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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)



No. CL-2019-000481

NCN: [2022] EWHC 3285 (Comm)

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday 25 November 2022

Before:

MR JUSTICE JACOBS

B E T W E E N :

SAHARA ENERGY RESOURCE LIMITED

Claimant/Respondent

- and -

(1) RAHAMANIYYA OIL & GAS LIMITED

(2) ULTIMATE OIL & GAS DMCC

(3) ALHAJI ABDULRAHAMAN BASHIR

(4) ADEBOWALE ADEREMI

Defendants/Applicants

MS N. ALLSOP (instructed by **Stephenson Harwood**) appeared on behalf of the
Claimant/Respondent.

MR F. HORNYOLD-STRICKLAND appeared on behalf of the **First, Third, and Fourth**
Defendants/Applicants.

J U D G M E N T

(v i a h y b r i d h e a r i n g)

MR JUSTICE JACOBS:

- 1 The first, third, and fourth applicants (collectively “the applicants”) apply to discharge various orders whereby the court granted injunctions initially ordering the delivery up of quantities of oil and subsequently granting anti-suit relief.
- 2 The important order that was made by the court was a consequence of the failure of the applicants to comply with those orders. That failure resulted in an order made by Butcher J on 7 February 2020 whereby: the first applicant (“Rahamaniyya”) was fined £500,000; the third applicant Mr Bashir was sentenced to ten months imprisonment; and the fourth applicant Mr Adebowale Aderemi was fined £10,000. The difference between Mr Bashir and Mr Adebowale is that Mr Bashir is the CEO of the Rahamaniyya, whereas Mr Adebowale is somewhat lower in the company’s hierarchy.
- 3 There was subsequently an application which came before me, on the part of various applicants, to discharge the order which Butcher J had made. That came before me on 18 June 2020, and I dismissed the application for the reasons which were set out in a judgment which I gave on that occasion.
- 4 Subsequent to those events, there have been some significant developments. The dispute which existed between Rahamaniyya and the respondent to the present application, Sahara Energy Resource Limited (“Sahara”), went to arbitration. That resulted in a substantial award against Rahamaniyya and against another company which had actually been the original purchaser of the oil which was in dispute.
- 5 Most significantly, Rahamaniyya has paid all the sums which were awarded under the arbitration award, and it has also paid all of the costs which have been incurred by the Sahara in pursuing the various injunction proceedings to which I have referred. The result is that Sahara, as Mr Hornyold-Strickland who appears on behalf of the various applicants has said, has been made whole. The matter goes somewhat further than that, because Sahara actually supports the application which is presently made.
- 6 The substance of the application now made is for all of the orders to be discharged, including the order made by Butcher J. As part of the order for discharge which the applicants seek, Mr Bashir has offered to pay the sum of £75,000 to a *pro bono* charity identified by the court. Mr Hornyold-Strickland has made various submissions to me as to why this is the appropriate course to take in this case in the current circumstances. For the reasons that I now give, I have been persuaded by his submissions. I therefore do propose to discharge the various injunctions, including the orders made by Butcher J, provided that Mr Bashir undertakes to pay £75,000 to the Access to Justice Foundation. The reasons which have led me to that conclusion are as follows.
- 7 First, when a court is faced with an application of the present kind, which is effectively to allow a person to purge his contempt, and to seek the reversal of orders previously made, the court does have a complete discretion as to what to do. That is provided for by CPR 81.10(3). In the past, Butcher J gave various indications which were non-binding as to what the punitive and coercive elements were of the sanctions which he imposed for contempt. But it is quite clear that I am not bound by those indications and, of course, Butcher J did not know what would subsequently happen.
- 8 Secondly, although Butcher J, as he has been encouraged to do by some of the authorities, identified what he considered to be the punitive and coercive elements of both the £500,000 fine and the 10-month prison sentence for Mr Bashir, the authorities indicate that the punitive and coercive elements are not rigid, hard-edged concepts. I have been referred to

the decision of Neuberger J in *Shalson v Russo* [2002] EWHC 399 (Ch), and, in particular paragraphs [18] and [21]. Those paragraphs indicate that if the coercive element of an order is effective, in that it leads a person to accept that he should comply with the order and he takes steps to do so, that may well impact on whether or not he can, in circumstances where a prison sentence has been imposed, be released early from prison. The distinction between coercive and punitive element, to some extent, then breaks down; because, as Neuberger J said, if a person has properly complied with an order, then that may well impact on the decision to release him from prison notwithstanding that the full punitive element of the sentence had not yet been served, the reason being that compliance with the court's order is effective mitigation of that punitive element. So this is another reason why I am not rigidly bound by Butcher J's indication of the punitive and coercive elements, and I must look at the matter afresh. If therefore, as in the present case, a party fully complies with a court's order to the satisfaction of the opposing party, that that may well significantly mitigate both the coercive and punitive element.

- 9 The third point is a point on which Mr Hornyold-Strickland placed considerable reliance, namely that this is civil litigation and it was therefore very significant that Sahara was no longer seeking the enforcement of any of these orders. He referred to various authorities which are to the effect that a court does not enforce its own orders by committal, but generally reacts to applications to that effect which are made by the parties.
- 10 I consider that there is some force in that submission but one must be careful about carrying it too far. The court undoubtedly does have an interest in its orders being enforced. When the litigation has got to the stage where orders have been made and have been breached, and where a party has sought a sanction for breach and the court has decided to impose one, the position is somewhat different to that where no action was taken pursuant to a breach in the first place. So whilst I do consider it relevant that I am dealing with civil litigation and that generally, the court does not enforce its own orders by committal, it is important not to take that matter too far: it is a factor, but not necessarily a decisive factor, in the court's decision.
- 11 That leads to the fourth point. It is in my view necessary and relevant to take into account that I am dealing with civil litigation where the parties have come to a sensible overall settlement agreement which has resulted in Sahara itself supporting the application. It does seem to me that where parties have reached an appropriate settlement agreement and where a respondent such as Sahara has been made whole, and where the victim of the breaches of the court orders invites the court not to take matters any further, that is a very positive point in favour of the court not doing so.
- 12 Fifthly, it does seem to me that there are reasons why those considerations apply, in particular in the present case. The conduct of Rahamaniyya, Mr Bashir, and Mr Adebowale can obviously be severely criticised in terms of how they reacted to the original injunctions. But their conduct in recent times seems to me to be worthy of being commended. Rahamaniyya has, as a result of the decisions taken by Mr Bashir, not only paid for the oil which was the subject of the original orders, but they have gone further in that they have honoured in full the arbitration award which was made against them. In that context, they have paid very significant arbitration costs which, on the basis of one document that I have seen, amount to over US\$500,000. They have also paid the costs of the legal proceedings which were necessitated in this jurisdiction. So the net effect is that Sahara has been made whole. It has made a full recovery of its costs, and it has not had to take steps to enforce the arbitration award. It does seem to me that when one looks at that matter as a whole, it can fairly be said that Rahamaniyya has gone over and above simply rectifying the breaches of the orders. Notwithstanding that the parties were previously heavily in dispute,

Rahamaniyya has gone further and made life as easy as it possibly could for Sahara, albeit belatedly.

- 13 Sixthly, I take into account that both Mr Bashir and Mr Adebowale have attended by video link today and they have expressed to me their apologies. I accept that those are genuine apologies and I think that those apologies are borne out by the fact that Rahamaniyya has taken the steps to pay the claimant Sahara what it has paid.
- 14 Seventhly, there is a hint that Rahamaniyya, Mr Bashir, and Mr Adebowale were not well advised when they were originally facing the injunctions. It does seem to me to be likely that there was an element of that, and that if different advice had been given, perhaps the approach which they would have taken might have been different. But I do not consider I can place considerable reliance on that, because I do not have full information as to what they were advised. I do know, however, and this was clear on the occasion when the matter was before me last time in June 2020, that advice was being received from certain Nigerian lawyers and it is not difficult to imagine that the advice may not have been the best.
- 15 When I look at the matter overall, it seems to me that there are two unusual features, certainly in terms of the cases which come before the Commercial Court and both of them are favourable to Rahamaniyya and the other two individuals. First of all, the award has been paid in full. That is to be welcomed. Secondly, the claimant Sahara has been made whole in the manner which I have described. The injunctions have ultimately, one way or another, been obeyed and they now serve no useful purpose because the parties have reached a satisfactory settlement agreement.
- 16 There is, of course, a public interest in the court ensuring that its orders are obeyed and in enforcing punitive elements of those orders. But it does seem to me that there is a countervailing, perhaps even stronger, public interest in encouraging companies and individuals to put matters right in the way that Rahamaniyya, Mr Bashir, and Mr Adebowale have done in the present case. I do not consider that it is disadvantageous for the court to be somewhat forgiving, in circumstances such as the present, as a way of encouraging companies and individuals in the future who are faced with injunctions and may have disobeyed them, to put matters right in the way that these particular applicants have.
- 17 I am therefore prepared to make the order which is proposed. The terms should include the payment of £75,000 to charity. I think that the appropriate charity is the Access to Justice Foundation. That charity is the recipient of monies where costs orders are made by the court in relation to work which has been carried out *pro bono*.
- 18 So, for those reasons, I am prepared to accede to the application.

CERTIFICATE

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