Neutral Citation Number: [2023] EWHC 3111 (Comm)

Case No: CL-2021-000009

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 05/12/2023

Before:

MR JUSTICE ANDREW BAKER

- -

Between:

HRH PRINCESS DEEMA BINT SULTAN BIN ABDULAZIZ AL SAUD	**Claimant**
- and -	
RONALD WILLIAM GIBBS	**Defendant**
- and -	
SUNNYDALE SERVICES LIMITED	**Non Cause of Action Respondent**

- -
- -

Simon Atrill KC and Samuel Rabinowitz (instructed by **Quinn Emanuel Urquhart & Sullivan (UK) LLP**) for the **Claimant**
The Defendant in person

Hearing dates: 1 December 2023

- -

Approved Judgment

This judgment was handed down by the judge remotely by email circulation to the claimant's representatives and the defendant in person, and release to the National Archive.

The date and time of hand-down is deemed to be 10.00 am on 5 December 2023.

.....

MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker:

1. On 1 December 2023, I conducted a pre-trial review in this Claim. The trial is listed to commence on 22 January 2024.

2. By order dated 14 July 2023, Dias J, DBE directed that unless by 4 pm on 25 August 2023 the defendant complied with directions as to disclosure in the main case management order of Jacobs J dated 4 November 2022 (as amended under certain later orders), complied with certain additional directions in respect of that disclosure set by Dias J, and paid to the claimant £598,955.21 and US$2,076,117, due under an order of HHJ Pelling KC dated 28 April 2022 and certain subsequent orders, the defendant would be "*debarred from defending these proceedings*". By his April 2022 order, HHJ Pelling KC had granted the claimant *inter alia* summary judgment on liability, with a payment on account against an eventual final judgment assessing *quantum*, in respect of some of the claims made.

3. The defendant did not comply with those requirements by 4 pm on 25 August 2023, has not done so since, and shows no sign of doing so. He thus stands debarred from defending these proceedings. The claimant accepts that the court retains a residual discretion, notwithstanding the debarring order, to allow the defendant some measure of participation on the merits at trial. I think that must be correct. The debarring order has been imposed by way of sanction for failure to comply with orders in the proceedings. In principle, the court has power, at any stage, to grant relief against that sanction.

4. The defendant indicated that he is hoping to be represented at trial and to make an application for a direction allowing him, as a matter of discretion, some measure of participation on the merits then. I directed that any such application is to be made at trial, and that it must be issued and served, with any supporting evidence, by 4.30 pm on 10 January 2024.

5. When in late August the defendant became debarred from defending the proceedings, he had two applications outstanding:

    i) an application by notice dated 30 March 2023 seeking a payment on account of certain costs ordered in his favour in an order of HHJ Pelling KC dated 11 July 2022, arising out of the discontinuance of various pleaded claims, the effect of which *inter alia* was that the claimant's brother, originally a co-claimant, dropped out of the proceedings altogether; and

    ii) an application by notice dated 18 April 2023 seeking security for costs.

6. By order dated 29 September 2023, Jacobs J granted on paper a request by the claimant to vacate a hearing listed for 6 October 2023, and adjourned the applications identified in the previous paragraph to the pre-trial review.

7. After hearing from Mr Atrill KC for the claimant, and the defendant in person, I ruled at the pre-trial review that:

    i) the debarring order did not prevent the defendant from pursuing his application for a payment on account of the costs previously ordered in his favour;

ii) the debarring order did prevent the defendant from pursuing his security for costs application, and justice did not require the exercise in his favour of any residual discretion to allow him nonetheless to pursue it.

8. I proceeded to deal with the first application on its merits, and, in the event, dismissed it. However, in ruling that it was open to the defendant to pursue it notwithstanding the debarring order, and in ruling by contrast that he was debarred from pursuing the security for costs application, I noted that the point arising did not appear to have been addressed directly in the authorities and said I would set my reasoning out in a short written judgment. This is that judgment.

9. The meaning and effect of an order providing, as in this case, that a defendant is "*debarred from defending [the] proceedings*", by way of sanction for failure to comply with some order or orders of the court, was considered by Edwin Johnson QC (as he was then, sitting as a deputy High Court judge), in *Times Travel (UK) Ltd et al. v Pakistan International Airlines Corp.* [2019] EWHC 3732 (Ch), at [35]*ff*, by reference in particular to two decisions of the Court of Appeal in *Thevarajah v Riordan*: [2014] EWCA Civ 14; [2015] EWCA Civ 41. The learned deputy judge helpfully gathered into six propositions the guidance to be gleaned from *Thevarajah* and a number of first instance decisions that had come after it: *ibid*, at [55].

10. The primary or general rule, stated in *Times Travel* at [55(2)] in terms with which I would respectfully agree, is that:

"*Where an order debars a defendant from defending … particular proceedings, this should mean what it says: At the trial of the relevant proceedings the defendant should not be permitted to participate in the normal way. That is to say by doing such things as adducing evidence, cross-examining witnesses on the other side, or making submissions.*"

11. That formulation no doubt focused upon participation at trial because that was the context. In that case, the hearing in question was the final hearing of an account and enquiry directed by Warren J as part of a final judgment entered in favour of the claimants after trial. That is to say, the learned deputy judge was conducting a species of *quantum* trial, and therefore a final trial hearing, not only a case management or other interlocutory hearing. There had also been a successful appeal to the Court of Appeal against one aspect of Warren J's liability decision, and a trial of certain preliminary issues in the account proceedings, but that does not affect what I have just said as to the nature of the hearing by the date of which the defendant had become debarred from defending the proceedings.

12. The question to which the present case gave rise is whether there can be participation by a defendant in proceedings, including by seeking some interlocutory remedy, that does not amount to "*defending [the] proceedings*". I consider that there can be such participation. Whether, prior to trial, a defendant is taking or seeking to take a step that amounts to or would amount to defending cannot be answered in the abstract. I therefore did not accept Mr Atrill KC's submission, which was that by moving an application for an interlocutory order favourable to him, the defendant was necessarily to be regarded as defending the proceedings.

13. Proceedings are brought to obtain a determination by the court of substantive claims. A defendant defends proceedings, therefore, by contesting the substantive claims brought against him, on their merits. The primary means of doing so is by (a) filing and serving a defence (it may be as first relevant step, or it may be after initially acknowledging service and stating an intention to defend), (b) taking thereafter, prior to trial, such steps following the filing of a defence as may be required to enable the defendant to contest the claims at trial, or to do so by specific means, and then (c) appearing at trial to contest the claimant's claims on their merits, through making (if at all) opening submissions, testing the claimant's evidence (to the extent he wishes to do so), calling (if at all) any evidence of his own, and seeking to persuade the court by argument in closing that the claims should be rejected.

14. A defendant may also defend proceedings by seeking, directly or indirectly, to defeat a claim without the need for a trial. Obvious direct examples would be applying to strike a claim out or applying for summary judgment dismissing a claim. An obvious indirect example would be applying to have a claim stayed, at least if the order sought or the circumstances are such that the stay might be or become permanent. It is not necessary in this case to consider how far that second notion extends, for example whether *any* application that, if granted, would delay the court's final determination of the claims, should be considered a step in defending the proceedings.

15. By his Order in July 2022, HHJ Pelling KC awarded costs in the defendant's favour arising on the discontinuance of claims, as I have said already, and directed in respect of those costs that:

    i) they are to be assessed on the standard basis, if not agreed, upon a detailed assessment after the conclusion of the proceedings; and

    ii) the defendant had liberty to apply for a payment on account.

16. Applying for a payment on account to be ordered, pursuant to that liberty, does not amount to defending the proceedings, as they stand today and stood in late August 2023 when the defendant became debarred from defending. The application concerns an existing entitlement to costs in respect of claims that are not now part of the proceedings, and have not been since July 2022. As long as no question arose of the step in question acting, by nature or in point of fact, to stifle or hamper the claimant's pursuit of the claims that remain, I could not see that taking a step to realise that costs entitlement amounted to a step taken in defence of those claims.

17. The security for costs application, however, was different. In support of the payment on account application, the defendant had stated, albeit without documentary evidence to enable the statement to be tested, that his "*wasted legal costs since the commencement of the proceedings*" were "*in excess of £565,000 plus interest*"; and in his statement in support of the security for costs application, that same figure was said to be his costs of defending just the claims brought by the claimant's brother that had been discontinued.

18. The defendant confirmed at the hearing, however, that the £565,000 in fact represents (so he says) his total costs of the litigation up to the July 2022 order of HHJ Pelling KC, without any attempt having been made to identify how much might be said to be recoverable under the costs order in his favour. In that regard, I note, by way of

example only, that in the April 2022 order, HHJ Pelling KC awarded the claimant costs in her successful summary judgment application, summarily assessed at £92,878.74; obviously whatever part of the defendant's claimed £565,000 represents his costs of that application will not fall within the scope of the discontinuance costs later ordered in his favour.

19. The defendant also mentioned at the hearing a figure of about £700,000 as his total costs incurred whilst legal represented in the proceedings. He is presently litigating in person, although as I mentioned above he said he was hoping to have legal representation again at trial.

20. Despite those being the circumstances, and without providing any basis in evidence for the amount sought, the defendant's application was for an order that £5 million be paid into court by way of security for his costs. In his statement in support of the application, the defendant asked for:

    i) an order that the claimant's brother pay £2.5 million into court;

    ii) an order that the claimant pay £2.5 million into court; and

    iii) an order that the proceedings be stayed until such payments are made, and struck out if they are not made.

21. For the hearing of the application, if the defendant was allowed to pursue it, he provided a draft order, making clear that he would in fact seek an order that the claimant pay the entire £5 million into court within 7 days, with an order that her claims be stayed pending that payment and struck out if it not be made, with judgment on the merits then to be entered for the defendant with costs.

22. Thus the security for costs application was plainly brought, and the defendant sought to pursue it, as a means, indirectly, to defeat the claimant's claims. It would amount to defending the proceedings for the defendant to pursue it. The defendant was therefore debarred from pursuing it; and there was no reason why as a matter of discretion the defendant should be allowed to pursue such a patently baseless application.