Case No: HC07CO2257

Neutral Citation Number: [2008] EWHC 1380 (Chy)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday 21st May 2008
Hearing date: 22 April 2008

BEFORE:

THE HONOURABLE MR JUSTICE HENDERSON

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BETWEEN:

Claimants

(1) RED RIVER
(2) ISMAIL DOGAN

- and -

(1) ANAL SHEIKH Defendants
(2) RABIA SHEIKH

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Mr Tom Smith (instructed by Isadore Goldman, Solicitors) for the Claimants

Miss A Sheikh in person

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Approved Judgment

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No of Folios in transcript - 101
No of words in transcript – 7176

MR JUSTICE HENDERSON:

1. This is my judgment on the applications made by Miss Sheikh on behalf of herself and her mother, the second defendant, in her application notice dated 31st March 2008. I heard oral argument on the applications for the greater part of a day on 22nd April and at the conclusion of the argument I reserved my judgment.

2. On the following day, Wednesday, 23rd April, Miss Sheikh gave notice of her intention to make a number of further applications, which she wished to be heard before I delivered my judgment on the applications which I had heard on the previous day. Arrangements were made at short notice for those applications to be heard on Friday, 25th April. After an oral hearing which lasted for some two hours, I dismissed those further applications for the reasons which I gave in an *ex tempore* judgment and I refused Miss Sheikh permission to appeal. I did, however, indicate that I would not give judgment on the earlier applications until I had received and had an opportunity to consider the approved transcript of the judgment which Briggs J gave on 21st December 2007, when he struck out the second winding up petition against Red River (UK) Limited ("Red River"), which had been presented by Miss Sheikh and her mother on 16th October 2007.

3. The approved transcript did not in the event become available until last week, which explains why I have had to reserve this judgment for considerably longer than I had originally hoped. I can, however, reassure Miss Sheikh that I have now carefully read and considered Briggs J's judgment of 21st December last.

4. To avoid confusion, I shall in this judgment try to refer to the parties by their names rather than by reference to their various capacities as claimants, defendants, applicants, petitioners or respondents.

Background

5. The background to this protracted and most unfortunate litigation, as Briggs J has aptly termed it, has already been described by him at some length in the reserved judgment which he handed down on 15th November 2007 after a hearing which had taken place on 7th November. I do not intend to travel over all the same ground again. However, I emphasise that I have considered the whole matter afresh and I will therefore begin by referring to some of the key features of the case.

6. Miss Sheikh is a solicitor who has until recently practised as a sole practitioner under the style Ashley & Co at 49 Blackbird Hill, London NW 9. In August 2004 Red River, the company through which Mr Dogan operates bought a former Esso petroleum service station in Stoke Newington ("the property") for a price of £1.825m plus VAT. Red River obtained planning permission to redevelop the property into a block of 32 flats with six retail units and associated storage and carparking spaces. The purchase price was mainly

funded by a first mortgage taken out by Red River with the Bank of Scotland. Ashley & Co acted as Red River's solicitors in connection with the purchase.

7. As well as providing legal advice through Ashley & Co Miss Sheikh also invested a substantial sum of money in the purchase on her own account. This investment took the form, as I understand it, partly of the provision of loan finance consisting of a cash advance of £329,000 and partly of an agreement to treat various debts owed to Ashley & Co by Red River or Mr Dogan as further loan capital introduced by Miss Sheikh. In return for this investment, one of the agreed terms was that Red River would issue or transfer 35 per cent of its shares to Miss Sheikh's mother, Mrs Rabia Sheikh, at par. This was duly done. I believe it to be common ground that Mrs Rabia Sheikh holds the shares as nominee for her daughter.

8. In addition, Miss Sheikh caused two restrictions to be registered at HM Land Registry in respect of the property, the overall effect of which was that no disposition of the registered estate by Red River could take place without the written consent of Miss Sheikh's mother, such consent to be certified by Miss Sheikh.

9. Before long the parties unfortunately fell out and a number of disputes led to the commencement of at least six separate sets of proceedings, including a professional negligence claim by Red River against Miss Sheikh, proceedings by Mr Dogan to remove her as a director of Red River and a petition by Miss Sheikh under section 459 of the Companies Act 1985. However, all these disputes were resolved by a successful mediation between Mr Dogan and Miss Sheikh which took place on 29th June 2007. The mediation was attended by Mr Dogan's solicitor, Mr Daniel Schaffer, who was a partner of Isadore Goldman. At about 10.00 pm on that day the parties entered into a written settlement agreement which was signed by Mr Dogan on behalf of himself and Red River, described as “Party A” in the document, and by Miss Sheikh on behalf of herself and her mother, described as “Party B".

10. The settlement agreement recited that the parties had invested in the property as development land, that specified proceedings had been issued as a result of the dispute between the parties, including those which I have mentioned above, that there was a further dispute in progress in the Willesden County Court and that the parties had agreed to settle all the recited claims on the terms then set out.

11. Clause 1 provided that Party A (Red River and Mr Dogan) would pay to either Miss Sheikh or her mother, as might be directed, a total of £1.2m payable as to £300,000 on or before 31st July 2007, ie within little more than one month, and as to the remaining £900,000 on or before 29th December 2009, that is to say within a period of approximately two and a half years. Both payments were to carry interest at 4 per cent over the base rate of National Westminster Bank, such interest to be discharged in full by 29th December 2009 with payments on account of £3,000 per month after tax starting on 1st August 2007, and increasing to £7,500 per month after tax with effect from 1st May 2008.

12. Clause 2 provided that in consideration of the above payments: (a) Miss Sheikh would deliver up to Isadore Goldman within seven days the necessary documentation to remove the two restrictions on the title to the property, such documents to be held by Isadore Goldman to the order of Miss Sheikh and her mother until payment of the £300,000 was made on or before 31st July; (b) she would procure the transfer of the shares held by her mother to Mr Dogan for a specified consideration not to exceed £300,000 and would deliver up stock transfer forms duly executed by her mother to Isadore Goldman within seven days, which were to be held to the order of Miss Sheikh until payment of the £300,000; and (c) she would provide certain other specified documents, which were again to be held to Miss Sheikh's order pending payment of the £300,000.

Clause 3 then provided as follows:

> "The Company agrees on the payment of the sum under 1.1 above [£300,000] and provision of the documentation pursuant to paragraph 2 above to enter into a legal charge in a form approved by the Bank of Ireland and reasonably acceptable to Miss Anal Sheikh which provides *inter alia* for the following:
> 3.1 a demand for repayment of the sums payable under paragraph 1 above if the Company defaults on any such payment;
> 3.2 a limitation on the sums to be advanced by the Bank of Ireland to £1,750,000, whether by legal charge or debenture or otherwise."

13. Although the settlement agreement does not say so in terms, it is clear from the references to the Bank of Ireland in clause 3, and from the provision in clause 2 requiring delivery up of the necessary forms to procure removal of the restrictions, that the parties contemplated a remortgage of the property with the Bank of Ireland, which would take the form of a first charge capped at £1.75m, subject to which a second charge would be granted to Miss Sheikh, and/or her mother, to secure payment of the £1.2m and interest due under clause 1, and the terms of which would provide for the full amount to become due on demand if any default was made in making any payment pursuant to clause 1.

14. Such a remortgage would obviously require the consent of the existing first mortgagee, Bank of Scotland, which would have to be paid off in full. It would also require a deed of priority, or some similar agreement, to be entered into between Bank of Ireland and the Sheikhs, so as to ensure that the sums advanced or to be advanced by Bank of Ireland on the security of its first charge could not exceed the stipulated limit of £1.75m. The terms of the second legal charge itself were not spelt out apart from the requirement for an acceleration clause on default in payment of the sums due under clause 1, but the terms had to be both approved by the Bank of Ireland and reasonably acceptable to Miss Sheikh.

15. I need not refer in detail to any of the other provisions of the settlement agreement. It provided, as one would expect, that it was to be in full and final

settlement of the disputes between the parties, and governed by English law. The existing claims were all to be discontinued with no order as to costs. There was an entire agreement clause, and also a severance clause if any part of the settlement agreement was found to be invalid or unenforceable.

16. Time was not stated to be of the essence of any of the obligations in clauses 1 and 2 of the settlement agreement, nor was the obligation on Red River and Mr Dogan to pay the initial £300,000 by 31st July 2007 expressed to be conditional in any way on the proposed refinancing with Bank of Ireland.

17. The agreement also did not say what was to happen if for any reason it proved impossible to obtain the proposed refinancing. However, three points may I think be made. First, it was obviously in the interests of all parties that the proposed refinancing should proceed in order to enable the express terms of clause 3 to be implemented. In those circumstances it seems to me clear that there was an implied obligation on all parties to cooperate in achieving that objective, at any rate for so long as Bank of Ireland was still willing to agree to the conditions spelt out or implicit in clause 3. Secondly, it seems to me most unlikely that the parties can have contemplated that Miss Sheikh and her mother should be left with no security at all for the payment of the £1.2m and interest if the proposed refinancing with the Bank of Ireland fell through. However, any alternative second charge would obviously have to be subject to the existing rights of the Bank of Scotland as first chargee, and would also have to be in a form acceptable to any replacement lender, as well as in a form reasonably acceptable to Miss Sheikh. Thirdly, unless and until the initial payment of £300,000 was made Miss Sheikh had the express protection that her restrictions would remain in place and the documentation to remove them would be held to her order by Isadore Goldman. The parties cannot in my view have reasonably contemplated that there could be any gap between the removal of the existing restrictions and the provision to her of security for payment of the £1.2m. Accordingly, in order to give business efficacy to the settlement a term must in my judgment be implied that the proposed second mortgage in favour of the Sheikhs should take effect simultaneously with the removal of the restrictions.

18. It is most regrettable that the spirit of compromise which led to the settlement agreement seems to have broken down almost as soon as it was executed, and to have been replaced with an attitude of deep mutual distrust and hostility between the parties. Miss Sheikh appears to have convinced herself that Red River and Mr Dogan were determined to leave her without any or any worthwhile security for the performance of their obligations under the settlement agreement, and that they would take advantage of any perceived loophole or drafting ambiguity to render the proposed second charge worthless. In particular, Miss Sheikh has convinced herself that it is their Machiavellian design to ensure that any first charge, whether with Bank of Ireland or any other replacement lender, is in substance an all monies charge and not subject to any effective cap of £1.75m. She says that all this would be obvious to any experienced conveyancer and that the courts have so far allowed themselves to be hoodwinked by Red River and Mr Dogan and their lawyers.

19. Miss Sheikh has set out her concerns on this score with great persistence and at enormous length. For example, her pending application to the Court of Appeal for permission to appeal against most of the orders made down to and including 21st December 2007 is supported by a skeleton argument which runs to no less than 440 pages and is devoted to an analysis of what she calls the "fraudulent transaction" whereby Red River and Mr Dogan intend to register an all monies charge which will take priority over her second charge.

20. Having now had the opportunity to read a good deal of the voluminous written material produced by Miss Sheikh, and having heard her make oral submissions to me for a number of hours on two separate occasions, I have to say that I am unable to detect any solid evidence in support of the so-called fraudulent transaction. The most that can be said, it seems to me, is that Isadore Goldman may initially have been unwilling to accept some of the timing implications of the settlement agreement. However, this problem was dealt with at a hearing before Kitchin J in the Vacation Court on 3rd September 2007, when the Sheikhs were represented by leading counsel, Mr Hugo Page QC. With some assistance from the court, the matters then in dispute were resolved by an order in Tomlin form in which each side gave undertakings to the court designed to ensure in summary: (a) that the Sheikhs would deliver up all the outstanding documentation within seven days; (b) that Isadore Goldman would then hold the documents to their order, not only until the £300,000 had been paid, but also until a second legal charge had been executed pursuant to clause 3 of the settlement agreement and a deed of priority had in addition been executed; (c) that a first legal mortgage over the property in favour of the Bank of Ireland to secure an advance of £1.75m to Red River, together with interest and costs, would be accepted by the parties as complying with clause 3.2 of the settlement agreement, provided that Bank of Ireland retained £140,000 out of the advance as a cover for interest due; and (d) that the parties would use reasonable endeavours to procure the entry by Bank of Ireland into a deed of priority containing certain specified provisions, including consent by the bank to the execution of the second legal charge and, importantly, to its registration at the same time as the first mortgage.

21. In my judgment, this agreement provided the necessary framework for the matter to proceed and should have removed any risk, however fanciful, of the Sheikhs being forced to accept a second charge subject to a first charge capable of securing sums in excess of £1.75m plus interest and costs.

22. There were inevitably continuing disagreements about the drafting of the second legal charge and the deed of priority, but these were largely, if not entirely, resolved at hearings before Briggs J and Mann J on 20th and 27th September.

23. On 28th September Mrs Rabia Sheikh, who was the only party on the Sheikh side to the deed of priority, executed it and delivered it to Isadore Goldman. The Bank of Ireland were content with the draft documentation and everything should then have proceeded smoothly to a rapid completion.

24. Far from assisting the matter to proceed smoothly, however, Miss Sheikh then embarked on a course of conduct which, whether she intended it or not, had the predictable result of causing Bank of Ireland to withdraw from the transaction altogether. The details are set out in paragraphs 14 to 30 of the judgment of Briggs J of 15th November 2007 and I need not repeat them. Her conduct included a unilateral attempt to register the second charge in priority to Bank of Ireland's intended first charge, an application for delivery up of the second charge, once it had been executed by Red River, and the presentation of her first winding up petition against Red River on 3rd October, which she subsequently served on the company on 5th October, immediately after a hearing before Briggs J which appeared to have ironed out all outstanding issues to the complete satisfaction of Miss Sheikh's own specialist Chancery counsel, Mr Nigel Meares, who appeared for her on that occasion.

25. Whether or not Miss Sheikh subjectively intended her conduct to sabotage the completion of the transaction, it undoubtedly had that effect, and efforts by Red River and Mr Dogan to obtain refinancing from an alternative source have to date unfortunately proved fruitless.

26. In her oral submissions to me Miss Sheikh has attempted to justify her continuing campaign on the basis, among other things, that the deed of priority in its signed form departs in at least two significant respects from the points of principle decided by Briggs J when he was considering its terms and is therefore, she says, evidence of the continuing bad faith of which she complains.

27. I am unable to accept this submission. In the first place, the deed of priority was executed by her mother and sent to Isadore Goldman on 28th September. I cannot believe that Miss Sheikh would have allowed this to happen if she was not herself entirely happy with its wording. Furthermore, neither of the points upon which she now relies were taken on her behalf by Mr Meares, even though the parties were back before Briggs J on 2nd October. In any event, neither of the points appears to me to be of any substance. The first point is that clause 2.7 of the deed of priority provides for enforcement by Mrs Rabia Sheikh of the second charge, following default by Red River in making any financial payment due under the charge, but not upon any other defaults such as a breach of obligations relating to planning permission. However, this limitation seems to me to reflect clause 3.1 of the settlement agreement itself, which provides for acceleration of the sums due only if Red River defaults in making any payment pursuant to clause 1 and does not mention any other circumstances in which the whole debt is to become immediately payable.

28. The second point is that in clause 2.9 the liberty given to Bank of Ireland (a) to make further loan advances to Red River and/or (b) to renew the loan of the principal sum of £1.75m, in each case upon the security of the first charge, is stated to be subject to the proviso "that the aggregate of the advances permitted by (a) or (b) above amounts to no more than the principal sum". Miss Sheikh submits that the wording approved in principle by Briggs J requires the proviso to read “permitted by (a) and (b) above", and that this

alteration in effect renders the proviso worthless. In my judgment, however, it makes no difference in this particular context whether the copulative "and" or the disjunctive "or" is used. Either way it is perfectly obvious the Bank of Ireland is not permitted to exceed the single ceiling of £1.75m, as the opening words of clause 2.9 itself make absolutely clear.

The applications

29. After this lengthy introduction I can now turn to the applications before me. They are 12 in number, but Miss Sheikh submits that in the interests of orderly and efficient case management I should deal with only four of them at this stage. I will, therefore, consider those four applications first, that is to say those numbered 2, 3, 4 and 5.

Application 2.

30. This is an application for delivery up of the executed second legal charge. However, this is one of the very questions upon which Briggs J ruled in his judgment of 15th November 2007. He declined to order delivery up of the charge for two main reasons. First, it formed part of a composite transaction involving Bank of Ireland, which could never now come into effect following the bank's withdrawal. The charge in its present form was therefore a dead letter and in the judge's words (see paragraph 36 of the judgment) "the sooner it is forgotten the better". Secondly, an order for delivery up would, in any event, amount to an order for partial specific performance and Miss Sheikh had forfeited the right to obtain equitable relief from the court by her breaches of contract and misconduct in, as the learned judge saw it, sabotaging the composite transaction.

31. It is not necessary for me to say whether or not I agree with all of the reasons given by Briggs J. The short point is that this question is, in my judgment, clearly *res judicata* at first instance, and Miss Sheikh is bound by the decision of Briggs J unless and until she succeeds in overturning it on appeal. For the same reason, I am unable to accept Miss Sheikh's submission that I could in some way deal with the question as unfinished business arising out of one or more of the earlier hearings. The fact is that it was dealt with and decided at the hearing before Briggs J on an occasion when she was represented by leading counsel. The parties before the court on that occasion were the same as they are today. I can see no possible reason why the principle of *res judicata* should not apply in the usual way. This application must therefore be dismissed.

Application 3.

32. This is an application for permission to issue a further winding up petition against Red River, based on the company's failure to pay at least the initial £300,000 which fell due on 31st July last year. Two petitions based on the same alleged debt have already been struck out by Briggs J on 5th October and 21st December 2007 respectively. The first of those orders was made on an urgent application by the company on the afternoon of the day on which Miss Sheikh served the petition. The order was made in her absence, efforts to trace her at short notice having failed and her counsel, Mr Meares, being without instructions. However, it is important to note that on 9th October 2007, at a

hearing before Kitchin J, Miss Sheikh claimed not to have realised that the effect of presenting the petition would have been to prevent completion of the remortgage, and she undertook to the court not to take any steps to set aside or vary the order of Briggs J striking out the petition, even though the order had been made in her absence.

33. In his judgment of 5th October Briggs J acceded to the company's application to strike out the first petition for two main reasons. First, he regarded its presentation as a blatant abuse of process directed on the face of it to sabotage rather than completion of the composite remortgage transaction. He was also influenced by what he considered to be the surreptitious and underhand way in which the petition had been presented two days earlier and then concealed from the court at the hearing on the morning of 5th October. Secondly, he evidently accepted the submission that Red River in any event had a *bona fide* cross-claim against Miss Sheikh, based upon alleged breaches by her of both express and implied terms of the settlement agreement.

34. It should be noted here that Red River's Particulars of Claim dated 22nd August 2007 not only pleaded that Miss Sheikh was in breach of her obligations under clause 2 of the settlement agreement, as a result of which additional finance charges of approximately £16,000 had already been incurred, but also expressly warned that damages for loss of profit would be claimed if breaches by the Sheikhs caused Red River to lose the opportunity to redevelop the property. It was accordingly submitted for Red River that the existing proceedings already asserted, and could certainly by amendment be made to assert, a *bona fide* defence to any claim based upon the company's failure to pay the initial £300,000.

35. In fairness to Miss Sheikh I should add that in his subsequent judgment on 15th November Briggs J recognised, I think, that his criticisms of the way in which the first petition had been presented may have been to some extent misplaced (see paragraphs 22 and 29 of that judgment). However, this does not detract in any way from the alternative ground upon which he struck out the petition, namely the existence of a *bona fide* cross-claim.

36. The second petition appears to have been presented by Miss Sheikh on 16th October 2007, but it did not come to the notice of Red River until 5th December when Mr Dogan received a letter from Miss Sheikh purporting to serve it. The petition was in identical terms to the first petition. Unsurprisingly, the company applied to strike it out and also applied for an injunction to restrain Miss Sheikh from presenting any further petitions without permission of the court.

37. In his evidence in support of the application Mr Dogan said that Red River was doing its best to find an alternative source of re-finance and had obtained indicative terms of refinancing from a large private bank regulated by the FSA. In view of the past history, he prudently refrained from giving its name. However, he said, a further revaluation of the property still had to be obtained and the bank was also unaware of the present dispute. It was, therefore, far

from certain that the negotiations would bear fruit, and with hindsight one can see that that was indeed the case.

38. In his judgment of 21st December 2007 Briggs J approached the matter on the basis that the second petition was likely to constitute an abuse of process in the same way as the first petition had done, unless there had been some relevant change in circumstances between the dates on which they had been presented. He pointed out that there had been one relevant change between 3rd and 16th October, namely the withdrawal of Bank of Ireland and the collapse of the composite transaction. Accordingly, he said, there was nothing left for the Sheikhs to sabotage by the presentation of the second petition. However, the learned judge went on to say that the second ground upon which he had relied in striking out the first petition, namely the existence of a genuine cross-claim on substantial grounds, was unaffected by the collapse of the composite transaction and, indeed, might have grown substantially as a result of the collapse.

39. He then reviewed and rejected a number of arguments advanced before him by Miss Sheikh to the effect that there were indeed changed circumstances, including a claim to which I will return that she and her mother had obtained a default judgment on their counterclaim. He pointed out that directions had already been given for determination of that issue by a judge, and said at the end of paragraph 18 of his judgment:

> "There are clearly *bona fide* issues as to whether Miss Sheikh and her mother have either obtained or would be entitled to any default or summary judgment on their counterclaim in those proceedings at all."

He then continued in paragraph 19:

> "It follows that none of the matters raised by Miss Sheikh as constituting a sufficient change of circumstances to prevent the second petition being an abuse in the same way as was the first petition have been established, at least as being a sufficient change of circumstances.
>
> In my judgment, the new petition, just like the old petition, is plainly an abuse of process, because Red River has a *bona fide* cross-claim on substantial grounds which the petition would prevent it from litigating and I, therefore, strike out the second petition."

40. In addition to striking out the second petition, Briggs J also granted Red River the injunction which it sought, preventing the Sheikhs from presenting any further petitions based on matters arising out the settlement agreement without the permission of the court. That is the injunction from which Miss Sheikh now asks to be released.

41. In my judgment, however, there has been no material change of circumstances between 21st December and today which could justify the presentation by the Sheikhs of a third petition to wind up Red River. In particular, Red River still has a *bona fide* cross-claim on substantial grounds and nothing which has

happened since December leads me to think that the potential scope or amount of that cross-claim has diminished. On the contrary, the longer that efforts to negotiate a fresh remortgage continue without success, the more likely it becomes that Red River will indeed have lost the opportunity to redevelop the property.

42. In my judgment, it is quite impossible on the material now available to form any concluded view about the true balance of account between the Sheikhs and Red River. What is clear is that presentation and advertisement of a winding up petition would bring Red River to its knees and would prevent it from litigating its cross-claim. The class remedy of a compulsory winding up may only properly be invoked by a petitioning creditor who has a debt which is neither disputed nor the subject of a cross-claim. The dispute or cross-claim must be substantial, in the sense of being properly arguable on grounds which are not shadowy or fanciful. It must also be advanced in good faith and it must be sufficient to leave no undisputed balance due to the petitioner in excess of the statutory minimum £750.

43. In my judgment those conditions are satisfied today by Red River, just as they were last December. Accordingly, this application too must be dismissed.

Application 4.

44. This application asks the court to confirm that judgment was entered by the Sheikhs on 27th September 2007 on their counterclaim against Red River and Mr Dogan. The relevant chronology is briefly as follows. The Defence and Counterclaim was filed on 10th September. The counterclaim sought payment of the £300,000 which fell due on 31st July, together with damages for breach of contract, interest and costs. Red River and Mr Dogan applied for an extension of time for service of a reply and defence to counterclaim, and on 1st October this application was listed to be heard on 19th October with time being extended in the meantime. On 12th October the Sheikhs issued an application for judgment in default, or, alternatively, for judgment on an alleged admission. This application was returnable before Deputy Master Mark on 18th October. At the hearing on 18th October Miss Sheikh claimed to have obtained judgment in default on the counterclaim. However, no judgment was to be found on the court file. The Deputy Master therefore ordered the Sheikhs to file in court and serve on the other side a copy of any sealed judgment in default which had been entered.

45. On 26th October the Sheikhs faxed a copy of what was claimed to be a sealed default judgment. However, there was no trace of any seal on the document, although it did appear to bear a faint trace of a 'Received' stamp. On 30th October Isadore Goldman wrote to Miss Sheikh asking how judgment in default had been entered. There was no reply to this letter.

46. Following further adjournments, the Sheikhs' application for default judgment and the other side's application for an extension of time for the Reply and Defence to Counterclaim came before Master Price on 30th November. He then adjourned both applications to be heard by Briggs J, taking the view that they raised the potentially serious issue of whether the Sheikhs had falsely

claimed to have obtained judgment in default. Those applications have still not been heard. They are listed to be heard at the same time as a number of other procedural applications in a window beginning on 16th June 2008 with a time estimate of one day. As I am now the designated judge dealing with this matter, I assume that I will be the judge who hears those applications.

47. In my judgment no proper basis has been shown by Miss Sheikh for seeking to preempt the hearing of her application for judgment in default next month, and for that reason alone I would dismiss this application. An inordinate amount of court time is being taken up with applications generated by these proceedings and it is important that duplication should be avoided as far as possible. However, I am also satisfied that the application should, in any event, be dismissed on its merits. Perusal of the transcript of the hearing before Master Price on 30th November shows that Miss Sheikh used the wrong form for applying to enter judgment on a counterclaim, and was told that the matter would have to be referred to a Master before any judgment could be entered. Master Price then explained to her the difference between a date stamp which merely acknowledges receipt of a document and the court seal which authenticates a judgment. He confirmed that there was no record on the court file of judgment having been entered.

48. In her oral submissions to me, Miss Sheikh said that she thought that the form which she lodged would entitle her to judgment, but she accepted that she was told it would have to go to a judge to be dealt with and she did not claim to have ever received a sealed judgment from the court. In the circumstances, it seems clear to me that her attempt to enter a default judgment on the counterclaim was abortive and that no such judgment has yet been entered, so this application must also be dismissed.

Application 5.

49. This is an application to strike out the claim. I can deal with it very shortly. The Particulars of Claim identify a proper cause of action against the Sheikhs in respect of alleged breaches of the settlement agreement. In addition, Briggs J has held in his judgment of 15th November that Miss Sheikh was in breach of implied obligations under the settlement agreement. In my judgment, it cannot possibly be said that these claims are so obviously devoid of merit as to offer no real prospect of success. Indeed, the starting point on any view is that the Sheikhs failed to comply with their obligations under clause 2 of the settlement agreement within the stipulated period of seven days. Nor can it be said, in my view, that the claim is in any way an abuse of the court's process. As I have already explained, I am wholly unpersuaded by Miss Sheikh's claim that she and her mother are the victims of a fraudulent conspiracy and I can see no reason to doubt that the claim against them has been brought in good faith. Whether or not the claim will ultimately succeed is of course an entirely different matter on which I express no view at all at this stage. However, in my judgment the application to strike out is misconceived and must therefore be dismissed.

Other applications.

50. Miss Sheikh asked me to postpone consideration of her other applications. However, they are all before the court and Mr Tom Smith, counsel for Red River and Mr Dogan, submitted that I should deal with them now. I agree. A number of the applications are in my view self-evidently hopeless and the court can and should dismiss them without more ado. I classify under this head the applications numbered 7, 8, 9 and 11, which are either too vague and unparticularised to be intelligible or are obviously misconceived. For example, application 7 seeks a vesting order in relation to the property, but no grounds for making such an order are set out. Again, application 9 seeks permission to withhold from the other side and their advisers a forthcoming File 17. However, as Mr Smith points out, there are no proper grounds upon which the court could make such an order. If the file contains relevant material upon which the Sheikhs wish to rely in support of their case, and if it is put in evidence or otherwise disclosed to the court, then it must be disclosed to the other side in the interests of fairness and in order to secure the Article 6 rights to a fair trial of Red River and Mr Dogan. If, on the other hand, the file turns out to contain material which is irrelevant or inadmissible, then no question of its disclosure will arise in any event.

I now turn to the remaining applications.

Application 1.

51. This is an application under CPR 32.14 for proceedings for contempt of court to be brought against eight named persons on the basis that they have allegedly made or caused to be made false statements in various witness statements. The eight named persons are Mr Dogan, his son Mr Ismet Dogan, Mr Schaffer, four other solicitors, and a financial consultant, Fawzia Dick. In my judgment, it would be wholly inappropriate to authorise the bringing of contempt proceedings against these persons on the basis of alleged falsehoods in their witness statements before any trial has taken place, before their evidence has been tested in cross-examination and before it can be placed in the context of the case as a whole. The allegations, although as yet unparticularised, are self-evidently of a very serious nature. To allow them to proceed at this stage would inevitably give rise to very extensive, costly and time consuming satellite litigation and would also impede the efficient and economical prosecution of the main action. I respectfully agree with David Richards J, who said in an unreported case cited in the White Book at the end of paragraph 32.14.1 that:

> "In general, the proper time for determining the truth or falsity of statements is at trial when all the relevant issues of fact are before the court and the statements can be considered against the totality of the evidence".
> (Daltel Europe Ltd v Makki [2005] EWHC 749 (Ch)).

52. It seems to me, therefore, that this application is obviously premature and it would be wrong to allow it to proceed any further. It will therefore be dismissed.

Application 6.

53. This is an application to set aside eleven orders made between 3rd September 2007 and 10th January 2008, including I think all of the orders made by judges of the Chancery Division between those dates. This application is hopeless. Miss Sheikh has applied to the Court of Appeal for permission to appeal against all of the orders. Unless and until she obtains permission to appeal and succeeds in having the orders set aside or varied on appeal, they stand. The grounds upon which she seeks to rely in making the present application are that the orders were obtained by misrepresentations and/or in pursuance of an unlawful collateral purpose. As I have already indicated, I have seen no evidence to substantiate those grounds. Even if there were such evidence, the appropriate place to deploy it would be in support of her applications for permission to appeal. With rare exceptions, for example where an order is made without notice to or in the absence of a party, the court does not have jurisdiction to set aside orders made by a judge of co-ordinate jurisdiction, so this application too must be dismissed.

Application 10.

54. This is an application for permission to present a bankruptcy petition against Mr Dogan. For the reasons given by Mr Smith in his skeleton argument, I am satisfied that it is misconceived. On 5th April 2008 Miss Sheikh served a statutory demand on Mr Dogan which he has applied to set aside. No petition can be presented until that application has been determined (see section 267(2)(d) of the Insolvency Act 1986). If Mr Dogan's application were to fail, it would then be for the bankruptcy court to authorise her to present a petition (see rule 6.5(6) of the Insolvency Rules 1986). That is the relevant machinery laid down by Parliament and if Miss Sheikh wishes to present a bankruptcy petition against Mr Dogan she must comply with that machinery.

Application 12.

55. This is an application that conveyancing counsel and a conveyancing practitioner should be appointed to assist the court if necessary. A similar application was made to me by Miss Sheikh on 25th April when I dismissed it. For the same reasons I will dismiss this application.

Conclusion

56. The result is that all twelve of Miss Sheikh's applications will be dismissed. I am required by CPR 32.12 to record the fact in the order of the court if I consider that any of the applications which I have dismissed are totally without merit. I regret to say that I consider all of the applications, with the exception of Application 1, to be totally without merit and the order of the court will therefore record that fact. The only reason why I except Application 1 is that I have dismissed it on the ground of prematurity rather than lack of merit.

57. I am also required by CPR 23.12 to consider whether it is appropriate to make a Civil Restraint Order. I warned Miss Sheikh on 25th April that the time was fast approaching when the court might need to consider whether to take that step. I do not propose to make a Civil Restraint Order today, but what I now say is in the nature of a final warning. If Miss Sheikh makes any further applications which the court considers to be totally without merit, I will be

strongly disposed to make a Civil Restraint Order with immediate future effect, whether or not I am asked to do so by Red River and Mr Dogan. I very much hope that it will not be necessary for me to take that step, but in my judgment the remedy lies in Miss Sheikh's own hands.