowed for the possibility that the terms of payment under the agreement would not be met. I observed that this was very unusual. However, I noted that a "consequence of GSL (Guralp) failing to meet the terms of the agreement might be that the company will be prosecuted". If Mr Farrell's argument on jurisdiction were correct, that observation would not be sustainable. A DPA suspends the indictment charging the corporate entity with an offence or offences. The suspension can only be lifted if the DPA is no longer in force because it has been terminated by the court pursuant to paragraph 9 of Schedule 17. An application under paragraph 9 can only be made if the DPA is in force. None of that could apply were the agreement in this case to have expired on 22 October 2024. The SFO would be obliged to discontinue the proceedings pursuant to paragraph 11 of Schedule 17. What I said at paragraph 41 of the judgment may be taken as a clear indication of the intention of the parties at the point at which they entered into the DPA. For that intention to be effective, the agreement cannot have expired on 22 October 2024.

23. For all of these reasons I am satisfied that the DPA remained in force after 22 October 2024. The only part of Mr Farrell's submission which might have had some purchase related to certainty. Paragraph 5(2) of Schedule 17 imposes a requirement that a DPA must specify an expiry date. It could be argued that, if that date in this instance was not 22 October 2024, the agreement could have continued indefinitely. Since any DPA must specify a date at which it ceases to have effect, an indefinite agreement prima facie would fail to meet the statutory requirement. However, I conclude that the agreement was not of indefinite duration. Unless varied pursuant to an application under paragraph 10 of Schedule 17, the agreement required payment of the gross profit figure by 22 October 2024. Failure to make payment constituted a breach of the DPA. At the discretion of the SFO late payment of the sum due by up to 30 days would not amount to a breach of the agreement. Even were the SFO to exercise their discretion, the time for payment could not extend beyond 21 November 2024. It was implicit that the SFO would not allow non-payment beyond that date since the purpose of the agreement was obtain disgorgement of the profits from criminality. If that end could not be achieved via the DPA, the SFO would give notice in accordance with paragraph 25 of the agreement. Paragraph 26 did not set any specific timetable in relation to an application to the court for termination of the agreement. A requirement to make the application within a reasonable time of Guralp responding to the notice or of Guralp's failure to respond must be an implied term of the DPA.

24. The breach occurred on 22 October 2024. The application to terminate the agreement was made on 21 November 2024. Mr Archer submitted that the application on any view was within the period required by the express and implied terms of the DPA. On the basis of the analysis set out in the preceding paragraph, I agree with that submission. The court has jurisdiction to consider the application made by the SFO.