IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Case No. KA-2023-000062
Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 31st March 2023

[2023] EWHC 3514 (KB)

Before:
MASTER MCCLOUD

B E T W E E N:

AWAN & ORS

and

MSSRS EMW LAW & ANOR

MR AWAN appeared In Person
MR C TROMAN and MR J FOLKARD appeared on behalf of the Defendants

JUDGMENT
(Approved)

MASTER MCCLOUD:

1. This is an application by the claimant to vary an order that I made by which I set a timetable for inter alia as to service of particulars of claim.

2. The dates, which were spelled out explicitly as calendar dates, by counsel when producing the minute reflected what I had said at the hearing in terms of the relative separation of dates in the timetable and as is normal for just about every judge, I think, when one sets an order, one uses calendar dates and counsel correctly interpreted what I had said and inserted dates by way of calendar dates in the order.

3. Mr Awan says, "Well those dates are wrong. CPR 2.8 means that they should be clear days". However, as Mr Folkard, I believe, but possibly both counsel said really rule 2.8 does not assist Mr Awan here because the order drawn and sealed contained specific dates. Those dates were missed by him. I then later struck out the case. At the hearing when I struck it out, it was conceded that the application for relief was itself a day late.

4. Leaving all that to one side, this is a matter which has been to a first appeal, which was dismissed and also there was an attempt at a second appeal. Now, I am going to take things slightly out of order perhaps, but the application to vary, which I have today, was made in virtually identical terms to the Court of Appeal at the time of the effort to make a second appeal. Not only that but it was relied upon in the appeal itself. Therefore, there was an application, but there was also argument in the appeal to vary my order, and that was dismissed expressly in reliance on the arguments on the skeleton which were put forward then, and Davies LJ dismissed that expressly.

5. It is an abuse of process to "have another go" and to pursue this application before me now and it is plainly an abuse of process. That by itself, in my judgment, renders this an application totally without merit.

6. This could alternatively have been raised with me before the order was perfected but it seems to me that at page 46, for example, there was some dispute over the order but not on this point. This was not raised by anyone let alone Mr Awan and he could and should have raised it then and did not.

7. It could and should have been raised at the strike out stage and indeed at the strike out stage, instead it was conceded that the application was made a day late, that the application proceeded on the basis of the dates in the order. Mr Awan proceeded on that footing. It does not avail him to say he is not a lawyer. He can get lawyers and he has demonstrated he can and he is also well able to marshal his arguments.

8. It could have been raised also at the first appeal where Mr Awan was represented by counsel and where the facts were, through counsel, agreed, including as to these timings in the form of the order and so on. That raises a point under the *Henderson v Henderson* (1843) 3 Hare 100, 67 ER 313 case.

9. Alternatively, it could have been raised at the second appeal, and actually was so raised, and was dismissed.

10. Even if all of that is ignored, even if this was now in front of me and we had not had all of that history, I consider that this order reflects my intention. There is no "slip" here. It is quite clear that this order reflects my intention, and I sent it for sealing on that basis.

11. It is also, for the avoidance of doubt, abundantly clear that Mr Folkard has not, at any stage, conceded any form of error by him as is alleged. There was no error on his part. He certainly never conceded it and to suggest otherwise is a misrepresentation of what he has said in his skeleton, on the face of the skeleton, frankly.

12. Therefore, for all those reasons, this application itself is totally without merit. It is an abuse of process and I dismiss it.

13. In parallel, there is a second set of proceedings. Those have been issued in the Chancery Division. They were noticed by the Master there, transferred over here to the QB and drawn to my attention and assigned to me. They are, and it is accepted that they are "another go", they are relitigating this case.

14. Those proceedings have not been served. There is a pending application for extension of time for service, otherwise but for that application they have expired because four months have passed and I was told very frankly that the purpose for that is to ensure that something can be shown to the Bankruptcy Insolvency Judge because there is a statutory demand which is aimed at bankrupting the claimant based on unpaid costs orders. The issued claim therefore seeks to set up evidence of a dispute.

15. The application to extend time per se is not strictly listed today but I did email the parties today saying that I would want to be in a position to consider that. I shall say exactly what I said in my message.

16. 10am this morning. "Thank you, noted". (It was a reply to Mr Awan but it went to everyone). "*I will of course wish to deal with matters arising in relation to claim KB-2023-001068…*" - that is the new case number for what used to be the Chancery case – "*…which you issued recently in the Chancery Division against the same defendants and which, as one would expect, has been transferred to the KBD and assigned to me*".

17. It is said that is not an abuse of process for the Claimant to issue a new claim in this way. It was issued within the limitation period and of course my strike out was not a strike out originally for abuse of process. It was a procedural strike out. It is of course not necessarily in every case that it follows that it is an abuse of process to issue another case. I must consider whether in this case it is.

18. However, I am going to take a step back from this though and I am going to consider this effectively of my own motion, and I have given the opportunity for submissions to be made.

19. This is a case which has been right through the appeal process. It is one where my original timetabling was tight in part because of the passage of time, and I noted that witnesses can forget evidence so time was important. There is a basic principle that a party is entitled to know when the litigation is over. There is meant to be finality and it seems to me that the issuing of a second case in identical form for the purely tactical purpose, evidently, of

showing the Insolvency Judge that there is still some dispute, is itself an abuse of process given all the prior history and attempted appeals.

20. I will accordingly refuse to extend time and I am going to, in any event, strike out that claim for abuse of process. It seems to me that as a pretty obvious abuse of process, it is also a matter which was totally without merit and in those circumstances that second case is also struck out.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiqus.com

Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof

This transcript has been approved by the judge.