Neutral Citation Number: [2024] EWHC 123 (Comm).

Case No: CL-2021-000009

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

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

Date: 24/01/2024

Before :

MR JUSTICE CALVER

- -

Between :

HRH PRINCESS DEEMA BINT SULTAN BIN ABDULAZIZ AL SAUD — **Claimant**

- and -

RONALD WILLIAM GIBBS — **Defendant**

- and -

SUNNYDALE SERVICES LIMITED
(a company incorporated under the laws of the British Virgin Islands)

Non-Cause of Action Respondent

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Simon Atrill KC and Samuel Rabinowitz (instructed by **by Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **Claimant**
Ronald William Gibbs attended the hearing as a litigant in person

Hearing dates: 24 January 2024

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Approved Judgment

Mr Justice Calver :

1. By reason of the Defendant's failure to comply with the Order of Dias J dated 14 July 2023, he was "debarred from defending the proceedings".

2. The Defendant makes an application dated 10 January 2024 to:
   2.1 Allow him *"to defend both the merits and quantum of liability, if any, in these proceedings*" (the "**Application to Defend**"); and
   2.2 Summons (i) C's brother, HRH Prince Khaled, and (ii) the manager of the latter's private office, General Ayed, to attend trial for cross-examination (the "**Summons Application"**).

The Application to Defend

3. The procedural background to the making of the Defendant's application is carefully and accurately set out in Mr. Khatoun's 17th witness statement. In short:

   (1) Butcher J granted a worldwide freezing order against the Defendant on 2 February 2021, which was continued by consent on 27 April 2021.
   (2) After HHJ Pelling KC had given summary judgment on 28 April 2022 on part of the claim against the Defendant in respect of cash held by the Defendant as well as the proceeds of those assets which were listed in schedule to the 2018 Settlement Agreement and which had been liquidated, together with an order for interim payment of the same pursuant to paragraph 4 of his order ("the payment order"), the Defendant failed to make payment as ordered.
   (3) The WWFO was amended and continued by consent on 12 July 2022 by order of HHJ Pelling KC.
   (4) A final charging order was granted by the court on 10 October 2022 against 36 King's Road, Richmond in respect of the outstanding payment sums of US$2,076,117 and £508,773.38.
   (5) On 4 November 2022 Jacobs J ordered Extended Disclosure by List by 17 February 2023 (subsequently extended to 21 February

2023) in respect of (i) the Issues in the DRD which include in particular documents concerning how the funds of $25m were invested and the value of the assets supposedly purchased with the funds supposedly invested ("the Disclosure Order"); and (ii) the exchange of witness statements for trial by 5 May 2023 (later extended to 19 May 2023), as well as (iii) a timetable for the exchange of expert evidence in relation to the valuation of the assets specified in the schedule to the 2018 Settlement Agreement.

(6) In the light of the Defendant's failure to comply with the payment order or the Disclosure order, on 14 July 2023 Dias J ordered that unless the Defendant complied with the Disclosure Order, he would be debarred from defending the proceedings; and unless he complied with the payment order, he would similarly be debarred from defending the proceedings. His application for permission to appeal against her order was refused.

(7) It should be added that the Defendant also failed to serve his witness evidence in compliance with the order of Jacobs J, by 19 May 2023, rather purporting to serve a "statement of facts" on 13 July 2023. No application for relief from sanctions has ever been made. He has served no expert evidence.

(8) On 28 November 2023 there was a trial of enforcement proceedings in the Chancery Division relating to the Claimant's application for the sale of 36 King's Road, Richmond. On 5 December 2023 Deputy Master Linwood granted the order for sale and gave a judgment in the enforcement proceedings to which I shall return.

4. So far as the present Application to Defend is concerned, despite the order of Dias J, and despite the fact that he did not renew, to the court of appeal, his application for permission to appeal against her order, the Defendant invites this court in paragraph 33 of his 10th witness statement to allow him to defend both the merits and quantum of liability at this trial of the action and to cross examine both factual and expert witnesses.

In oral submissions, Mr Gibbs, who is unrepresented, said "I wish to make some submissions and provide evidence in relation to the whole basis of the claim. I would like to play a part in all of it." He said that he wishes to point out what he termed "major flaws in the Claimants' expert reports."

5. The application is said to be made pursuant to paragraph 1 of the order of Andrew Baker J of 1 December 2023 [B/33/100], where the Judge ordered that:
"*Any application by the Defendant for permission to participate at trial notwithstanding being debarred from defending these proceedings must be issued and served, together with any evidence to be relied on in support, by 4.30 pm on Wednesday 10 January 2024*." This order was no doubt made by Baker J because the Judge who hears the trial has a residual but narrow discretion to permit a debarred party to take some limited part in the trial.

6. The Judge's order gives rise to the need to give some consideration to the effect of a debarring order of the type made in the present case. The law was summarised by Mr Edwin Johnson QC, as he then was, in *Times Travel v Pakistan International Airline Group* [2019] EWHC 3732 (Ch) at paragraph 55 in a passage that was cited with approval by the Court of Appeal in *Hirachand v Hirachand* [2021] EWCA Civ 1498, in which King LJ, at paragraph 37 of her judgment, described what Mr Johnson had to say as representing the proper approach in such a case. It has also subsequently been applied by Steyn J in *Kim v Lee* [2021] EWHC 231 QB at paragraph 25.

7. Consistently with Mr. Johnson's analysis, the principles which are applicable to this application are as follows:

    i) When determining the effect of a debarring order the court should first consider the terms of the order. What does the order state the relevant party is debarred from doing? The wording of the "unless order" in this case is clear: the effect is to debar the Defendant from defending the proceedings at all. As the CPR makes clear at 29.9.2, citing *Michael v Phillips* [2017] EWHC 1084 (QB): "*Subject of course to its precise terms, a debarring order extinguishes any right the debarred defendant would otherwise have to participate in any*

way in the determination of all the issues which fall for determination at that trial".

ii) If an order debars a defendant from defending the proceedings (like the one here), at the trial the defendant should not be permitted to adduce evidence, cross-examine the claimant's witnesses, or make submissions in defence of the claim.

iii) Moreover, the defendant will usually be prevented not just from advancing a positive case, but also from making any submissions that challenge the claimant's case. In *Michael v Phillips*, Soole J at [19] rejected a submission to the contrary by counsel for the defendant:

> *"Nor can the matter be dealt with by the more limited form of involvement that Mr Beresford proposes. Challenges to the cogency of factual and expert witnesses by cross-examination and submission are a major participation in the trial and would be contrary to what the court has decided should not happen. There would be great difficulties for the trial judge in determining where the boundaries lay between such questions and submissions and putting forward an alternative case".*

iv) The prohibition on making submissions (and cross-examining) applies to issues of quantum just as it does to issues of liability. See again Soole J in *Michael v Phillips* [2017] EWHC 1084 (QB) at [19]:

> *"In my judgment, there is no good reason to draw a distinction between issues of liability and quantum. The order debars the first and second defendants from defending the claim. A claim involves issues of both liability and quantum. I can see no principled distinction between the two. In some cases the issues of liability may be relatively straightforward whereas the issues of quantum are extremely complicated. It would not make sense if, notwithstanding a debarring order the defendant was nonetheless able to participate in what was really the meat of the claim".*

v) There appears to be a narrow, residual discretion or trial management power to permit a debarred defendant to take some part in the relevant proceedings. For example, if a debarred defendant considers that a judge is proposing to grant excessive relief based on a misunderstanding of the scope of the claim, the defendant may seek and potentially be granted permission to make submissions on the limited issue of the extent of the pleaded claim; similarly a debarred defendant should normally be able to address the court on the form

of order to be made after the substantive decision on the trial has been made, and on the costs of the proceedings.

vi) The court may also have regard to the nature of the pleaded defence of the debarred defendant for the purposes of understanding the nature and extent of the relevant claim. Indeed, to adopt the phrase adopted by Tomlinson LJ in the second decision of the Court of Appeal in *Thevarajah* , "The relevant defence may have left a lasting legacy on the statements of case as a whole".

vii) But in exercising this narrow power, the court should have regard to the importance of ensuring that a debarring order, which is an important sanction available to the court in the exercise of its case management powers, and an important method of ensuring that the court's case management orders are respected, means what it says and is not undermined by permitting the defendant to escape its effect by purporting to make supposedly “clarificatory” submissions.

viii) Of course, where a defendant is not permitted to participate in the trial, by reason of an order debarring him from defending a claim, the claimant does not automatically win by default. At the trial, the claimant must satisfy the court that he is entitled to the relief sought. In this case is remains for the Claimant to prove her claim and her entitlement to the damages sought.

8. The debarring order is not only an important method of ensuring that the court's case management orders are respected, but it is also of important practical effect as the facts of this case show. Allowing the Defendant in this case to have a limited form of participation at trial by defending both the merits of the claim and quantum of liability, would be unfair to the Claimant. It would allow the Defendant to participate in the trial despite his refusal to comply with court orders concerning disclosure in a case where disclosure is central to the claim. It would allow him to make assertions with impunity as to what happened to the Claimant’s assets (which is what the Defendant wishes to happen in this case: see for example paragraphs 9, 15 of his 10th witness statement and paragraphs 26-29; 31-32; 35-37 of his so-called “Statement of Facts” dated 13 July 2023), knowing that those assertions cannot be tested against the contemporaneous documents because he has failed to comply with the court’s orders as to disclosure.

9. The Defendant has not sought the court's permission to address it at trial in relation to narrow, discrete points. Instead he has sought permission to defend the claim on the merits, both as to liability and quantum. That is impermissible by reason of the debarring order. The Defendant did not seek permission to appeal against the debarring order and it is not open to him now to invite this court to overturn or disregard it.

10. In any event, the tenth witness statement of the Defendant which he has made supposedly in support of his application does not support it. Instead, by this witness statement the Defendant seeks to argue his case on the merits concerning the 2018 Settlement Agreement (including at paragraphs 5,6,8-9, 12, 14-18 in respect of issues which have already been determined against him by HH Judge Pelling KC). He seeks to reargue and repeat his reasons why a debarring order should not have been made, which have already been rejected by Dias J, namely his supposed impecuniosity [paragraphs 22-23; 25.3 and 25.4; 26-28]; the supposed late fixing with lack of notice of the debarring hearing [paragraphs 23-24]; the supposed "extensive disclosure" which he said he had already made and that he had nothing further to disclose [paragraph 25]. He again seeks to argue irrelevant points which are not in issue in these proceedings and once again includes material in his exhibit to his statement which has already been struck out by Cockerill J on 21 January 2022 (such as para 44.12 – 44.14 of item 8 of his exhibit). Finally, as he did before Dias J, he again makes serious and unfounded allegations against professional and experienced solicitors acting for the Claimant.

11. In her judgment, Dias J stated that, so far as disclosure was concerned, she was *"very sceptical indeed that [D] has, in fact, provided everything which he is in a position to provide"* at [21]. Mr. Gibbs has sought before me to reassert his excuses for non-compliance with Jacobs J's order which Dias J rejected. This he has relied upon his 8th witness statement of 15 December 2022 in which he said that his laptop was destroyed by reason of a drink being spilled on it. He suggested in response to questions from me that he had complied with the terms of paragraph 5(iv) of Jacobs J's order concerning Credit Suisse and referred me to an unsigned letter at F/162/724 in that regard. However, that letter itself did not comply with the terms of Jacobs J's order and the Claimant's solicitors wrote to Mr. Gibbs on 6 March 2023 to say so [G/1159]. Mr. Gibbs' response by email dated 13 March 2023 [G/1160] still failed to provide the ordered documentation.

12. As Mr. Attrill rightly pointed out in submissions on behalf of the Claimant, Mr Gibbs provided neither any documents pursuant to Dias J's Unless Order, nor the affidavit in lieu of documents. It is not plausible that Mr Gibbs had none of the documents that the experts asked for. As Mr. Atrill points out, for example, Mr Stern asked for unredacted bank statements for all bank accounts held in the name of any of the entities in the SAM group from 18 April 2018 to date, which must be accessible to Mr Gibbs because (i) he has told the Court that he is the person that manages SAM, and (ii) he has previously disclosed *redacted* versions of SAM's statements. In any event, he could of course have produced an affidavit in lieu of the documents and indeed would have done if he had a good reason for not producing the documents. However, he has not done so.

13. Moreover, in her judgment at [22] Dias J rejected D's assertions, repeated before me, that he was hindered by a lack of offices or staff and by *"limitations of the IT available to him"* including alleged inability to download attachments to emails *"because his computer is not big enough"*, as being *"wholly spurious"*. Dias J also rejected D's claim that his Gmail account was blocked as *"incomprehensible"*.

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14. As to the total failure to comply with the payment order, at the time before the hearing before Dias J, the Defendant was in breach of six payment orders of the Court, totalling more than US$2.8m. The debt and number of unpaid orders is now higher. Again, Dias J rejected D's excuses, finding that the defendant had been *"less than transparent"* about his assets which he had said in his asset disclosure schedule dated 16 February 2021 given in response to the Worldwide Freezing Order made against him exceeded US$50m. Moreover, no documentary evidence has been provided as to where the monies have gone that the Defendant received upon liquidation of certain assets which formed part of the Settlement Agreement. Whilst before me Mr Gibbs pleaded impecuniosity in respect of the unpaid orders, as Mr. Attrill pointed out, if he asked the Claimant whether he could pay these sums out of the frozen funds the answer would obviously be yes. Moreover, he has failed to be transparent about the rental income he is getting from certain of the properties; about his bank account and who the nominee is in respect of the Montenegrin property; and about the sums channelled through his wife's account after the sale of shares in a company called Hubflow, which was only discovered when his wife disclosed her redacted bank account statements and the Claimant's solicitors managed to read the entries beneath the redactions.

15. Mr Gibbs sought to explain this away before me in reply but this explanation should have been put forward long ago so that the claimant could investigate it. Likewise with the production of a letter from Sunseeker at the hearing today which concerned the cost of the yacht.

16. Subsequent to the hearing before Dias J, in the Chancery enforcement proceedings to which I have referred before Deputy Master Linwood, the Defendant again maintained that he was impecunious. He also sought to reconcile his excuses for his failure to give disclosure with the fact that he admitted corresponding with third parties on his Gmail account. The Deputy Master rejected the Defendant's account as wholly untruthful, stating as follows in his judgment:

"*Mr Gibbs gave his evidence with bluster, swagger and confidence. However, I could not believe much of what he told me was true. He was also at times evasive and prone to exaggeration or manipulation. I set out some examples below [… one such example:] Under cross-examination Mr Gibbs admitted corresponding with third parties via his Gmail account. He tried to excuse this by saying he managed it occasionally by deleting large amounts of data to free up space to enable it to be usable again. His witness statement, in which he confirmed is true on oath, was therefore untrue*." [at 40-42]

And:

"*Of especial importance in his [the Defendant's] attempts to mislead the court is over the movement of cash and assets. I have mentioned the payments to and from Mrs Gibbs' account, but substantial funds were received by him following the JPR investment share sale, the purchase of shares in Hub Flow, albeit he says for a third party he did not wish to name, the sale for Euros 675,000 of a property in Montenegro, which I am satisfied he attempted conceal from the claimant, and also his failure to disclose further receipt of £700,000 following his sale of his shares in Gibbs Gillespie*." [at 50]

And finally, in relation to the Defendant's non-payment of the costs orders in these proceedings which are also the subject of the Debarring Order that:

"[…] Mr Gibbs says he wishes to pay but provides a litany of excuses as to why he has not been able to. It is remarkable that, notwithstanding all the assets listed in his

disclosure at the time of the worldwide freezing order and disposal of certain assets, not a penny has been paid. … This, therefore, is a simple refusal to pay the claimant. It is a serious and contumacious default which is over one year old." [81-82]

17. These are serious findings of dishonesty in relation to the very matters which formed the subject matter of the debarring orders. The Defendant seeks to reargue these points before yet another court, namely this court. He is not entitled to do so.

18. Accordingly I dismiss the Application to Defend.

19. I add that the Defendant seeks permission to bring what he calls a counterclaim on the last two pages of his "statement of facts" of 13 July 2023. However, as to this:

    (1) In paragraph 32.1 he refers to his fees (i.e costs) of the discontinuance of the Primary Claims of the First and Second Claimants. This has already been provided for by order of HHJ Pelling KC in paragraph 3 of his Order of 11 July 2022 [Trial bundle B, vol 1/tab 17/p. 53], in which the Judge ordered that those costs shall be assessed upon a detailed assessment at the conclusion of these proceedings and the Defendant was granted permission to apply for an interim payment on account of those Discontinuance costs. However, he did so apply before Andrew Baker J on 5 December 2023 and his application was dismissed. So there cannot be a counterclaim for the Discontinuance cost in whole or in part.

    (2) In paragraph 32.2 he seeks £5.2m for fees and expenses for dealing with the funds and properties over 12 years for the four princesses. However, it is far too late to seek to advance this unparticularised, unpleaded claim, for which no legal basis is advanced and which in any event falls within the scope of the debarring order, as it is no doubt relied upon as a set off to the Claim in that it reduces the sums which the defendant claims he is obliged to pay the Claimant.

(3) I make the same observations in respect of paragraphs 32.3 to 32.6. It is far too late to seek to raise these unparticularised and unpleaded claims which fall within the scope of the debarring order. Moreover, the allegations in paragraphs 32.3, 32.4 and 32.5 are advanced against Prince Khaled who is no longer a party to this action in any event. It is accordingly not possible to bring a counterclaim against him.

20. I accordingly refuse the Defendant permission to bring this counterclaim.