

Neutral Citation Number: [2022] EWHC 1860 (Comm)

Case No: CL-2022-000077

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
COMMERCIAL COURT (QBD)

Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Wednesday, 13th June 2022

Before:

HIS HONOUR JUDGE PELLING, QC
(sitting as a High Court Judge)

Between:

FVS INVESTMENTS LIMITED

Claimants

- and -

(1) G3 GOOD GOVERNANCE GROUP
(2) MICHAEL DAVID BEVAN
(3) NICHOLAS HARDING

Defendants

The Claimants were neither present nor represented
MR. ALEXANDER RIDDIFORD (instructed by **Simmons & Simmons LLP**)
for the **Applicants/Defendants**

APPROVED JUDGMENT

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[Transcript prepared from poor quality audio]

JUDGE PELLING:

1. This is an application on notice for an order striking out the claim under CPR 3.4(2) (c) in consequence of what is alleged to have been a failure on the part of the claimant to comply with paragraph 2 of an order made by me on 13th April 2022. That order required that the respondent to the application and claimant in the proceedings should file and serve on the applicants and defendants in the proceedings evidence given by Mr. Usman by way of witness statement attesting to his identity by 4 p.m. 14 days after service of the order. In the event that there was no evidence filed then the order went on to permit the applicants to apply to strike out the claim either on the basis of a failure to comply or to comply adequately with that order. There has been no evidence filed by Mr. Usman concerning his identity either within the time ordered or at all. It is in that context that this application comes to be brought.
2. It is now necessary that I should refer in passing at least to the background to this claim. I take that evidence from paragraph 10 and following of the second statement of Miss Caroline Hunter-Yates filed in support of the application.
3. As Miss Hunter-Yates says at paragraph 10 of her witness statement the background to the order is a committal application brought by various entities (known in these proceedings and referred to hereafter as the BMS parties) against a Mr. Rizwah Hussain who is thought to be the true individual behind the various claims brought against the BMS parties. As is set out in paragraph 11 of Miss Hunter-Yates witness statement, since early 2019 the BMS parties have been the subject of what she describes as corporate harassment and abuse by Mr. Hussain. She summarises that campaign as including at least 27 sets of proceedings involving the BMS parties and those connected to them, a number of unauthorised and unlawful steps taken or purported to be taken in respect of the BMS parties which has culminated in a series of very lengthy judgments given by this court and in the Chancery Division, which has been designed to control and curtail this conduct.
4. The general modus operandi by which this harassment has been carried into effect is a series of purported attempts to obtain control of the BMS parties in circumstances where there has been a manifest failure to comply with the corporate governance procedures applicable to the BMS parties so that the attempts to obtain control have been fundamentally and fatally flawed from the outset. I should say that Mr. Hussain's modus operandi involves operating through a series of pseudonyms and which become increasingly familiar as one becomes more familiar with this and associated litigation.
5. The long and the short of all of this was that in February 2021 an injunction was granted restraining Mr. Hussain and certain of his associates from taking a number of steps in relation to the BMS parties and those connected with them.
6. The BMS parties commenced contempt proceedings against Mr Hussain and established to the criminal standard of proof that Mr. Hussain had resumed and escalated his actions against the BMS parties in breach of the injunctions. This led ultimately to a committal hearing before Miles J in the Chancery Division, where on 2nd March 2022 Mr. Hussain was sentenced to 24 months' imprisonment.

7. A particular difficulty faced by the court hearing the contempt proceedings was that Mr. Hussain did not attend. The trial took place between 7th and 11th February 2022 and Miles J issued two bench warrants on 2nd and 4th February designed to secure the attendance of Mr. Hussain at court. The BMS parties instructed G3, the first defendant and applicant in these proceedings to undertake surveillance of Mr. Hussain so as to identify his whereabouts and secure his attendance. In the result the tipstaff was unable to execute the warrant issued by Miles J but one week after the conclusion of the committal trial the present claim was issued in the name of FVS.
8. The claim is explained in Miss Hunter-Yates witness statement and I need not take up time describing it in this judgment. The applicants' case is that the action is misconceived in law and fact and is an abuse of process but none of those issues are relevant to the application that is currently before me. The application that is currently before me depends upon the fact that the claim form and particulars of claim in these proceedings was apparently signed on the part of the claimant, a corporate entity incorporated according to the laws of the Marshall Islands which is currently annulled although apparently still able to commence (and defend) proceedings in its own name, by Mr. Ahmad. Mr. Ahmad is thought to be a pseudonym of Mr. Hussain.
9. The defendants being unaware of any proper evidence demonstrating the existence of Mr. Ahmad made the application leading to the order that I referred to earlier. The order not having been complied with and the present application has been brought. The only evidence which has been filed in answer to the application, is a series of three witness statements filed on behalf of the claimant by a Mr. Artemiou. The three witness statements, in essence, allege that Mr. Ahmad has ceased to be a director of the company and assert that in those circumstances the strike out order sought by the applicants should not be made.
10. The points which are made by Mr. Artemiou, in summary, are, first of all, there is no basis in law on which Mr. Ahmad can be compelled to give evidence. This is mistaken and misconceived as an answer to the application. The order was not directed to Mr. Ahmad, who is not a party to the proceedings, but was directed to the claimant and respondent to the application, and it was the claimant and respondent who was required to comply with the order.
11. Secondly, it is said that Mr. Ahmad is no longer an officer having resigned within 28 days prior to the first statement of Mr. Artemiou, that is to say 13th May 2022. As to that, again that is immaterial to the issues that arise unless it could be demonstrated that it was either impossible or impractical for the respondent to obtain evidence from Mr. Ahmad which goes to demonstrate that he is a genuine person, who was at all material times a director of the company. This is evidence which will be relatively easy to obtain, first, by producing the books and records of the claimant demonstrating who its directors were or perhaps registration documents held by the Registry in the Marshall Islands demonstrating who the directors were of the company between relevant dates. A short affidavit from Mr. Ahmad which confirms that he is a genuine person, that his name is as alleged, and produce a photocopy of his passport, would more than adequately have complied with the order made. No attempt whatsoever has been made to address this issue.
12. It is suggested that because Mr. Ahmad is no longer a director there can be no obligation on the claimant to produce the evidence sought. That is wrong. There has

been no application to set the order aside. The order stands therefore as an order of the court and unless the claimant and respondent to the application is able to demonstrate that it is either impossible or impractical to a high degree to obtain the evidence concerned, then the failure to comply is a plain breach of the order that has been made in circumstances where, as I have said, the claim form and particulars of claim were apparently signed on behalf of the claimant by the individual concerned and where there is reason to believe that Mr. Ahmad is a pseudonym of Mr. Hussain.

13. It was then alleged that Mr. Ahmad's identity is "nugatory". If it was intended to suggest that Mr. Ahmad does not in fact exist, then that demonstrates the need for the order and the serious consequences of breach of it. If it is merely an attempt to allege that his identity is immaterial since he has now resigned as a director, that is wrong as well for the reasons I have identified.
14. It was said that Mr. Artemiou knows Mr. Ahmad to exist and has recently met him in person but that again is not in any sense an adequate compliance with the order previously made. The order previously made required the evidence to be obtained by the respondent from Mr. Ahmad and an assertion that Mr. Artemiou knows Mr. Ahmad and has met him does not at all address the identity issues which have been part of the order that had previously been made.
15. This all leads Miss Hunter-Yates to submit, in paragraph 30 of her witness statement, that it is self-evident the evidence wholly fails to satisfy the requirements of the order which required evidence to be given by Mr. Ahmad by way of a witness statement attesting to his identity. I agree and accept that submission.
16. Before departing from this application I ought to refer to the written submissions which have been filed on behalf of the respondent. The respondent's position in this case as in most, if not all, of the others which have arisen in similar circumstances is that all of the relevant officers of the respondent live and work and are to be found in the Marshall Islands and therefore are unable to travel to attend a hearing of this sort. This leads invariably to the submission of written submissions that is said to provide an answer to the application. It is right I should deal, therefore, with the points which are identified in relation to the strike out application in those submissions.
17. They are to be found at section B of the relevant submissions and at paragraph 8 it is submitted by Mr. Artemiou that it is the claimant that is making the claim not Mr. Ahmad and, therefore, the request to seek private information of a former officer is "*irrational and is entirely evocative of the underlying allegations of a victimisation and harassment and redolent of the unlawful stalking of the three victims over a long period of time.*" That submission is one that I have already dealt with.
18. The reason that the identity of Mr. Ahmad is relevant is because Mr. Ahmad, whilst purporting to be a director of the company, signed the particulars of claim and the claim form on behalf of the company. If that individual did not in fact exist then that of itself is a reason why ultimately the claim form and particulars of claim should be struck out because they would have been issued without the authority of an officer of the company.
19. Secondly, it is suggested in paragraph 9 of these submissions that the "*... defendants appear to be under the misconceived impression that because the claimant has not*

filed and served evidence given by Mr. Usman Ahmad, by way of witness statement, attesting to his identity' then they are entitled to have the claim struck out 'under CPR 3.4(2)(c) and certified as totally without merit'. It is submitted by Mr. Artemiou on behalf of the respondent claimant that this was "obviously unsubstantiated nonsense, unsustainable in law and principle, not least because: (a) the claimant has no extant power or reserved authority to compel Mr. Ahmad or any of its former officers" to be available. It is not suggested anywhere that he is not available to give the necessary evidence and otherwise I have already addressed that point earlier in this judgment. If Mr. Ahmad was a real individual and had refused to give evidence following the termination of his appointment as a director, then this could be dealt with in an entirely straightforward manner by producing evidence demonstrating that Mr. Ahmad was a director, evidence as to how and when he ceased to be a director and what, if any, evidence there was to support the contention that he refused to provide the evidence directed. None of that has been complied with and therefore this point takes the respondent no further at all.

20. It is then said Mr. Ahmad is no longer an officer of the claimant, that he resigned and is not a party to the proceedings. As to the first point that is nothing to the point unless it is either impossible or impractical for the claimant and respondent to obtain the evidence of its director, as to which there is no evidence that that is so. Secondly, the fact that Mr. Ahmad is not a party to the proceedings is also nothing to the point as it is the claimant and respondent's application, not of Mr. Ahmad.
21. Before departing from this part of the case I should perhaps note that at paragraph 11 of the submissions filed on behalf of the company it is asserted: "*Irrespective, any alleged involvement by [Mr Hussain] is ... wholly irrelevant when even an unpurged contemnor has the right to privacy amongst others, can seek remedies for harassment and intimidation inflicted upon him and be 'entitled still to the due process of the court', see Birss J (as he then was) at paragraph 52 in JSC Mezhdunarodniy Promyshlenniy Bank and Anr v Pugachev & Ors [2017] EWHC 1972 (Ch,) Mr. Hussain's alleged involvement, even if found or believed, cannot, by any stretch, justify the egregious conduct and unlawfulness of the acts complained of, which is seemingly what the Defendants would have the Court believe and accept.*"
22. As to this, as I have endeavoured to explain at the outset of this judgment, this application does not engage with the merits of this claim for the purposes of striking it out. If it was otherwise it would be necessary either to bring the application under paragraph (a) of CPR 3.4 or, alternatively, to make clear that any application under paragraph (c) is advanced on a wider basis than simply non-compliance with the order which is the limited basis on which this application has been brought and advanced. Neither of these options has been taken.
23. In those circumstances, as it seems to me, this is yet another poor example of the commencement of proceedings in the name of an annulled Marshall Islands company, probably instituted in truth by Mr. Hussain, which has been advanced by using a now familiar pseudonym. In those circumstances, it was plainly right for the defendants to seek an order which sought identification in relation to the individual who allegedly sanctioned the commencement of these proceedings on behalf of the company concerned.

This Judgment has been approved by HHJ Pelling QC.

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