Neutral Citation Number: [2025] EWHC 138 (KB)

Case No: KA-2023-000096

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 January 2025

Before :

MRS JUSTICE FOSTER

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Between :

HELIUS MEDIA LIMITED	**Claimant/Respondent**
- and -	
(1) LIKE FUTURES LIMITED (IN LIQUIDATION)	**Defendant/Appellant**
(2) RYAN LEWIS DAVIES	
(3) IAN ROBERT DAVIES	

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Mr Ian Davis in person for the Second and Third Defendants

Hearing dates: 14 May 2024

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JUDGMENT

1. These are the written reasons for an application for permission that was refused on 14 May 2024.

2. This is an application for permission to appeal an order of HHJ Hellman made on 26 April 2023. It is made by the second defendant who alone has signed the notice of appeal which by rule 52.12 (2) (b) was due to be filed on 17 May 2023 but appears to be marked 6 June 2023. Notwithstanding this and certain inadequacies of process no reliance is placed on these matters in this judgment: the substance of the application has been dealt with on its merits as if all that required to be done had been properly done.

3. The second defendant was at the material time a director of the first defendant, ceasing to be so on 15 March 2023. The first defendant was ordered to be wound up on 4 October 2023 upon the claimant's petition. On 8 November 2023, an application to rescind the winding up was dismissed in the insolvency and companies court. The third defendant remained a director until winding up.

4. The official receiver does not appear before me nor has he made any submissions in this appeal. Neither the company nor the third defendant appear to have any involvement in the appeal.

5. As to this application, between the 24th and 26 April 2023, the judge heard a claim by Helius media Ltd for unpaid deferred consideration against Like Futures Ltd and the second defendant Mr Ryan Davies and third defendant Mr Ian Davies under a Settlement Agreement.

6. The claim against the second and third defendants was as guarantors of the first defendant's obligations pursuant to a guarantee and indemnity dated, like the contract, 18 May 2020. All three together with certain others, were parties to the contract.

7. Following trial the judge concluded among other matters, in respect of the sum of £140,000 plus interest and costs claimed under the settlement contract:

    a. against the first defendant company, that the money was due and owing as alleged, in spite of the defendant's assertions that the Settlement Agreement was a forgery and that another and different draft was the effective agreement between the parties,

    b. that the second and third defendants were liable as guarantors, in spite of their argument that the guarantee did not refer to the Settlement Agreement about to the other draft, and that the Guarantee was avoidable for misrepresentation because of an alleged breach by or on behalf of the claimants in respect of the other draft.

8. Accordingly, the judge determined that the first, second and third defendants were jointly and severally liable in the sum of £140,000 and £11,130 odd interest. Various other orders were made concerning her interest and various sums. Costs were ordered on the indemnity basis, and were apportioned and assessed.

9. This application for permission asserts that the defendants did not receive a fair trial, that Article 6 was infringed, and appears also to make a number of complaints about the manner in which the Judge dealt with the hearing.

10. The judge heard counsel for the Claimant, the second defendant Mr Ryan Davies in person and permitted Ryan Davies to represent the third defendant Ian Davies.

11. The complaints made are it, in essence, the following, as taken from the Grounds of Appeal:

    a) generally, the hearing was unfair and contrary to natural justice
    b) the judge ought to have adjourned the trial on the first day when an application to do so was made, or on the second day when the application was renewed
    c) an application for security for costs of legal representation ought to have been heard even though it was not listed before the judge – they wanted to have representation without the risk of not recovering the costs in the event they succeeded in trial
    d) annotation of materials with page references ought not to have been allowed, and the claimant's exhibits to witness statements ought not to have been allowed in evidence since they were not served in a fair manner – and they should have been properly proved
    e) discrepancies in the trial bundle would mean the claimant's evidence was flawed and "the whole record was questionable" this they said was suspicious [I paraphrase]
    f) there were also suspicions about the original document which the claimant said they had signed – the defendants said that suppression of documents had taken place
    g) there were problems with documents that had references written in
    h) the defendants should have been allowed to contend that the claimant's email evidence had been edited/added to/removed or reordered - all of which raised suspicions, this was important and the court ought to assume the claimant had left out [it is to be assumed deliberately] a crucial document.
    i) There were suspicions concerning the bundle, and examples of editing the evidence showed this to be the case and this proved that the claimant's documentary evidence had been "deliberately doctored"
    j) the defendants ought to have had a chance to cross examine both of the claimants witnesses but the documents were not in court; however it is also said the defendants could not be expected fairly to cross-examine in the circumstances.
    k) Insufficient time was given to allow the defendants to check the references that had been written into documents

12. All of the above it was submitted meant that the defendants' rights were "grossly and unjustifiably compromised." Further, the judge wrongly refused to hear from the second defendant about his qualifications as an expert in IT and wanted to use his expertise to show the claimant's evidence had been doctored. The judge "wrongly substituted his own views" to explain away the evidence of doctoring.

13. In any event even if the case was heard fairly, it is submitted that the claimant's entire case "was so bad that it ought to have been struck out."

14. An interim stay of the Order appealed against is also sought.
15. Mr Davies addressed me in person on these grounds on behalf of the second and third defendants, submitting that during the trial the bundle was "vastly different" from what was expected, and that there was evidence missing, the numbering was different, and he had stayed up till 4 am reading it, but it was not what the second and third defendants had expected – including as to the contract. Mr Davis asserted there were also emails missing and they asked for an adjournment and ought to have been given one. They wanted representation, and also security for costs, he felt the treatment of all of these issues by the judge was unfair.

16. Even though they had chosen earlier not to participate, they ought to have been allowed to then.

17. Their case on the documents, which they were given, was that the emails had been changed – the name had been changed and there were edits which were to their disadvantage: Mr Davis asserted there had been a fraud about the course of a particular discussion in the case. I put to Mr Davis that this case had been put to the judge, who dealt with it and no analytical or other error had been pointed out in the course of his rejection of their arguments. Mr Davis argued that the two witnesses who gave evidence were dishonest, and what they said contradicted the paper evidence. The burden of Mr Davis's submissions was that the judgment should be regarded as a nullity, because of the way the judge handled it, further, and unfairly, the judge did not accept what Mr Davis asserted as to the formatting of certain documents revealing the fact that they were frauds.

CONSIDERATION

18. The judge gave a detailed final order in which he indicated that he had permitted the second defendant to represent the first defendant.

19. He had ruled on the defendants' application to adjourn, having heard preliminary matters, by adjourning it into the next morning. The claimant was ordered to file and serve an annotated copy of the witness statements marked with the location of the exhibits in the trial bundle, which they did by about the end of the morning.

20. The judge records that he heard oral evidence from two witnesses and that he had inspected the original counterparts of the settlement agreement, guarantees and indemnities.

21. The judge records that the second and third defendants declined to cross examine the two witnesses further, the second and third defendants declined to give oral evidence or to tender themselves for cross examination. Accordingly, the trial took place without the defendants putting forward their case or taking part in the trial.

22. Insofar as this application seeks to challenge the substance of the judgement, the following findings are of relevance.

23. The judge examined the Settlement Agreement stating that on the face of it, it had been duly executed and signed as a deed by the relevant persons including the second and third defendants. Some monies, namely £35,000 under clause 3.2.1 had been paid

under it, but £140,000 was still due under other clauses. He recorded that the validity of the emails dealing with the formation of this contract were challenged – the judge examined them, he cites them and records that he heard evidence from the two claimants witnesses on the formation of the contract. They spoke also of the defendants signing the contract - the judge detailed the wet signature process and the handing over. He indicated that the evidence from the contemporaneous emails supported the claimant's case as to the version of the contract in force. Importantly, he recorded that the authenticity of the emails was challenged, however, having considered the evidence there was no reason to doubt their authenticity.

24. I can find here no arguable error of reasoning nor challengeable finding of fact that is sustainable on the basis of the judge's analysis, given the basis of the evidence he saw and heard. He noted that, significantly, the defendants chose not to challenge the evidence about the signing of the contract and other matters in cross-examination. Had they wished to challenge, they should have done so [See paragraph 64 the judgment].

25. There was nothing therefore to disturb the judge's acceptance of the evidence supporting the claimant's case. The judge also accepted the claimant's case on the guarantee as valid and enforceable and not founded upon a misrepresentation. There is nothing to suggest his findings on this are arguably wrong.

26. The burden of the challenge on application for permission to appeal was the alleged unfairness of the trial. It is towards the end of his judgment that the judge deals with the matters which are primarily under challenge. He says the following

> *" 96. On the first morning of the trial I considered an application by all three Defendants for an adjournment. This was the subject of a separate ruling which I gave earlier in this trial. I declined to adjourn the trial altogether but put it back to the start of the next day. I directed that Mr Cutler, for the benefit of the Defendants and the court, should mark up the witness statements of Mr Taylor and Mr Coates so that the documents mentioned in those statements were cross-referenced with the relevant page numbers in the trial bundle, rather than the relevant page numbers in the exhibits to the witness statements, as the exhibit page numbers were not included in the trial bundle. This exercise was completed by around lunchtime on the first day of the trial and the Defendants and the court were supplied with copies of the marked-up witness statements.*
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> *97. I declined to re-open the adjournment application the following morning. In protest, the Defendants chose not to participate further in the trial. The Second Defendant – who represented himself and the First Defendant – and the Third Defendant both declined to cross-examine either of the Claimant's witnesses. They refused to give oral evidence and submit themselves to cross-examination, as a result of which I acceded to Mr Cutler's application to exclude their witness statements. This was somewhat ironic as on the first morning of the trial I had allowed the Second and Third Defendants' applications for relief from sanctions to admit their witness statements, even though both statements were filed considerably out of time. I gave a separate ruling on the application to exclude their witness statements earlier in this trial.*
>
> *98. The Defendants declined to make any closing submissions. Instead, the Second Defendant read out a short, prepared statement on behalf of all three Defendants, complaining that they had not received a fair trial, alleging that the proceedings were a mistrial, confirming that they stood by their pleadings, answers to the Claimant's Part*

> *18 questions, and any other documents filed on their behalf during the course of these proceedings. They contended that the Claimant's case was so bad it ought to be struck out, and that therefore the claim should be dismissed with costs.*
>
> *99. At every stage of this trial the Defendants have been encouraged to participate. As noted above, they were given extra preparation time to enable them better to do so. It is regrettable they chose not to engage with the trial process. Their failure to do so has made the court's task that much more difficult. I have, nonetheless, considered their pleaded cases on the merits.*
>
> *100. For the reasons given above, the claim succeeds. I find that under the Contract the First Defendant is indebted to the Claimant in the sum of £140,000. The Second and Third Defendants are jointly and severally liable under the Guarantee to indemnify the Claimant in respect of this sum."*

27. As was pointed out by Sir Stephen Stewart when refusing permission on paper, as to the adjournment application on Day 1, submissions were made on three bases of which the main one was the exhibits. The other bases were dealt with "sensibly and pragmatically" by the judge in his ruling. I agree. I agree also that detailed submissions on the exhibits point were heard, and the judge did not discount the exhibits point – indeed he recorded that there was "some substance in it." He gave detailed reasons for his decision to adjourn Day 1 of the trial to allow annotation.

28. I also agree that this was a decision consistent with the overriding objective under the CPR. The appeal court will not readily interfere with a judge's discretion in this context and there is, in my judgement, no real prospect of arguing successfully either that the Judge erred in law or procedurally went appealably wrong when adjourning the case to the following day.

29. There is no arguable unfairness in the judge's refusal to reopen the adjournment application made on the morning of Day 2; this followed written submissions sent to the Judge which Helius only saw just before the hearing.

30. As indicated by Sir Stephen, the approach of the judge was justified -the matters could be the subject of cross-examination, but the defendants in fact chose not to exercise that right, nor to give evidence. If they had, they could have made a further application later if they believed, nonetheless, one were needed. I agree with Sir Stephen's reasons for refusal- the defendants chose what he called "*a path of substantial non-participation*" accordingly, after a ruling which was within the Judge's discretion, they cannot successfully complain of a breach of their rights arising under Article 6.

31. The conduct at trial came after a catalogue of procedural failures by the defendants which it is difficult to interpret as other than an attempt to stymie or derail the legal proceedings against them. The third witness statement of Mr Johannes Duminy, solicitor with conduct of the matter on behalf of the claimants, sets out a chronology of these failures in paragraph 21 (it was a statement to support an application made in February 2023 for summary judgment).

32. The position is described by him as demonstrating a vexatious disregard for the court process and the efficient conduct of proceedings. I agree with this assessment. Examples of what he relied upon are:

    a) The Defendants filed their Directions Questionnaire late
    b) They failed to respond to Part 18 questions until compelled by an Unless Order
    c) They failed to pay almost £6,000 under a costs Order until another Unless Order 23 Jan 2023
    d) There was a continuing failure to pay that January Order and another made in February 2023
    e) The disclosure list was 25 days late
    f) Copy documents had been outstanding for over three months

33. This behaviour appears to be of a piece with the defendants' behaviour at trial. If the defendants suffered disadvantage or difficulty it was of their own choice and making. As the judge noted and is set out above, at every stage the defendants had been encouraged to participate and it is regrettable they chose not to engage with the trial process.

34. As to the complaint about the defendants' purported security for costs application, it was never issued nor set down, it was just made on the first day of trial. Had it been acceded to it would have been unfair and disproportionate, the judge made no arguable error.

35. There is in my judgement no reason to impugn the judge's approach to any of the procedural matters raised. His conclusions were rational and fair and within his discretion. His assessment of the evidence was entirely open to him – particularly in light of the defendants' refusal to participate fully. Likewise his approach to the wish of one of the defendants to be treated as an expert – there had been none of the proper procedures followed nor could the court possibly treat the proposed evidence as of assistance in the circumstances - as set out in the refusal of permission on paper.

36. I have carefully considered the written grounds and the oral submissions, recognising that Mr Davis appeared in person. There is nothing here that presents any arguable point for an appeal, and the application for permission and for a stay must fail.