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

Case No. CL-2022-000048

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 10 March 2023

Before:

MR JUSTICE BUTCHER

B E T W E E N :

- (1) COMMERCIAL BANK OF DUBAI PSC
- (2) HORTIN HOLDINGS LIMITED
- (3) WESTDENE INVESTMENT LIMITED
- (4) LODGE HILL LIMITED
- (5) VS 1897 (CAYMAN) LIMITED

Claimants

- and -

- (1) ABDALLA JUMA MAJID AL SARI
- (2) MAJID ABDALLA JUMA AL SARI
- (3) MOHAMED ABDALLA JUMA AL SARI
- (4) FAL OIL CO LLC
- (5) INVESTMENT GROUP PRIVATE LIMITED
- (6) IGPL GENERAL TRADING LLC
- (7) GLOBE INVESTMENT HOLDINGS LIMITED
- (8) MENA INVESTMENT HOLDINGS LIMITED
- (9) MAS CAPITAL HOLDINGS LIMITED

Defendants

APPROVED JUDGMENT

J U D G M E N T

(v i a M i c r o s o f t T e a m s)

APPROVED JUDGMENT

A P P E A R A N C E S

MR A TROTTER (instructed by Jones Day) appeared on behalf of the First Claimant.

THE SECOND TO FIFTH CLAIMANTS did not appear and were not represented.

THE DEFENDANTS did not appear and were not represented.

MR JUSTICE BUTCHER:

- 1 The first claimant (“the Bank”) applies for, in effect, an unless order to require the first, second, fourth, and fifth defendants (“the Summary Judgment Defendants”) to serve any evidence in response to the Bank’s application for summary judgment against them.
- 2 The Summary Judgment Defendants have not appeared on this application. That application was served on Charles Russell Speechlys (“CRS”) at a point at which that firm acted on behalf of the Summary Judgment Defendants. Since CRS has ceased to act for the Summary Judgment Defendants, notice of this hearing has been given to the Summary Judgment Defendants through the means of alternative service which were permitted and which were successful prior to the involvement of CRS, namely by WhatsApp and email messages. It appears that all bar one of the WhatsApp messages and the email addresses have all been successfully delivered. Accordingly, I am satisfied that the Summary Judgment Defendants could have appeared on this hearing had they wished to do so.
- 3 The Bank claims against the Summary Judgment Defendants, amongst other things, to enforce a debt of some £88 million which it says is outstanding under a judgment of the Sharjah Federal Court of first instance dated 29 March 2016 (“the Sharjah judgment”). As the Bank contends, the Sharjah judgment is final and the Bank says that it is not aware of any defence to the claim to enforce that judgment and that none has ever been articulated. The Bank has, accordingly, applied for summary judgment on that claim to enforce the Sharjah judgment.
- 4 The Summary Judgment Defendants’ evidence in answer to the summary judgment application was, *prima facie*, due over nine months ago but no such evidence has been served. I will explain the circumstances in relation to that in some more detail in due course. The Bank therefore seeks an order that the Summary Judgment Defendants serve

APPROVED JUDGMENT

any evidence by 24 March 2023. The Bank says that given the history of these proceedings and other proceedings, the order ought to be backed with a sanction in order to secure compliance.

- 5 In somewhat more detail, it is pertinent to note that the claims in these proceedings fall into two categories: firstly, the claim to enforce the Sharjah judgment, which I have mentioned; and, secondly, claims by the claimants against the first to third and sixth to ninth defendants in respect of what is said to have been fraudulent wrongdoing calculated to avoid the enforcement of the Sharjah judgment, which is referred to in Mr Trotter's skeleton argument and has been referred to today, as "the conduct claims".
- 6 Worldwide freezing orders and injunctive relief have been granted against the defendants. The material before the Court indicates that the Sharjah Federal Court of first instance granted judgment for the Bank against the first to third defendants and the fourth and fifth defendants for AED 433,833,166.81, plus interest and costs, on 29 March 2016. Further, that material indicates that all appeals against the Sharjah judgment have now been exhausted. It also appears that the Bank issued proceedings in the BVI to enforce the Sharjah judgment and the BVI Court entered summary judgment for the Bank at an uncontested hearing in June 2018. The Bank says that it has had only limited success in identifying assets of the first to fifth defendants against which to enforce and it says that the amounts due under the Sharjah judgment amount to some 88.5 million as of 10 February 2023, with interest continuing to accrue at AED 10,782.93 per day.
- 7 The Bank's evidence also indicates that the Al Saris and their companies have taken a number of steps to avoid or delay enforcement of the Sharjah judgment. One matter which merits mention and to which Mr Trotter has drawn particular attention is that appeals and applications were made in Sharjah and in the BVI proceedings to enforce the Sharjah judgment, including on the basis of a document which was found by the Sharjah court to be

APPROVED JUDGMENT

apparently corrupt and which could not be used as evidence. Also, that the Summary Judgment Defendants in these proceedings evaded service in the BVI proceedings leading to an order for alternative service there. I accept that those matters give rise to at least a legitimate concern that the Summary Judgment Defendants might, unless it is precluded, serve evidence late on the summary judgment application in this case and potentially derail that application in a similar way to the way in which the Sharjah and BVI proceedings might have been delayed or derailed.

- 8 By the conduct claims in these proceedings, the claimants also allege that the Al Saris and companies under their control have created false and backdated documents and have pursued proceedings on the basis of those documents in order to frustrate effective enforcement of the Sharjah judgment. For present purposes, it is sufficient to note that Calver J has already concluded, for the purposes of granting an imaging order, that there is a strong *prima facie* case on those claims and Cockerill J has also concluded that there was a good arguable case on the conduct claims for the purposes of granting a worldwide freezing order against the sixth to ninth defendants.
- 9 There has also been evidence put before me that there has been evasive conduct on the part of the Al Saris since these proceedings were issued. One matter which should be mentioned is that there was, as a result of what the claimants say was the defendants' failure to comply with their asset disclosure obligations, an application for committal and other sanctions for contempt of court, which was issued on 12 May 2022. The Al Saris and the other CRS defendants failed to file evidence in response to that application and after several extensions of time applied for an extension of time until after judgment on their jurisdiction challenge, or a longstop date of 29 September 2023. Foxton J granted a more limited extension to 24 March 2023 noting that the defendants' record of compliance with court orders is poor and ordering that if the defendants did not comply with this order, the matter should be brought before the court on a one-hour hearing to address the consequences of non-compliance.

APPROVED JUDGMENT

- 10 More specifically, in relation to the present application, Abdalla and Majed Al Sari, and the fourth and fifth defendants have not engaged with the Bank's summary judgment application in any satisfactory fashion. The summary judgment application was made against his first to fifth defendants on 6 May 2022. A default judgment was entered against the third defendant on 20 May 2022. It remains live against Abdalla and Majid Al Sari and the fourth and fifth defendants. That application was filed as an ordinary application and that meant that the Summary Judgment Defendants were required to file any evidence in response within fourteen days, namely by 20 May 2022.
- 11 Despite demands by the Bank in correspondence that the Summary Judgment Defendants serve their evidence in response, they have not done so and in a letter of 22 August 2022, the Summary Judgment Defendants indicated that they did not intend to file any evidence pending determination of their jurisdiction challenges. They have, however, never sought to agree an extension of time, or applied for one, or suggested that they would do so, and no extension of time has ever been granted.
- 12 After the summary judgment application was served, apparently on the day of the listing appointment for this hearing, namely on 21 February 2023, CRS wrote indicating that it had terminated its retainer by the Summary Judgment Defendants because of "various breaches of our terms of engagement", and as I said at the outset, although this application was served on CRS, it has subsequently, since CRS's termination of the retainer, been notified to the Summary Judgment Defendants by a number of other means.
- 13 The other feature of the background to the present application relates to the listing of a number of applications. There was a decision made by Cockerill J which was in the form of a direction contained in an email from Commercial Court Listing made on 16 June 2022 whereby a number of applications in these proceedings were directed to be listed in a particular order. That has led to a listing of the defendants' jurisdiction challenges in June

APPROVED JUDGMENT

2023, the Bank's summary judgment application and certain costs applications in October 2023, and the claimants' contempt application in December 2023. The direction of Cockerill J also permitted the seventh to ninth defendants twenty-eight days to file evidence in response to the contempt application and they served that evidence on 17 August 2022. The Bank applied to vary the order of those applications but that application was dismissed by Jacobs J on the basis that there had been no change of circumstances. I should say that I do not regard either the order of Cockerill J nor the order of Jacobs J as having decided when evidence needed to be served in the summary judgment application and certainly not as ordering that there need be no evidence served in the summary judgment application until the hearing of the jurisdiction challenges, nor as providing what might be the consequences of the non-service of evidence in accordance with any orders of the court in relation to the summary judgment application.

- 14 It is against that background that the Bank applies for a direction requiring the Summary Judgment Defendants to serve evidence by 24 March 2023, and that a sanction should be attached in order to secure compliance and avoid further delay. The Bank says that such a direction is required because the Summary Judgment Defendants have refused to comply with the rules and have indicated that they will not serve evidence until after the determination of the jurisdiction challenges, which is a unilateral pronouncement on their part which does not involve compliance with the rules.
- 15 The Bank says that that course, if adopted, would involve significant delay and would prejudice the Bank because, *inter alia*, the joint jurisdiction challenges are listed for hearing on 13 and 14 June 2023. If judgment is then reserved, and perhaps not given before July 2023, what the Summary Judgment Defendants' proposed course would involve is their not serving evidence before July 2023 and more likely in August or September 2023. That, the Bank says, would involve a delay, given that their evidence should have been served on 20 May 2022, of some fourteen to sixteen months. The Bank also says that given that the

APPROVED JUDGMENT

summary judgment application is listed for 3 October 2023, it would leave the Bank little time to respond to any such evidence.

16 In light of the fact that the only defences available to a claim to enforce the judgment would be that the judgment is not final, that it was given by a court without jurisdiction, or that it was procured by fraud, or was contrary to natural justice or human rights, or otherwise contrary to public policy, if any of those defences were going to be raised, it would be necessary for the Bank to have proper and adequate notice of it in order to be able to deal with it. Accordingly, the Bank says that it may not have sufficient time fairly to deal with any evidence on its summary judgment application, or the summary judgment application might be derailed.

17 The Bank says, moreover, that there is no justification for a delay. The Summary Judgment Defendants have not said that more time is required in order to serve the evidence required in relation to the summary judgment application. Rather, they have simply said that they are not going to, or ought not to be required to, serve such evidence in advance of the jurisdiction challenge. The Bank contends, however, that the Summary Judgment Defendants' jurisdiction challenge does not concern the enforcement claim. Instead, their application notice, draft order, and evidence in support of the jurisdiction challenge all expressly concede that the court has jurisdiction over the enforcement claim. Nor does the jurisdiction challenge by the seventh to ninth defendants concern the enforcement claim, which is not brought against them. As the Bank says, the jurisdiction challenges are irrelevant to the enforcement claim, and to the summary judgment application.

18 In my judgment, this submission on the part of the Bank appears to be well founded. The jurisdiction challenge does not appear to be relevant to the enforcement claim, and, in those circumstances, there appears no good reason why the Summary Judgment Defendants

APPROVED JUDGMENT

should not serve evidence in response to the summary judgment application prior to the hearing of the jurisdiction challenges.

- 19 The Bank says, correctly, that the court has a broad discretion to impose sanctions for failing to comply with an order of the court under CPR 3.1(3)(b). The Bank has put forward a number of possible sanctions which the court might impose. I agree that it is necessary to impose a sanction in this case in order to secure compliance with the Court's order. It appears from the material before me, some of which I have briefly summarised, that the Summary Judgment Defendants do appear to have a history of failing to comply with the Civil Procedure Rules, and with orders of the court and that that includes: evading service in the BVI proceedings; failing to comply with their asset disclosure obligations; and failing to file evidence in response to the contempt application. This led to Foxton J noting, as I have already set out, a record of non-compliance with court orders. Accordingly, I do take the view that unless a sanction is imposed, there is a significant possibility that the Summary Judgment Defendants will not comply. That may mean that costs are wasted, that there is the possibility of further delay, and that the summary judgment application may be derailed or the Bank prejudiced.
- 20 The appropriate sanction is one which seeks to ensure compliance. In my judgment, the appropriate sanction is that if the Summary Judgment Defendants fail to serve evidence by a date which can be debated, then the Summary Judgment Defendants should be debarred from adducing evidence on the summary judgment application. That is designed to avoid the prospect of a last-minute ambush. In addition, I would order that there should be, in the event of non-compliance, a hearing fixed, for I would say in the region of an hour, and expedited - by which I mean it does not need to take place after the jurisdiction hearing dates - at which the court can address the consequences of the non-compliance and with the consequences of the fact that the debarring order has come into effect. That hearing would be the opportunity, if it came to that and if the Summary Judgment Defendants wished to

APPROVED JUDGMENT

make it, for any application for relief from the sanction of the debarring order. Equally, at that hearing, the Bank could contend that the relevant consequence of the non-compliance should be that summary judgment should be granted and the Court would then consider whether that was, indeed, the consequence and whether it could be determined on that occasion.

- 21 So, on that basis, I will make an order for the service of the evidence by a particular date and I will attach to it the sanction which I have mentioned.

(See separate transcript for proceedings after judgment)

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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