



Neutral Citation Number: [2023] EWHC 2907 (Ch)

Case No: HC-2014-001453

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

7 Rolls Buildings,
Fetter Lane,
London,
EC4A 1NL

Date: 16 October 2023

Start Time: 12.10 Finish Time: 12.40

Before:

MR JUSTICE MICHAEL GREEN

Between:

PARESH KANTILAL CHOCHAN

Claimant

- and -

PRAKASH DHANJI PATEL

Defendant

MR STEPHEN RYAN appeared on behalf of The **Claimant**
MR SIMON HUNTER appeared on behalf of The **Defendant**

APPROVED JUDGMENT

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MR JUSTICE MICHAEL GREEN:

1. This is an application by the claimant, Mr Paresh Chohan, represented by Mr Stephen Ryan, asking for an order that the defendant, Mr Prakash Patel, represented by Mr Simon Hunter, be cross examined in relation to a freezing order that was made on 3 August 2023 and which has not been fully complied with by the defendant.
2. By way of brief background, the claimant and the defendant used to be in partnership together as solicitors. After there was a falling out between them, a receiver manager was appointed in relation to their partnership by Nugee J (as he then was) on 15 December 2014.
3. The process of winding down the partnership took a long time, but, by 2023, when there was shortly to be a trial of the accounting process instigated by the court, a settlement between the parties was achieved, and that was embodied in a consent order dated 9 June 2023. By that consent order, the defendant was to pay the claimant the sum of £285,000 by 21 July 2023, plus a contribution to the costs of £385,000, and that was to be paid by, firstly, a tranche of £290,000 by 4.00 pm on 21 July and a tranche of £95,000 by 4.00 pm on 4 August 2023.
4. The effect of that was that the defendant was due to pay the sum of £575,000 to the claimant by 21 July 2023.
5. It was apparent and represented during the course of the settlement negotiations that the defendant would be making those payments out of the proceeds of his pension fund. He had a pension fund with James Hay and it was understood that there were sufficient funds in there in order to make the payments that he had agreed to make in accordance with the consent order. However, on 20 July, the day before he was due to make payment, an email was sent by the defendant to the claimant's solicitors that he could not make the payments by those dates and he was asking for a further eight weeks.
6. He referred to the pension fund but claimed that there were various issues, regulatory, financial and trustee-related that needed to be sorted out before he would be able to draw on his pension fund. This came as somewhat of a shock because there had been plenty of time, six weeks since the consent order, for the defendant to have sorted this out. Shortly after this email was received, together with a further one from the defendant on 21 July saying he was instructing new solicitors, the claimant applied for a freezing order, which was granted by Leech J on 25 July, and that was specifically in relation to the pension fund.
7. On 31 July a letter was received by the claimant, from or on behalf of the defendant, saying that there was actually now only some £50,000 of tax free lump sum still available from the pension and that if any of the remainder was drawn there would be a very high tax penalty applied.
8. On the return date of the freezing order, which came before Edwin Johnson J on 3 August 2023, the injunction was continued. First of all, the freezing order, as I have said, is limited to the pension fund held by James Hay or

“the amount of that pension that has been drawn down (so far as any such sum falls within paragraph 4 below) or transferred to another pension provider up to the value of £1.2 million.”

9. It appears that the freezing order itself covered, not only the pension fund, but also amounts that have been drawn down by the defendant from that pension fund, but which were still effectively owned by him. The order for the provision of information was contained in paragraphs 6 to 8 of the order. By paragraph 6 of the order, Edwin Johnson J ordered as follows:

“Unless paragraph 7 applies, the Respondent must immediately and in any event by 5pm on 7th August 2023 inform the applicant’s solicitors of what sums he drew out of the pension fund held by James Hay Pension Trustees Ltd under number 84623, giving the amount and date of each drawing and stating in respect of each what accounts they were paid into, what person now has custody of them and (if applicable) the terms on which they were transferred to that person, and if any part of them was spent the amount, the date and what it was spent on.”

10. Paragraph 7 was the usual provision about self-incrimination, and paragraph 8 provided as follows:

“By 5pm on 9th August 2023 the Respondent must swear and serve on the applicant’s solicitors an affidavit setting out the above information and additionally setting out all assets directly and indirectly held by him or on his behalf and attaching as an exhibit full documentary evidence of all matters set out.”

11. As can be seen, paragraph 8 of the order broadened the provision of information to include all assets held by or on behalf of the defendant. The main provision of information was concerned with the pension fund, as set out in paragraph 6, and that was designed to establish where each drawing from the pension fund went, into which account it went and what it had been used for and that was because of the width of the freezing order itself, which included any sums that were drawn down from the pension fund that were still effectively held by, or on behalf of, the defendant.

12. Some information was provided by the defendant by an email of 7 August 2023, then followed up in an affidavit, that basically repeated the contents of that email. The affidavit set out two drawings that were made from the pension fund, the first one of which was an amount of £150,000, said to have been drawn down on 27 June 2019. The defendant then set out in a table in his affidavit drawings from the account into which that sum was paid, namely a Barclays bank account, and he set out items, many of which were living expenses, entertainment expenses, but including items such as “third party loan payable on reasonable notice and demand” but without including any details as to who the loan was made payable to, was paid to, or what its terms were and really giving away not very much, and certainly not in the detail that was anticipated in the order. The table in relation to the payment in 2019 went up to 9 October 2019.

13. In paragraph 5 of the affidavit the defendant refers to a drawdown of £100,000 on 25 May 2023 that was paid into the Barclays bank account and he then sets out the

details of 22 withdrawals from that account, said to be related to the drawdown and those sums were for the period 25 May to 1 June 2023. This was a much shorter period than previously, but it included large amounts, for instance in relation to counsel's fees.

14. There was no disclosure in that affidavit of the defendant's assets, as he was required to do under paragraph 8, and no explanation has been received as to why that was not disclosed.
15. Furthermore, under paragraph 8, the defendant was required to exhibit all documentary evidence supporting the disclosures that he was required to make. There was no such documentary support for the statements in his affidavit. There were no bank statements, and there was no information, as I have said, as to the details of where third party loans were made or information like that.
16. The claimant engaged in a certain amount of correspondence, pointing out the deficiencies in the affidavit and asking for them to be remedied, but nothing has happened. The defendant has essentially prevaricated and has provided no further information which is highly surprising given that the defendant is a practising solicitor and in, as I understand it, litigation so one would expect him to know the requirements to comply with court orders and the possible consequences.
17. What the claimants have decided to do is to apply for an order for cross-examination and that was filed on 24 August 2023 and it has come to me now.
18. Mr Hunter, on behalf of the defendant, does not actively oppose the order for cross-examination but he does say that, in certain circumstances, it is too widely drawn.
19. Mr Ryan referred me in his skeleton argument to JSC Commercial Bank Privatbank v Kolomoisky [2021] EWHC 403 (Ch) which sets out the principles which the court will follow in deciding whether to order cross-examination or not.
20. I debated with Mr Ryan during the course of the hearing, in particular in the light of the disclosure which I had not picked up from the papers, but which I see was referred to in Mr Hunter's skeleton argument, about a large amount that has since been paid from the pension fund of over £500,000 to the claimant pursuant to an order that enabled them to directly execute the necessary documents to withdraw those sums. I queried whether there is any further point in cross-examination in the light of the fact that a substantial sum of money has been received and whether the claimant really needs to know any further details in order to police the order which was limited to the pension fund, but which has now been exhausted. Mr Ryan pointed out to me, which is true, that the freezing order is not limited to the pension fund itself, but also to where the drawdowns have been applied and, in light of the inadequate information that was provided in the affidavit, the claimant is unclear as to whether there are other assets to which he might wish to enforce his judgment against.
21. I am satisfied that in the circumstances of this case it is appropriate to make that order for cross-examination. I think it is necessary in order to police the freezing order in the terms that it is. I think that it is not being used for any ulterior purpose because the proceedings have in fact settled; it can only be for the purpose of seeking effective enforcement of the judgment in their favour and the consent order and to police the

freezing order which that supports. It is clear that the defendant has demonstrated an unwillingness to cooperate and he is quite clearly in breach of the order in not providing any details of his assets and not providing any documentary evidence to support what he has said in his affidavit.

22. He has not disclosed fully what he has done with the pension monies and I suppose the other option that could be available to the claimant is to apply for his committal, but it seems to me that in the circumstances this is a more proportionate course to take. That is not to say that the claimant may not be able to, or may not wish to, take committal proceedings in the future but, at this stage, the more important process is to find out what has happened to the money to enable the claimant to enforce his judgment.
23. I am therefore going to make the order for cross-examination in the terms sought.
24. I then need to consider whether to make the further orders that are sought for documentary disclosure to be made in advance of that cross-examination and effectively pursuant to the previous orders that have been made.
25. The claimant wants there to be disclosure of all of the bank statements for the account at Barclays Bank into which the drawdowns were made - so that is bank statements for the period 27 June 2019 to the present date. The claimant also wants any statements for any other account of his into which any part of the pension was paid for the same periods.
26. Mr Hunter's response was essentially that there should only be disclosure of documents that are necessary for the purposes of policing the freezing order, and he was suggesting that the provision of bank statements ought to be limited to the period set out in the affidavit.
27. In my view that is not the case. There needs to be full disclosure of the bank statements because it will be impossible to tell without that full disclosure what other sums were being received into that account, whether there were any other drawdowns from the pension and why the defendant had to use the pension monies for the items that he did, rather than using other sources of income. So that is necessary information for the purposes of there being an effective cross-examination at the hearing I have just directed.
28. What the claimant also seeks is documentary evidence of the defendant's earnings for 2019 and for the first six months of 2023. In my view that is not information that is necessary for policing the freezing order. It will be apparent from the bank statements if substantial other monies were being received by the defendant and what he has done with them, at least insofar as the bank statements show that. He was only required to disclose his assets, not his income and I think that is perhaps a step too far; I am not going to direct that evidence of his earnings be provided.
29. I am going to direct that the last part of the order that is sought, which is namely:

“all documents in the defendant's possession, custody or power, evidencing drawings from the pension, evidencing disposition of

drawings from the pension, including, but not limited to, the documents listed in Schedule A to the order”

and Schedule A sets out, by reference to each item that was in the defendant’s affidavit, the documents that the claimant says should be disclosed. It seems to me that that is an appropriate way of making it clear to the defendant what sort of documents he should be expected to disclose.

30. Finally I will order: “All documents evidencing all assets held by him or on his behalf.” That is necessary as a reinforcement of the order that was made by Edwin Johnson J.

31. That is the extent of the documentary disclosure.

32. There are two further items that I need to consider which the defendant takes objection to. The first is the question of the privilege against self-incrimination. What Mr Hunter suggests is there should either be an undertaking by the claimant as to the use that would be made of any evidence given by way of cross-examination. Alternatively, there should be a proviso along the lines of the order in Memory Corps v Sidhu [2000] Ch 645 and he seeks an order in the following terms that:

“No transcript or other record of such cross examination may be used by any person other than the first defendant for any purpose unless and to the extent that the first defendant consents or the court gives leave.”

It seems to me that that is too widely drawn but I think there is a need, and I think Mr Ryan recognised this, for there to be something in the order that will prevent the defendant from saying that he cannot answer any particular question at cross-examination on the grounds of the privilege against self-incrimination. This protects the defendant and will enable the court to insist that he does answer those questions.

33. Mr Ryan suggested that any such proviso should be limited so that the transcript, or record of cross-examination, could be used by the claimant for the proper purpose of policing the freezing order.

34. It seems to me that it is too wide to say that the transcript cannot be used by any person, including the claimant, for any purpose. In my view the most appropriate wording should be to the effect that the claimant can use the transcript for the purpose of policing the freezing order.

35. I also think that there should be excluded from this proviso the documents produced by the defendant at that cross-examination. It seems to me those documents should not need the protection of the privilege against self-incrimination and that should be excluded from the order.

36. The final point concerns the suggestion of Mr Hunter that there should be wording in the order that if the sums due to the claimant under paragraphs 1 and 3 of the consent order are paid in full by the defendant before the hearing for his cross-examination, essentially that hearing should be vacated and the defendant released from attendance. Mr Ryan says there is no need for such an order because what they are concerned about is that the defendant is not only responsible for paying those sums of money

under the consent order to the claimant, but also will be responsible for paying the receivers and managers' costs. Mr Hunter points out that those costs have not yet been determined in accordance with the consent order and so they are not due, and it would not be right for the cross-examination to go ahead simply on the basis those sums are still outstanding.

37. It seems to me that this matter should not be determined at this stage, but that if the defendant does pay the full amount due to the claimant under the consent order, leaving aside the receivers and manager's costs, that they should be at liberty to apply to the court to be released from attendance and for the hearing to be vacated. At that stage the court can consider whether it is appropriate to continue with the cross-examination because of the outstanding amount that is due to the receivers and managers, and which there is a risk that if the defendant does not pay it, the claimant would have to pay those sums in full and then seek to recover from the defendant.
38. That risk still being there, it should be for the court to determine whether it is appropriate for cross-examination to go ahead should we be in the situation where the defendant has actually paid the full amount due to the claimant.

(This Judgment has been approved by Mr Justice Michael Green.)