Case No: BL-2020-001050

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **Friday, 28 August 2026**

Before:

Mr Justice Richard Smith

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Between:

LOUDMILA BOURLAKOVA & OTHERS **Claimants/ Applicant**

(18) FUNDACION CANTUCCI

- and -

THE ESTATE OF OLEG BOURLAKOV & OTHERS **Defendants**

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Mr P Harty (instructed by **Mishcon de Reya LLP**) for the **First Claimant.**
Mr T Chelmick (instructed by **Wallace LLP**) for the **Twelfth Defendant.**
The **Eighteenth Claimant** did not appear and was not represented**.**

Hearing dates: **28/8/26**

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APPROVED RULING

Friday, 28 August 2026

MR JUSTICE RICHARD SMITH:

INTRODUCTION

1. Today, I oversaw an application made by the first claimant in these proceedings, Loudmila Bourlakova, for an order preventing the sale by the respondent, the eighteenth defendant Fundacion Cantucci (Cantucci), a Panamanian private interest foundation, of a particular work of art.

2. The background to the matter is that, on 5 June 2026, I made an order for proprietary injunctive relief against Cantucci in the first claimant's favour on the basis of her alleged proprietary interest in Cantucci's principal asset, namely the shares in a Panamanian company, Hydrangea Group S.A. That injunction was also directed to maintaining the first claimant's interests in the value of such shares as was said to be reflected in the holding of a range of different assets by subsidiary entities, including artwork, jewellery, real property and a private plane.

3. Cantucci did not appear at the last hearing, but the twelfth defendant (Edelweiss) did, its standing then said to be as a major creditor of Cantucci, Edelweiss having previously funded its expenses, albeit no longer permitted to do so since 2025 on account of the earlier proprietary injunction I granted then on account of Veronica Bourlakova's, the fourth claimant's, arguable proprietary interest in Edelweiss. The principal concern expressed in June this year by Edelweiss was that Cantucci's inability to realise assets in the Cantucci structure for the purpose of funding its expense and maintenance would result in potential insolvency, thereby prejudicing Edelweiss' claims.

4. Having heard argument in June, I granted the injunctive relief sought against Cantucci, both with respect to the shares in Hydrangea, defined as the "Proprietary Assets", but also with respect to certain other specified assets, defined as the "Frozen Assets", held by its subsidiary entities, albeit with certain modifications to the proposed order.

5. One of those modifications was to make explicit, as was accepted by the claimants at the hearing in answer to my related questions, that assets could be sold in the ordinary course of business to allow Cantucci to fund itself. Cantucci heading up an asset-holding structure, it was not clear to me that such disposals for those purposes would necessarily fall to be treated as ordinary course of business expenditure. The order I granted in June made clear that it would.

6. The order also took into account that there may be genuine limits to the ability of Cantucci to control or direct the actions of subsidiary entities beneath it in the structure and Cantucci's obligations under the order reflected those limits through the requirement for Cantucci to cause or procure *to the best of its ability* that the various entities in that structure should not dispose of the Frozen Assets.

7. The order also took into account the claimants' concerns about a proposed sale of assets not taking place in the ordinary course of business if not a commercial arm's length transaction, or it was not a transaction at market value and, with a limited exceptions, I provided for advance notice of the sale of assets to be provided to the claimants to enable them to apply to Court if necessary. As I come on to explain, it is such advance notice with respect to a sale of a piece of fine art that has precipitated this application.

8. I also ordered the provision of information by Cantucci, again with limited exceptions, concerning assets in the structure, including by way of the provision of a sworn affidavit.

9. I adjourned the hearing to 3 July to allow funding discussions for Cantucci to continue, Edelweiss having indicated, in principle, a continued willingness to fund the structure, and, at that stage, there being optimism, at least on the part of some, that such an agreement might be capable of being reached.

10. Finally, I put back the provision of the information beyond 3 July to prioritise discussion of any agreed funding regime, recognising that this itself might encompass information provision. Although Cantucci was on notice of the application, I also considered it appropriate to allow an opportunity for Cantucci to come back and make further representations about such disclosure, making clear, however, that it should prepare on the basis that such information would be required and no funding agreement might, in the event, be reached.

11. The re-listed hearing on 3 July was subsequently pushed back by consent to 17 July, with disclosure deadlines also extended by consent. The parties then subsequently agreed to vacate the hearing on 17 July. Towards the end of last term, there was also a flurry of correspondence about extending the disclosure deadline further and the possible adjourned hearing taking place during the summer vacation. I understand that those discussions did not crystallise into an agreed position, despite the preparation of a proposed consent order.

12. Moreover, although Cantucci purported to provide certain asset information said to be responsive to my June injunction, the related affidavit required to be served by 31 July

2026 has not been. Cantucci's position appears to be that it had understood an extension was agreed. However, the claimants made clear their position that it was not agreed and, to that extent at least (although the claimants have other observations in that regard), it would therefore appear that Cantucci is currently in breach.

THE APPLICATION

13. Despite this, Cantucci wrote to the claimants on 18 August 2026, stating that one of the Cantucci subsidiaries intends to sell an artwork by Pompeo Batoni titled "Susanna and the Elders" (Batoni) for the sum of $6m, the sale to take place on 1 September 2026, next Tuesday. The sole purpose of the sale said to be to release funds for the purpose of maintaining the continued existence of that subsidiary and the Cantucci structure. That sale is apparently brokered by Christie's and was said to be to an arm's length buyer on commercial terms. The claimants responded the next day, expressing concerns and seeking further information about the sale.

14. This, in turn, led to the first claimant issuing an application on 24 August 2026 for an order, said to be ancillary to my June order, that Cantucci and its subsidiaries do not dispose of the Batoni. That application was supported by the affidavit of Ms Whiston-Dew on behalf of the first claimant.

15. It is that application which comes before me today. Cantucci does not appear but Edelweiss does in the same capacity as it indicated at the last hearing. No further evidence has been served but I am grateful to the parties for their respective written and oral submissions and argument.

The first claimant's arguments

16. Summarising those arguments briefly, I firstly accept – and I do not think it was disputed on either side in argument – that there does remain a serious issue to be tried having regard to the claimants' arguable proprietary interest in the Hydrangea shares.

17. Turning to those issues where there was more argument, the first claimant also says in terms of the adequacy of damages that, although the resulting loss would be a financial or economic one, she would not be able to recover the loss following a sale at an undervalue from any person. As such, her harm would be irremediable.

18. It is also said that she would suffer loss which is non-compensable in damages given the truly unique nature of the asset which the first claimant does not wish to sell, in contrast to other assets to which no objection might be taken. Cantucci, however, has not indicated any non-compensable loss which it would suffer as a result of the restraint of the sale.

19. As to the balance of convenience and the first claimant's related objections to the sale of the Batoni, these are informed by the suggested sale of the Batoni at a significant undervalue, now proposed at $6m against a purchase price in 2013 of over $11m, with the first claimant's evidence indicating a current market value of $7-10m and Sotheby's said to be likely to be prepared to guarantee a purchase price of some $6.5m. Cantucci's estimate of the price in October 2025 was also said to be $9m. As such, there is said to be no basis for selling it at the price of $6m. Multiple valuations have, since the issue of the application, been produced by Cantucci which show a range of between $4-6m but, and please forgive the use of my phrase in this context, the claimants say that the provenance of those valuations is uncertain and questionable, not least given their late production and their lack of detail or explanation of how they were

produced or how any sale brokered by Christie's would take place or what the related marketing would look like, who the purchaser is, and so on. The first claimant also says that no material has been produced which evidences Cantucci's instructions to Christie's, their views on value or the sale process or, as I say, the identity of the purchaser.

20. It is also said that Cantucci has failed to give the asset disclosure required in my June injunction, including what cash it has and revenue its assets are generating. That is said to be critical to the question of prejudice and how any suggested funding requirement might properly be met, including otherwise than by sale of the Batoni.

21. I was also taken to the letter sent by, or on behalf of, Cantucci in purported response to the information requirement in my June order, and it was said that this was wholly deficient and, in fact, there was no information at all provided about the assets lying within the structure. Moreover, it was said that Cantucci had failed to give the asset disclosure required by way of affidavit and that this is still overdue and that Cantucci is in breach. Those deficiencies, too, are said to be critical to the question of irremediable prejudice and how any suggested funding requirement might properly be met, given the potential availability of other assets, potentially more liquid assets and income-producing ones within the broader Cantucci structure.

22. The first claimant also says that no information has been provided as to the deployment of the Batoni sale proceeds beyond saying it is for the maintenance of the subsidiary and the structure more generally. Proper evidence of Cantucci's expenses, or of the structure or its subsidiaries, has not been provided but, at least based on the expenses schedule which I was shown at the last hearing – and as was also explained in the

correspondence sent on behalf of Cantucci to which I was again taken today – some of that proposed expenditure appears to be earmarked to recipients who, according to the claimants at least, could not be legitimate ones. I was referred to Mr Schneider and Mr Anufriev in particular in that regard as recipients of potentially large and unexplained consultancy fees. It was also contended today that such expenses would not, on any view, properly be considered as ordinary course of business expenses, in any event, such that their discharge by Cantucci would result in a breach of the June injunction.

23. It is also said that it is no answer to say that the sale could be avoided if there had been an agreement with respect to the proposed independent accountant in the context of the ongoing, or at least previously ongoing, discussions concerning the funding of Cantucci. Cantucci did not meaningfully engage in those until after it gave notice of the proposed sale. I was taken today in a little detail to the exchanges in relation to that process. The claimants also say that the suggestion that the independent accountant could be the arbiter of whether payment can properly be made to the likes of Mr Schneider would simply be unworkable. However, if there are genuine expenses which Cantucci is obliged to incur or disburse, such as art storage costs, and these are not capable of being met from other assets, such as cash or future revenues from other assets, the claimants may well agree that these can be paid by Edelweiss but subject to proper evidence thereof, which has not been provided.

24. Finally, it is also said that all this arises very shortly after it has emerged that the defendants have been less than forthcoming with the Court as to the funding of the Panamanian structures, it apparently recently emerging that Hemaren's prior representations to this Court about the source of its funding did not mention a loan facility from the seventh defendant, Mr Kazakov, to Hemaren.

25. Given these matters and others traversed today, it is said that the balance of convenience firmly favours the *status quo* being maintained, irremediable prejudice occurring through a sale at an undervalue, the shortfall not being recoverable in damages and the Batoni being a unique asset that cannot be replaced, those unique assets in the Cantucci structure having been acquired in the first place for the personal benefit of the first claimant and her daughters. There is no proper evidence from Cantucci of prejudice, let alone irremediable prejudice but it would be for Cantucci to adduce proper evidence, and it has not done so. As such, the injunction should be granted.

<u>Edelweiss' arguments</u>

26. For its part, Edelweiss says that, as an unsecured creditor of Cantucci, it may be prejudiced if Cantucci becomes insolvent and that, again, was the position from which it was arguing today. That is why it did not object to the order restricting the disposition of assets back in June but it took that position on terms allowing the structure to be funded, the Court also delaying the disclosure mechanism for that purpose. The return date was subsequently adjourned by consent but the critical funding negotiations have stalled and Cantucci has applied, if only in writing, not by way of a formal application, for more time to comply with its disclosure obligations, albeit it was fairly recognised that there may be issues for Cantucci on that front with respect to its compliance with my previous order.

27. At the last hearing, it was also expressly confirmed by the claimants that selling an asset for funding purposes would not be caught by the injunction, albeit a notification provision was provided. Predictably, says Edelweiss, the claimants have now issued an application restricting the sale.

28. As for the narrow issue arising here, Cantucci's latest letter confirms that the Batoni is being sold for $6m, with evidence from art market experts showing a range of between $4-6m. There is no sale at an undervalue, unsurprisingly so given that the independent directors of the relevant subsidiaries themselves have fiduciary obligations. As such, damages would be an adequate remedy for an undervalue sale. However, the valuation is, in fact, really a red herring. More than sufficient information, it is said, has been provided by Cantucci as to the arm's length nature of the exercise, the valuations presented by both parties merely reflecting a reasonable range of different views amongst different experts in the market.

29. The bottom line, I think it is said on behalf of Edelweiss, is that it appears that a sale of any asset will not be considered by the claimants to be in the ordinary course and the real issue here is the question of funding, The independent accountant proposal, has been the subject of extensive discussion between the parties, Edelweiss and Cantucci having attempted to strike a balance between the interests of the parties by having the independent accountants approve the expenditure, and not have the claimants do that job.

30. If there is to be restraint here because, for example, the Court is not persuaded that there is sufficient evidence from the Cantucci side on the question of irremediable prejudice, nonetheless, any such restraint should be for a short period to allow the parties to agree a funding arrangement. If that cannot be achieved, any further hearing before this Court should be one addressed to broaching matters more widely in terms of attempting to unblock the funding issue and the question of Cantucci's expenses and how those are to be met.

Decision/ disposal

31. I have decided to order the restraint of the sale of the Batoni until further order. Although the hearing lasted nearly all morning, I can give my reasons relatively briefly. Even taking account of the matters put in correspondence by Cantucci or on its behalf recently and not so recently, for the reasons they have given, the claimants have made out the better case - for today's purposes at least - as to the inadequacy of damages were the Batoni to be sold as opposed to the restraint of its sale. Although there have been multiple references in the correspondence and submissions to the need for funding and the spectre of insolvency, and hence the need for that painting to be sold, these are not made out, in my view, in any cogent evidence put forward by Cantucci. Even though they are unrepresented parties and notwithstanding the jurisdictional position they have taken, they have had an opportunity to put in such evidence but this has not been forthcoming.

32. The same point perhaps also feeds into the balance of convenience considerations more generally. Although Cantucci has indicated a need for funding, there remains insufficient information, let alone evidence, as to why that funding is currently required so as to necessitate the urgent sale of the Batoni. As such, there is no sufficient information before the Court as to the likely harm or prejudice Cantucci would suffer if the sale proceeds were not forthcoming, let alone – and I do pay proper regard to the interests of Edelweiss as a third party interested in these matters – the risk of suggested insolvency. Indeed, although I take at face value today Edelweiss's concerns as a creditor to avoid Cantucci's insolvency, the Court is simply in no position to assess the level of that risk which has been asserted repeatedly and over a not insignificant period of time, but with very little clarity or granularity.

33. As to the value of the painting and the range of values expressed, one can understand, in principle at least, that there may well be different views in the art market, but I agree that the information provided by Cantucci as to the basis of the valuation and the sale and marketing process is opaque such that I cannot by any means discount the claimants' concerns in this regard, which, again, obviously feed into the assessment of the balance of convenience and which, if there were an answer to them, could have been readily dealt with in evidence.

34. Finally, in terms of the lack of clarity from Cantucci's side, I agree that the information provided in response to the first element of the disclosure order that I made back in June as ancillary to the injunction order also made then seems, surprisingly so, thin. Moreover, the affidavit of assets has not been provided at all, which does raise genuine questions as to whether Cantucci can be funded through other assets or other assets might more conveniently be available for sale, rather than the one we have been discussing today. Cantucci's stance that it thought an extension of time to provide the affidavit was agreed is, I have to confess, somewhat difficult to understand, at least in the absence of a proper explanation. But Cantucci is in no doubt now that such an extension has not been agreed, and yet the relevant affidavit has still not been provided nor, despite being afforded the opportunity, has Cantucci come forward to challenge the June injunction, or at least to apply to vary its provisions, or to set some or all of the injunction aside, or, indeed, to seek to have it discharged.

35. In these circumstances, and on the evidence before the Court, the only cogent evidence of irremediable harm is that which emanates from the claimants. I therefore find it just and convenient to restrain the sale of the Batoni until further order. I do agree, however, with Edelweiss that the issues thrown up on this application go wider than this

particular application. It does seem to me that I should give one last opportunity for Cantucci to restore the injunction application and to apply to vary, discharge or set it aside. It seems to me as well that it should be given a reasonable opportunity to do so. I do not simply say this because I am duty judge next week and two hours in the interim applications list would not be appropriate for that purpose. It seems to me that a more sensible approach needs to be taken. This is not an open-ended opportunity but Cantucci would – and I am sure this message will be taken back to them – be well advised in the meantime to regularise its position before the Court, so far as it can do so.