



Neutral Citation Number: [2020] EWHC 2088 (Comm)

Case No: CL-2018-000827

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

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

Date: 31/07/2020

**Before : THE HONOURABLE MRS JUSTICE MOULDER**

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**Between :**

**Charles Ridley**

**Claimant**

**- and -**

**Dubai Islamic Bank PJSC**

**Defendant**

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**Matthew Morrison** (instructed by **Charles Ridley**) for the **Claimant**  
**Robert Anderson QC** and **William Edwards** (instructed by **Baker McKenzie**) for the  
**Defendant**

Hearing dates: 17 July 2020  
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**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.

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**THE HONOURABLE MRS JUSTICE MOULDER**

**Covid-19 Protocol: This judgment was 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 is deemed to be 10:30am on 31 July 2020.**

**Mrs Justice Moulder :**

1. This is the reserved judgment on the application by the defendant, Dubai Islamic Bank PJSC (the “**Bank**”) to set off a costs award in favour of the claimant, Mr Charles Ridley, against a judgment debt owing to the Bank.
2. By an order of 11 June 2020 Mr Christopher Hancock QC sitting as a deputy judge dismissed an application by the defendant to set aside the order of Carr J (as she then was) dated 8 February 2019 granting permission for the claimant to serve the claim form out of the jurisdiction and by an alternative method. The Deputy Judge ordered the Bank to pay the costs of the set aside application. The Deputy Judge ordered that the question of whether the amount due to Mr Ridley (the “**Costs Award**”) may be set off against the outstanding judgment and costs order made by Flaux J (as he then was) on 6 December 2013 in favour of the Bank in a previous action (the “**Judgment Debt**”) shall be determined at the CMC. The CMC was held on 17 July 2020 and judgment on the application was reserved.
3. The hearing was held remotely in the light of the current pandemic. However, the court had the benefit of written skeleton arguments and oral submissions from Mr Morrison on behalf of the claimant and Mr Anderson QC on behalf of the defendant.
4. A preliminary point was taken for Mr Ridley that no application had been made by the defendant and no evidence served.
5. Given the terms of the order that was made by the Deputy Judge this court took the view that no application was necessary by the defendant and to the extent that the defendant does not seek to rely on any evidence other than documents in the public domain the matter can be resolved even though the defendant has not filed any evidence.
6. The claimant has however filed evidence in the form of the fifth witness statement of Mr Ridley dated 9 July 2020.

Background to the current proceedings

7. The events out of which the present proceedings arise is that the Bank had advanced money pursuant to trade finance agreements (the "Agency Agreements") and pursuant to a restructuring agreement in August 2007 entered into between (amongst others) the Bank, Plantation Holdings FZ LLC (“**Plantation**”) and Mr Ridley (the “**RSA**”) there was an agreement for the repayment to the Bank of monies owing and profit thereon of approximately US\$501 million. Plantation had been formed for the purpose of the development of a parcel of land in Dubai (the “**Plantation Land**”) and had taken a lease from the Dubai Development and Investment Authority. Mr Ridley, among others, was an investor in the Plantation Project. In addition by the RSA Plantation conditionally assigned to the Bank by way of security the Plantation Land. In 2011 Mr Ridley was convicted by a Dubai criminal court of misuse of funds under the Agency Agreements.
8. In June 2008 the Bank alleged that Plantation had breached the RSA and, as a result, the Bank perfected the assignment of the lease and took control of the Plantation Land. In proceedings brought by the Bank under the RSA, following a trial in 2013

the Bank obtained the Judgment Debt in its favour. Flaux J held that events of default occurred under the RSA which led to the acceleration of repayment of the sums due with the result that Mr Ridley and others who were guarantors under the RSA were jointly and severally liable to the Bank for the outstanding amount due. In a judgment of 23 October 2013, ([2013] EWHC 3781 (Comm) at [131] to [140]) Flaux J considered the value of the Plantation Land: Flaux J noted that the land had been assessed as having significant value on an “as is” basis even though it was a vacant plot with minimal development completed: [133]. However, he was aware of the effects of the then-recent economic crisis and said “*such evidence as there is, suggests that since the collapse of the property market in Dubai, the Plantation land has been essentially worthless and unsaleable*”: [140]. On 6 December 2013, judgment was entered for the Bank against four defendants including Mr Ridley for the sum of approximately \$432 million. The defendants were also ordered to pay the costs of the action.

9. In 2016, Plantation brought a claim against the Bank in which Plantation alleged that the Bank had no right to enforce over the Plantation Land and as a result Plantation had suffered substantial losses. Plantation alleged that in July 2008 the lease was worth \$2 billion or, at least, \$800 million. Picken J found that the Bank had enforced its security at a time when it had no right to do so. However, since the Bank would have been entitled to enforce its security after 1 October 2008, Picken J awarded only nominal damages to compensate Plantation for loss suffered between mid July 2008 and 1 October 2008.
10. In a judgment of 23 March 2017, Picken J considered (obiter) the value of the Plantation Land in relation to an argument concerning damages payable to Plantation in its claim against the Bank: [2017] EWHC 520 (Comm) at [263] to [271]. He considered the evidence of two valuers who were agreed that the Plantation Land held significant value as at June/July 2008. However, Picken J stated that “*those valuations assumed the existence of a market and there was none at the time*”: [265]. Picken J noted and approved expert evidence to the effect that “*any disposal would require a considerable period of marketing*”: [267]. Picken J concluded that “*since there was no market in existence at the relevant time, the valuations... are nothing more than notional*”: [270].
11. More recently there has been a decision of the Bahrain Chamber for Dispute Resolution (“**BCDR**”) in a case brought by the Bank against Mr Ridley and others as guarantors under the RSA for which judgment was given on 15 April 2020. The Bank sought a sum of US\$30 million. The BCDR found that, the Bank had taken over the Plantation Land and that in accordance with an expert report, its value was up to US\$544 million at the time (July 2008) and therefore, after deducting the indebtedness, there would be a balance of US\$70 million to Plantation’s credit. The BCDR concluded that under Bahraini law the Bank had accepted the Plantation Land in place of payment by taking it over and this discharged the liability for the indebtedness under the RSA. The claim against the guarantors was therefore held to be groundless and dismissed.
12. Mr Ridley is currently in prison in Dubai. He was initially arrested and imprisoned in 2008 and then remained in prison following his conviction in 2011 for defrauding the Bank and paying bribes to its employees. He was sentenced to ten years in prison which was automatically extended by one year because he had not paid the fine

imposed along with his original sentence. Taking into account a 25% reduction of his sentence for good behaviour, the claimant's case is that Mr Ridley's original sentence would have expired in 2015 and the automatic extension would have expired a year later.

13. It is accepted for the purposes of the current proceedings that Mr Ridley is currently imprisoned pursuant to Dubai Law 37 of 2009 ("Law No 37") which provides for a sentence of imprisonment to be imposed on a person who has been convicted of certain offences and fails to pay back "illegal money". Law 37 required the Bank to make an application to have Mr Ridley imprisoned for a further period after the expiry of his initial sentence. It made that application in March 2018. In May 2018, a hearing took place and Mr Ridley was committed to prison for a further 20 years.
14. Mr Ridley lodged the present claim in the English courts for an injunction in December 2018. Mr Ridley contends that the Bank effectively agreed, by clause 12.4 of the RSA, not to take steps pursuant to Law 37. The dispute between the parties is whether the imposition of this further period of imprisonment may properly be regarded as an automatic or default consequence of the criminal compensation remaining outstanding or, as the claimant maintains, requires the issue of a new claim which is contrary to clause 12.4 of the RSA. He asks the English court to injunct the Bank to discontinue its Law 37 claims in order to give effect to the RSA.
15. On 8 February 2019, Carr J granted permission to Mr Ridley to serve his claim form out of the jurisdiction and by an alternative method.
16. By an order of 11 June 2020, Mr Christopher Hancock QC, sitting as a Deputy Judge, dismissed an application by the defendant to set aside the order of Carr J.
17. The balance of the amount due to Mr Ridley in respect of his costs of the set aside application (after setting off the costs payable by Mr Ridley to the Bank in respect of an application to amend his particulars of claim) is agreed at £47,479.99.

#### Application

18. The Bank says that the Judgment Debt remains unsatisfied and this court should therefore exercise its discretion to order that the Costs Award be set off against the outstanding Judgment Debt.

#### The applicable law

19. It is common ground that the court has a discretion in the circumstances to order set off of the costs order against the judgement debt: *Fearns v Anglo Dutch Paint and Chemical Company Ltd* [2010] EWHC 2366 (Ch), [2011] 1 WLR 366, at [37] and [38].
20. As stated in *Fearns*, it is clear from the authorities and from the wording of CPR 40.13 that the power of the court to order such a set off is discretionary – it is a jurisdiction to order a set off where the court considers it just and equitable to do so.

#### Submissions

21. For the Bank it was submitted that:

- i) Flaux J held that the Bank taking possession of the Plantation Land did not reduce Mr Ridley's contractual liability to pay;
- ii) The right to payment under the RSA merged in the judgment of Flaux J. Therefore, the fact that the Judgment Debt is still outstanding is unaffected by any finding of the BCDR;
- iii) It is no answer to set off to say that there is security held by the Bank – the judgment debtor is still liable;
- iv) If there is any value in the Plantation Land any set off will operate like a part payment and the equity of redemption will be increased by the amount of any set off;
- v) Mr Ridley's criminal conduct led to the Judgment Debt and that ought to bear heavily on the court's assessment of what is now just and equitable such that in the circumstances, the starting point must be that set off is just and equitable.

22. For Mr Ridley it was submitted that:

- i) As held by the Bahrain court the liability under the RSA on which the Judgment Debt is based has been extinguished and it would be egregious to allow set off of the Costs Award;
- ii) Even if, technically, the Judgment Debt is outstanding the Bank is sitting on security and has done so for almost twelve years;
- iii) Mr Ridley's case is that he is wrongfully imprisoned due to the actions of the Bank and the set off would unfairly restrict the ability of the claimant to continue with his challenge and encourage the defendant to mount unmeritorious challenges to the proceedings for an injunction.

#### Discussion

23. The test as to whether the court should order set off is whether it is just and equitable to do so.
24. I accept that as a matter of English law the cause of action under the RSA ceased to exist having merged in the judgment in 2013 (*Republic of India v India Steamship* [1993] AC 410 at 417 D-F). I also take into account the fact that the Judgment Debt remains outstanding in a principal amount of some US\$433 million plus interest of over US\$228 million (to date) and has been outstanding for a number of years. In any other circumstances the case for an order for set off of an order for costs against a judgment debt may well be overwhelming.
25. However the application to set off the Judgment Debt has to be considered in the context in which the Costs Award has arisen:
  - i) These proceedings are being brought by Mr Ridley to challenge his continued imprisonment;

- ii) The imprisonment of Mr Ridley, on the claimant's case, is the result of the wrongful actions of the judgment creditor (the Bank) and arise out of the underlying facts giving rise to the Judgment Debt. (I understand that the Bank does not appear to challenge that it caused the extension of the imprisonment of Mr Ridley by its application but rather it says that it was bound to do so.)
  - iii) The Costs Award is the result of a protracted challenge by the Bank to an order for service out which has had the effect (if not the express intention) of delaying the substantive proceedings for over a year.
26. The court also has to weigh the fact that an order for set off may adversely affect the just conduct of the present proceedings:
- i) Although the Bank submitted that any order for set off now would not set a precedent for the future, in my view the Bank is likely to rely on any order now made by this court to support any similar application which may arise in the future.
  - ii) The risk of an adverse costs order is one of the few sanctions which the court can use to deter parties to litigation from bringing unmeritorious applications. Whilst I do not seek to categorise the application to set aside the order of Carr J, it is highly undesirable that, in general terms, this potential sanction of an adverse costs order is weakened or removed particularly when, as in this case, one has regard to the likely relative financial resources of the parties which the court may infer would enable the Bank to resist the claim by Mr Ridley regardless of any cost constraints and in circumstances where the Bank has no apparent interest in, and will receive no obvious benefit from, pursuing its defence to these proceedings in an expeditious manner.
  - iii) This litigation concerns the liberty of Mr Ridley and was commenced in December 2018. It has already taken many months largely due to the challenge which the Bank has brought through the set aside application. Having lost on all three strands of its argument and having been refused permission to appeal by the judge at first instance, the Bank now seeks permission to appeal from the Court of Appeal. Whilst the Bank has the right to make such an application for permission, it reinforces the concern that the Bank may seek to delay these proceedings.
  - iv) Accordingly a decision to allow the Bank not to pay the order for costs in respect of an application in the proceedings where it has been unsuccessful (other than payment by way of set off) would in my view not be in furtherance of the overriding objective. It would mean that should the Bank be minded to take actions to delay or thwart substantive consideration of the issue in the proceedings it would have the comfort that however unmeritorious the application it was unlikely to bear the risk of paying adverse costs orders.
27. Further the court takes into account that even though the Bank relies in this court on the (accepted) proposition of English law that the contractual debt under the RSA has merged in the judgment debt, it separately chose to bring and pursue proceedings (which ultimately led to the judgment of the BCDR) based on the obligations of Mr Ridley arising under the RSA and further submits that the court should pay no heed to

the findings of the BCDR that by taking over the Plantation Land it (is deemed to have) accepted the discharge of the liability under the RSA on the basis that such a judgment is not enforceable in England. In my view this court is entitled to have regard to the conduct of the Bank and the findings of the BCDR in determining what is just and equitable in the circumstances.

28. If set off is refused, in my view the Bank will suffer no real prejudice:
- i) Although the Judgement Debt remains outstanding, the amount of the Costs Award to be set against the Judgement Debt is relatively modest;
  - ii) the Bank continues to have the benefit of its security over the Plantation Land. Whilst the court has no evidence as to the value of the land in 2020 equally the court has no evidence that there is any imminent or current prejudice to the Bank in this regard. The Bank remains in control of the Plantation Land and its value in 2020 is yet to be ascertained or realised. Although there have been findings as to its value in 2008 to the extent that these were reliant on the existence of a market at that time, the findings were clearly against the backdrop of the financial crisis in 2008 and do not lead to an inference that the security held by the Bank is currently worthless.

#### Conclusion

29. It is in furtherance of the overriding objective that the court ensure that the parties are on an equal footing so far as practicable and that litigation is dealt with expeditiously and fairly. In the highly unusual circumstances of this case and for the reasons discussed above, I do not consider that it would be just and equitable to order that the Costs Award should be set off against the Judgment Debt.