Neutral Citation Number: [2020] EWHC 1443 (Comm)

Case No: CL-2018-000827

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**COMMERCIAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/06/2020

**Before** :

**MR CHRISTOPHER HANCOCK QC sitting as a Judge of the High Court**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **CHARLES RIDLEY** | **Claimant** |
| **- and -** | |
| **DUBAI ISLAMIC BANK PJSC** | **Defendant** |

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Matthew Morrison (**instructed on a direct access basis) for the **Claimant**
**Robert Anderson QC and William Edwards** (instructed by **Baker and McKenzie**) for the **Defendant**

Hearing dates: Written submissions received.

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR CHISTOPHER HANCOCK QC

**"Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be TBC. A copy of the judgment in final form as handed down can be made available after that time, on request by email to the judge's Clerk"**

**Christopher Hancock QC (sitting as a Judge of the High Court):**

1. There are a number of issues which I now need to determine, in the light of the judgment that I handed down on 26 May. I am grateful to the parties for their various submissions in this regard. The issues which I have to determine are as follows:

   (1) Should Mr Ridley be awarded his costs of the application to set aside?

   (2) If the answer to (1) is yes, should I summarily assess those costs and if so, in what amount?

   (3) Should any costs order in favour of Mr Ridley be set off against the Bank's judgment against Mr Ridley?

   (4) Should I grant permission to appeal to the Court of Appeal?

   (5) What further directions should be given, and in particular:

      (i) What dates should be set for the service of an acknowledgement of service and defence?

      (ii) What date should be set for a CMC?

      (iii) Should the matter be set down for the Shorter Trial Scheme?

      (iv) Should the matter be transferred to the London Circuit Commercial Court?

      (v) Should directions be given for steps to be taken in relation to disclosure under the Pilot Scheme prior to the CMC?

2. I set out my conclusions below in relation to each issue.

**Costs.**

3. My starting point is the provisions of CPR Part 44. Pursuant to that Rule, costs will generally follow the event.

4. In this case, the Bank's application failed. It follows that, at first blush, the Bank should pay the costs of the application.

5. The Bank makes two points in opposition to this conclusion.

   (1) First, it submits that, since Mr Ridley did not in fact need to serve out, the application to set aside was unnecessary and the costs wasted. However, in my judgment it is clear that the Bank would have applied on the same grounds to strike out Mr Ridley's claims had the claim form been issued without leave. That is because the Bank's points all went to the merits of the claims. I therefore have no hesitation in rejecting this argument.

   (2) Secondly, it is submitted that the application would have succeeded had it not been for Mr Ridley's amendments of his claim form and Particulars of Claim, and that the costs of the application should be treated as costs thrown away by reason of the amendment. Again, I do not accept this submission. It is not correct that the only reason that the application failed was because of the amendments; I would have rejected the application on the basis of the unamended claim, but the amendments simply strengthened Mr Ridley's position. Moreoever, the Bank continued with its application in the face of the amendments. What are within the scope of the normal order as to costs are costs thrown away by reason of the amendments. Thus, insofar as extra costs

were incurred by reason of the fact that Mr Ridley's claim form in its amended form, and the evidence supporting that, were not available at the initial hearing, in my judgment this would justify a reduction in costs. I have no evidence to assess the amount of such extra costs.

**Summary assessment.**

6. I take the view that this is best left to the CMC. However, since I have heard and dealt with the matter, it may be that the judge at that CMC may find it helpful if I make the following comments.

   (1) The amount of the costs claimed seem to me to be both reasonable and proportionate, given the complexity of the argument.

   (2) If extra costs have been caused by amendment, as I have noted, then the costs should be reduced accordingly. I have no evidence of this at present.

**Set off.**

7. I also take the view that this is a matter which should be dealt with at the CMC, when a quantified order for costs is made. It is clear that it is at that stage that the Court will have to grapple with the question of when any order in favour of Mr Ridley should be paid, and whether it is appropriate to order payment at a time when there is an outstanding judgment in favour of the Bank.

**Permission to appeal.**

8. The test under this head is whether the Bank can show a real, as opposed to fanciful, prospect of success in the Court of Appeal.

9. The Bank has raised three points, and I will deal with each in turn.

   (1) The first is the suggestion that I should have dealt with the argument on abuse of process at this stage, because, contrary to my judgment, it is not a fact dependent inquiry. No authority is cited in support of this assertion. Indeed, as Mr Morrison, pointed out, it runs counter to the passage from the judgment of Lord Bingham in *Johnson v Gore-Wood* cited in my judgment, where the learned judge said that the inquiry had to take into account all the facts of the case. In my judgment, the Bank has no real prospect of success on this argument.

   (2) The second relates to my treatment of the submission that the injunction sought by Mr Ridley was an anti-enforcement injunction. The Bank suggests that my judgment is based on the relevant delay being that between the enforcement step and the taking of proceedings in England. That is to misread my judgment. I considered whether it would clearly be the case that the delay overall (including the earlier delay) would render Mr Ridley's claim untenable, and concluded that I could not be sure on the basis of the evidence in front of me that it did. Again, this is not a matter that can be judged in the abstract, and I consider that the matter should be tested on the facts before the Court of Appeal is involved. Again, I take the view that the Bank has no real prospect of success on this argument at this stage.

   (3) The third matter raised by the Bank is the question of whether, in my treatment of service by alternative means, I had effectively concluded that in any case involving a bilateral treaty service pursuant to which would take some time, there will always be a good reason for alternative service. That was not what I

held. I held that, given the very peculiar facts of this case, involving a party in gaol, the fact that that incarceration would be unnecessarily lengthened by following the bilateral treaty constituted a good reason. This does not mean, as the Bank suggests, that in every case involving a bilateral treaty, that will constitute a good reason for alternative service. Again, I take the view that the Bank has no real prospect of success on this point.

10. It follows that, for the above reasons, which I have set out in summary form, I refuse permission to appeal.

**Acknowledgement of service and Defence.**

11. In my judgment, it is appropriate to allow the Bank until 23 June to file a defence. The Bank has already had three weeks since the draft judgment to consider its position, and has been considering the issues on which it is likely to rely for its Defence for over a year. I take into account in this regard the difficulties imposed by the Eid break and the fact that certain decisions and instructions may be delayed.

12. However, I also take the Bank's point that the filing of a further acknowledgement of service may amount to a submission to the jurisdiction. Mr Morrison has indicated that Mr Ridley does not object to a direction that the taking of any further steps in the action should not be treated as a submission to the jurisdiction. Whilst, in my judgment, it may be that the Bank has no right to object to jurisdiction, in the light of my findings in relation to Article 25 of the Brussels Recast Regulation, I do not need to reach any positive conclusion on this and I do not do so. Accordingly, I order that the taking of any further steps should not prejudice any rights to challenge jurisdiction that the Bank may have.

**Further pleadings.**

13. Any reply that Mr Ridley wishes to serve should, in my judgment, be served by 7 July.

**Date for CMC.**

14. A date for the CMC should now be fixed. In my judgment, in the light of the fact that Mr Ridley remains in gaol, and the fact that these proceedings have already been delayed, this CMC should take place before the end of July.

**Shorter Trials Scheme and Transfer to Circuit Commercial Court.**

15. These matters should be dealt with at the CMC.

**Steps in relation to disclosure pending the CMC.**

16. I think it sensible that the parties liaise with a view to providing the Court at the CMC with a disclosure review document. For my part, I take the view that it is unlikely that this document will need to be an extensive one. The issues between the parties have been canvassed at length as part of the Bank's application. Thus, the Claimant should produce a list of issues for the Bank to consider; the parties should then seek to agree that list of issues; and the parties should each propose a model of disclosure for each issue.

17. I hope that this judgment deals with all outstanding matters. I would be grateful if Counsel could draw up the appropriate order, with today's date, in line with the indications that I have given above.