



[2022] EWHC 2450 (Comm)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

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

Date: 05/10/2022

Before :

HIS HONOUR JUDGE PELLING KC
SITTING AS A JUDGE OF THE HIGH COURT

Case No: CL-2006-000270, CL-2010-000804,
CL-2011-000610, CL-2013-000625,
CL-2014-0001210, CL-2014-000916,
CL-2015-000249, CL-2016-000116

Between

MICHAEL WILSON & PARTNERS, LIMITED

Applicant

-and-

JOHN FORSTER EMMOTT

Respondent

And :

Case No: CL-2021-532

Between:

MICHAEL WILSON & PARTNERS, LIMITED

Claimant

- and -

- (1) JOHN FORSTER EMMOTT
- (2) M.B. ROBINSON FOR THE ESTATE OF
MICHAEL LYNDON BEVERLY ROBINSON (DECEASED)
- (3) MR LAW LIMITED
- (4) KERMAN & CO, LLP
- (5) PHILLIP ALEXANDER SHEPHERD QC
- (6) SHEPHERD LEGAL LIMITED
- (7) SOKOL HOLDINGS INC

Defendants

Mr Michael Wilson, Solicitor, for the Claimant (attending remotely)
Mr P.J.Kirby KC (instructed by Armstrong Teasdale Limited) for the 2nd 3rd and 4th Defendants
Mr Charles Dougherty KC (instructed by DAC Beachcroft LLP) for the 5th Defendant
Mr Charles Dougherty KC (instructed by F Liebling, Solicitor) for the 6th Defendant
Mr Emmott appeared in person (attending remotely)

Hearing dates: 6-7 September 2022

**JUDGMENT ON CRO APPLICATION BY DEFENDANTS IN THE CL-2021-532
CLAIM AND PURSUANT TO THE COURT OF APPEAL DIRECTION IN THE
CLAIMS BY MICHAEL WILSON & PARTNERS LIMITED AGAINST JOHN
FORSTER EMMOTT**

HH Judge Pelling KC:

1. This is the hearing to determine whether and if so in what terms a civil restraint order should be made against Michael Wilson & Partners Limited (“MWP”). That issue comes before me by two distinct routes. The first arises from an Order of the Court of Appeal sealed on 12 July 2022 by which it remitted the question whether an Extended Civil Restraint Order should be made against MWP to the Commercial Court and directed that I should hear it if possible. The second arises by reason of an application by the successful parties in the CL-2021-532 claim (“the 532 Claim”).
2. I should record that Mr Wilson submitted that I should not act on the Order of the Court of Appeal because he had applied to the Court of Appeal to re-open the application that led to that Order and because officials had indicated that a wrong bundle had been placed before the Court of Appeal. Mr Wilson has not applied to the Court of Appeal for a stay of its Order, nor has one been granted of its own motion by the Court of Appeal. In those circumstances, it would be wrong in principle for me to ignore the Order of the Court of Appeal. I indicated to Mr Wilson however that rather than delivering an *ex tempore* judgment, I would hand down this judgment on the first day of Michaelmas term 2022 unless before then he obtained a stay from the Court of Appeal of its order. I have not been informed by Mr Wilson of any such Order having been made, much less supplied with a sealed copy of such an Order¹.
3. Similarly, Mr Wilson indicated at the hearing of this application that he was prepared to offer an undertaking not to commence any further proceedings or applications against any of the defendants in the 532 Claim and submitted that in the light of this offer it was not appropriate that this application be heard. By implication this offer was limited to the 2nd to 6th defendants since it was only those defendants who were seeking civil restraint orders against MWP in the 532 Claim. Leading counsel for the 2nd to 6th defendants rejected MWP’s proposal on the basis that it was made too late and was not properly formulated and if negotiated would swallow up the whole of the time left for the hearing of the application. I accepted this submission but again indicated that I would not hand down this judgment until the first day of Michaelmas term 2022 so that if Mr Wilson was able to put forward proposals that were satisfactory to the 2nd to 6th defendants) there would be a limited opportunity for agreement to be reached and a signed consent order lodged. Again, however, no such agreement has been reached or consent order lodged.
4. The principles that apply to applications of this sort are not in dispute. By CPR r.3.11:

“A practice direction may set out (a) the circumstances in which the court has the power to make a civil restraint order against a

¹ By an email containing Mr Wilson’s comments on this judgment, he stated that “*The EWCA have set-aside the Order of 12.07.22 ...*” but Mr Wilson had not produced any order of the Court of Appeal to that effect. I requested a copy of the Order setting aside the Court of Appeal’s order on the morning fixed for the hand down of this judgment. It was not forthcoming from Mr Wilson. Mr Emmott sent me a copy. It is the order sealed on 3 October 2022. That Order did indeed set aside the 11 July Order but it then again dismissed MWP’s application and marked it as totally without merit. It was seriously misleading of Mr Wilson to have said what he did in his email to the Court without providing the 3 October order or stating that the application to which the 11 July order related had been dismissed and marked as totally without merit by the 3 October order.

party to proceedings; (b) the procedure where a party applies for a civil restraint order against another party; and (c) the consequences of the court making a civil restraint order.”

The relevant practice direction is Practice Direction 3C, which provides for three kinds of civil restraint order, being (i) a limited civil restraint order, (ii) an extended civil restraint order, and (iii) a general civil restraint order. Assuming a civil restraint order (“CRO”) is to be made at all, a limited CRO will be of no practical utility in the circumstances of the claims other than the 532 Claim, which is no doubt why the Court of Appeal phrased its order in the way it did. It would be of no practical utility in the 532 claim either because that claim has been struck out. By the same token a General CRO would in my judgment be disproportionate, at any rate at this stage, because if made it would or might have an adverse impact on the ability of MWP to conduct litigation on behalf of its clients and because the terms of an extended CRO would be sufficiently wide in all the circumstances to control the conduct which is said to justify the making of a CRO. In reality therefore, the question to be decided is whether an extended CRO should be made against MWP.

5. There are two elements to any decision to make a CRO. The first is jurisdictional and the second discretionary. As to the first of these requirements, before a court has jurisdiction to make an extended CRO, it must be satisfied that the party against whom the order is sought “... *has persistently issued claims or made applications which are totally without merit.*” If that requirement is satisfied, then whether an order should be made is a matter of discretion based on an evaluation of all the material circumstances.
6. Turning to the first of these requirements, in relation to the Court of Appeal’s remission, the Court of Appeal have held already that the jurisdictional requirement has been satisfied and I accept the submission of the defendants in the 532 Claim that it plainly has been. They relied on the following orders to establish the jurisdictional requirement, being those of:
 - i) Longmore LJ on 19th October 2015;
 - ii) Master Yoxall on 2nd October 2019;
 - iii) HHJ Pelling QC on 20th January 2020;
 - iv) Master Yoxall on 12th November 2020 ;
 - v) HHJ Pelling QC on 16th December 2020;
 - vi) Deputy ICC Judge Baister on 7th July 2021;
 - vii) HHJ Pelling QC in 20th July 2021;
 - viii) Males LJ on 14th December 2021; and
 - ix) Simler and Nugee LJJ on 11th July 2022².

² By an Order made by Simler and Nugee LJJ on 3 October 2022, their Order of 11 July was set aside but the application to which it related was then again dismissed and certified as Totally Without Merit.

Mr Wilson suggested that I should leave out of account the orders of Master Yoxall and Longmore LJ. In the absence an order setting aside or staying any of these orders, I do not consider it open to Mr Wilson to challenge them. Even if I left out of account the orders to which Mr Wilson refers however, that would still leave seven others about which no complaint can be made. Further that is before taking account of the orders that I have made in the 532 proceedings. In summary I have held that the 532 claim is one that is totally without merit for the reasons set out in my judgment striking out the claim and entering summary judgment for the defendants. I have also held that the application to re-open and for permission to amend by MWP was totally without merit as against the sixth defendant. In each case I have done so applying the test approved by Males LJ at Paragraph 27 of his judgment in Sartypi v Tigris Industries Incorporated [2019] EWCA (Civ) 225. On this material I am satisfied that the jurisdictional requirements for the making of a CRO are made out.

7. I now turn to the question whether in the exercise of my discretion I ought to make an extended CRO. I have already explained why it is not appropriate to consider either a limited or general CRO.
8. The 532 defendants submit that this is plainly a case where a CRO should now be made. They rely on the contents of the judgment striking out the claim and entering summary judgment, on MWP's conduct in relation to the sixth defendant and on the conduct of this claim prior to the commencement of the 532 Claim, which involved an attempt to set aside the costs order under CPR r.3.1(6) then an attempt to commence a new claim using an existing Claim Number. Both these procedural steps were ones that ought not to have been taken and rendered both the application and the claim totally without merit applying the test referred to earlier. They also (and correctly) rely on the prolixity of the pleadings and witness statements produced by MWP and the vast volume of material included in the bundles that are routinely lodged most of which is immaterial to the issue at hand. Their overarching submission that applies as much to the other claims as to the 532 Claim is that any sense of objectivity has long since been overruled by obsession on the part of MWP and Mr Wilson.
9. I accept these submissions. I have drawn repeated attention to these factors in numerous judgments that I have given in the claims by MWP against Mr Emmott. I do not intend to repeat them in this judgment. The Court of Appeal has drawn attention to the pathological nature of the litigation in the clearest and firmest of terms. In its most recent order the Court of Appeal has drawn attention to various vexatious elements of the conduct by and on behalf of MWP. The 532 claim is an entirely unmeritorious proliferation of this never ending litigation, the vexatiousness of which is illustrated by the conduct of that claim against the sixth defendant, as to which see my substantive judgment striking out the 532 Claim. Numerous other judges abroad have drawn attention to the same problem. This occurred most recently in the Federal Court of Australia where in deciding that MWP must pay costs to be assessed on an indemnity basis Stewart J held:

“It will be apparent that those circumstances include the conclusion that much of what MWP sought to rely on and what was submitted on its behalf was irrelevant. ... the interlocutory application was shockingly poorly prepared and run which had the result that the respondents were unreasonably subjected to the expenditure of costs which they should not have had to face

... MWP substantially delayed bringing the application, leading to inevitable expense... Compounding the delay, MWP did not file its affidavit supporting the application until 16 May 2022. That affidavit is 16 pages and is referred to as the fifth affidavit of Michael Wilson. Mr Wilson is a NSW solicitor ... (t)he fifth affidavit of Michael Wilson consisted entirely of irrelevant material... [it] referred to Exhibit MEW-5, but the exhibit was not filed with the affidavit... (t)he only part of that [164 page] exhibit relevant to the interlocutory application is the 30-page transcript ... MWP filed the sixth affidavit of Michael Wilson. Like the fifth affidavit, it contained only irrelevant material ... sixth affidavit of Michael Wilson refers to Exhibit MEW-6. It is 50 pages and is wholly irrelevant. MWP filed its submissions on the interlocutory application. The submissions were of essentially no value and merely burdened the Court and the respondents [which were] ... ambling, irrelevant and hopeless”

Stewart J concluded this analysis by saying that “ ... *MWP’s Mr Wilson casts allegations around like confetti at a wedding without the least regard for their relevance to the issues at hand or whether they can be substantiated*”.

10. I set out what Stewart J said only because it is the most recent judicial summary of the problem which reflects my experience over the 2 or more years that I have been determining MWP’s applications. Typically they are prolixly expressed, manifestly disproportionately lengthy, contain applications that are tendentiously expressed and go further than both the evidence or conventional procedural norms permit, are supported by witness statements that seek to incorporate earlier witness statements filed ostensibly for other purposes and in support of other applications, which are also tendentiously expressed, contain seemingly endless historical narrative that can be of no relevance to the application at hand and supported by exhibits containing vast volumes of materials, most of which is plainly irrelevant and which run into many hundreds if not thousands of pages. All too often a document that is critical to the application has been omitted. Bundles are then lodged which are never confined (as they should be) to the material strictly relevant to the application at hand, very frequently don’t include material that is relevant and in consequence are frequently augmented by further extensive bundles served outside the time provided for by Part 58, the Part 58 Practice Direction and the Commercial Court Guide and at a time when neither MWP’s opponents, nor the court, have a realistic opportunity for digesting the material contained within them. This leads to endless confusion, to at least potential unfairness, to delay and to hearings that almost never complete on time and thus either have to be extended into supposedly protected court time thereby prejudicing or potentially prejudicing other litigants or to adjournments that result in yet further court time and resources being devoted to this litigation. I have set out these issues in detail in a number of previous judgments. It is not necessary that I should repeat them.
11. I note that the Court of Appeal has complained expressly about such conduct in its order of 3 October 2022 referred to in footnote 1 above, where Simler and Nugee LJJ state:

“Mr Wilson has filed an inordinately long 4th witness statement dated 1 August 2022. Despite the very clear directions from the Court in its e-mails of 20, 22 and 28 July 2022 which made it

clear that Mr Wilson should simply file any additional documents he sought to rely on, this witness statement unnecessarily repeats much of the material already before us in the shape of his 3rd witness statement, including a lengthy recital of the procedural history.”

They also record that Mr Wilson had failed to provide to the Court of Appeal a critical document on which he wished to rely and added:

“We also remain of the view that this application was totally without merit (“TWM”). We clearly pointed in our Order of 11 July 2022 why the application failed. Despite this MWP has continued to pursue it without any substantive reasoned answer to the point.”

They also repeated the observation set out originally in the 11 July Order that:

“This is not the only egregious example of the deficiencies in MWP’s application. We draw attention in particular to the assertion in para 9 of Mr Wilson’s witness statement that Males LJ, Popplewell LJ, [David] Richards LJ, Simler LJ and Nugee LJ have found MWP’s analysis to be correct, contrary to the findings of Master Kay QC and HHJ Pelling QC. This is simply wrong. Males J (as he then was) and Popplewell LJ granted permission to appeal against Master Kay’s and HHJ Pelling’s judgments respectively, on the basis that MWP’s argument had a real prospect of success. Nugee LJ (with whom David Richards and Simler LJJ agreed) said that he agreed with Popplewell LJ that the proposed appeal (then) had a real prospect of success. To suggest that any of these judges had found MWP’s analysis to be correct is obviously wrong, and displays either an inability to read and understand the plain words of a judgment, or a willingness to misrepresent and distort the position. Neither does any credit to Mr Wilson.”

This conduct is similar in kind to that referred to in Footnote 1 above.

12. Mr Wilson’s only answer on the question whether a CRO should be made was that MWP has been successful in a large number of the applications that it has issued both here and abroad and to make an extended CRO would be to play into the hands of his opponents, who are determined to defeat MWP by resort to what he characterises as an “interlocutory strategy”. In my judgment these points are not in any sense an answer to this application. First, the application and any order made focusses on the proliferating number of totally without merit claims and applications. It is not concerned with other claims and applications not falling into that category. Litigants and other court users are entitled to be protected from claims and applications that are totally without merit regardless of whether other claims and applications have been issued that do not fall into that category. Issuing applications and claims that succeed does not justify issuing applications or claims that are Totally Without Merit or justify the court not making a CRO, where the necessary level of persistency has been made out. In any event, MWP overlooks the point that the effect of a CRO is not to preclude the issue of claims and

applications altogether but to impose an Article 6 compliant filter that requires permission to be obtained before either a claim or application is issued. In relation to an extended CRO, its scope is further confined to claims connected with the subject matter of claims in which the orders are made. For these reasons, Mr Wilson's answer to the application in my judgment is not an answer at all at any rate in all the circumstances of these cases.

13. I have warned MWP on previous occasions that unless the issuing of applications that were totally without merit ceased, it was probable that a CRO would be made. Regrettably, the time has now come when such an Order needs to be made. In reaching that conclusion I have taken into account Mr Wilson's conduct referred to in footnote 1 above. I do not make these orders lightly. I had hoped that a solicitor as experienced as Mr Wilson would understand the need to correct the conduct which so many judges have complained of literally over years but that has not come to pass. I propose to make an extended CRO therefore in the Emmott claims and the 532 Claim. I have considered whether I should make orders for the maximum length that is now permitted. This involves balancing the protection of those who require to be protected by the Orders against the Article 6 right of MWP to have unrestricted access to the courts. With a great deal of hesitation, I have concluded that this balance will be satisfactorily struck by making an order of 18 months duration, starting with the date of this judgment. MWP and Mr Wilson should understand however that if there is a resumption of the conduct that has led me to make these orders when the orders I intend to make come to an end, it is highly probable that further such orders will be made and a judge considering whether to make such an order is unlikely to consider it appropriate (if an order is to be made at all) to make it for less than the maximum period permitted.
14. I direct that Leading counsel submit draft orders for approval and sealing by no later than 4pm 7 October 2022. The nominated judges should be me or Foxton J if I am not available in relation to KBD (and County Court) claims and applications and Trower J in relation to Chancery Division (including Insolvency and Company Court) claims and applications.