Neutral Citation Number: [2020] EWHC 3628 (QB)

Case No: FJ22/19

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/12/2020

Before :

MR JUSTICE EDIS

- -

Between :

COBUSSEN PRINCIPAL INVESTMENT HOLDINGS LIMITED	**Claimant**
- and –	
(1) GHOUSE AKBAR **(2) LEGACY HOLDINGS LIMITED** **(3) MEHREEN AKBAR**	**Defendant**

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James Weale (instructed by **DWFM Beckman**) for the **Claimant**
William Edwards (instructed by **DWF Law**) for the **First Defendant**
Lisa Lacob (instructed by **DWF Law**) for the **First Defendant**

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Covid-19 Protocol. This judgment was handed down by the judge remotely by circulation to the parties representatives by email and release to BAILII. The date of the hand-down is deemed to be as shown above.

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

MR JUSTICE EDIS

Mr Justice Edis :

1. This is my ruling on the post-judgment issues in relation to the form of the order and costs. Following the hand down of the judgment on 21 October 2020, see [2020] EWHC 2805 (QB), I have received written submissions from all four parties and have decided to deal with the outstanding issues without a further hearing. My first judgment on disclosure, see [2020] EWHC 476 (QB), handed down on 2 March 2020 is also relevant. I shall not repeat anything which appears in those judgments.

2. In summary, the issues I have to resolve are

Costs

i) Whether the costs order against Mr. Akbar should be made for the determination of the claimant's costs on the indemnity or the standard basis.

ii) What is the consequence of offers made on 24th and 26th July by DWF on behalf of Mr. Akbar which were marked "Without Prejudice Save as to Costs"?

iii) Whether the costs order against Legacy Holdings Limited should be made for the determination of the claimant's costs on the indemnity or the standard basis.

iv) What, if any, costs order should be made against Mrs. Akbar.

v) What, if any, order should be made for a payment on account of costs in favour of the claimant.

Form of order

vi) Whether the Order should contain a recital referring to the applications which have been or may be made against DWF and/or Equiom for costs either as wasted costs, or as costs against a non-party.

vii) Whether a declaration should be made which declares that Mr. Akbar is "the sole beneficial owner of the Second Defendant (Legacy Holdings Limited)".

The basis of the assessment of the costs orders against Mr. Akbar and Legacy

3. The parties are broadly in agreement about the well-known principles to be applied when considering whether to award costs to be assessed on the indemnity basis or on the standard basis. They have drawn to my attention a number of authorities in which those principles are explained. I shall gratefully adopt Chief Master Marsh's pithy summary in *Galazi v Christoforou* [2019] EWHC 670 (Ch) as follows (at §75):

> "The court has power to order that costs should be paid on the *indemnity* basis where there is something in the conduct of the claim or the circumstances of the claim which takes the case out of the norm: *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Hammer Aspden & Johnson (a firm)* [2002] EWCA Civ 879 at [39] per Waller LJ. It is not necessary for there to have been some sort of lack of moral

probity or conduct deserving moral condemnation on the part of the paying party: *Reid Minty (a firm) v Taylor* [2011] EWCA Civ 1723 at [27] per May LJ."

4. The matters which are relied on as taking the present case out of the norm are:-

   i) Against both Mr. Akbar and Legacy their dishonesty in the defence of the claim; and

   ii) Against both Mr. Akbar and Legacy the failures in disclosure, and the pattern of very late service of evidence throughout the proceedings.

5. In my main judgment, I found unambiguously that Mr. Akbar had lied on fundamental matters throughout the proceedings. I made no such finding against any director of Legacy. I was critical of DWF, who acted for both Mr. Akbar and Legacy, both in my disclosure judgment and in my substantive judgment following the trial. I was also critical of Legacy's first disclosure statement which I found was not dishonest, but was nevertheless misleading.

6. There is, therefore, a significant difference between the position so far as Mr. Akbar is concerned and that of Legacy, at least as far as the culpability of its current corporate director is concerned. Mr. Akbar mounted a defence which he knew to be false. Equiom caused or permitted Legacy to mount a defence which may have been true, so far as the Equiom was aware. Equiom did not really know whether it was true or not, but ran it anyway. Equiom never managed to obtain the most significant documents from their predecessors as professional directors of Legacy and trustees of what became the Garden Trust, see Ms. Laura Brown's acceptance of this fact recorded in paragraph [36] of the main judgment. When they assumed those roles the Equiom companies were given the bare bones of the structure. I describe the defence of Legacy in these proceedings at [10] of my main judgment. It contains some assertions which the Equiom directors may have believed to be true, but where there was no real basis for that belief. At [16(xi)ff] of the main judgment I give a summary of the efforts of Equiom to catch up with their failure to address compliance issues to their own satisfaction in 2016 when they took over from EFG. This failure continued until at least 2019 and was still unresolved at the date of Mr. Isaacs' witness statement referred to in paragraph [16](xiv)]. Mr. Isaacs was Legacy's solicitor and was acting therefore on the instructions of Equiom as Legacy's director. Paragraph 16[xv] of the judgment identifies an "unprepossessing contrast" between the reality as known to Equiom and its case as advanced in these proceedings. The summary of Laura Brown's evidence at paragraphs [36]-[38] explains the gaps in my knowledge after the trial of relevant events which she did not fill and at paragraph [43] I find that her evidence was "unsatisfactory".

7. I awarded the claimant its costs of the disclosure application before me, but that order covered only the costs of that application. Other costs, including reserved costs of an application determined by Kerr J, have been incurred since my first costs order and these, I am sure, have been significantly increased because of Mr. Akbar's dishonest approach to disclosure and Equiom's negligent approach to disclosure on behalf of Legacy. That is a material factor in which both defendants are culpable although to a different extent. The way in which these proceedings were affected by late service of

evidence just before relevant hearings is also relevant to the question of the basis on which costs should be assessed.

8. I have no doubt at all that Mr. Akbar's conduct of these proceedings as described in my two earlier judgments is "out of the norm". His defence was based on lies and was conducted in a way which sometimes verged on contempt for the proper way of conducting civil litigation in this jurisdiction. I will award the claimant its costs of these proceedings against him and they will be assessed on the indemnity basis.

9. In considering this issue in Legacy's case, I have found that Equiom believed that its defence may have been true, but did not really know, and made almost no productive enquiries of its predecessors (Citibank and EFG) to find out what Legacy had known or believed during their periods in office as its directors and as trustees of the trust which held its single issued share. That is the time when all relevant events happened. It is, I find, fair to say that Equiom did very little to inform itself of the truth of its defence which actually relied on the word of Mr. Akbar. They had to choose whether to rely on him in these proceedings and they chose to do so, as long as he indemnified them for their costs. I consider that the conduct of these proceedings by Equiom was culpable in the ways I have briefly summarised above, and more completely explained in my earlier judgments. Dishonesty is not a necessary condition for the making of an order for indemnity costs, but failures of this kind by a professional directors are "out of the norm", or at least I very much hope they are.

10. In any event, I am dealing with the basis of assessment of a costs order against Legacy, not Equiom. Although Equiom did not come into the picture until 2016, Legacy existed throughout. Legacy did not give disclosure of the complete records held by the Citibank and EFG which were the groups providing the companies which acted as directors of the company and trustees of the trust. Therefore, I do not know what Legacy's "state of knowledge" was during those periods. That is because of the failure of Legacy to produce relevant evidence going to that issue.

11. The final relevant point in my judgment follows from what I have just said and from my factual finding at paragraph [43] of the main judgment. For all practical purposes Legacy is Mr. Akbar. It would ignore this reality to award costs against him on one basis and against his company on another. I therefore do award costs against Legacy also on the indemnity basis.

The relevance of the offers of 24 and 26 July

12. By emails on these dates DWF on behalf of the defendants made offers which were without prejudice save as to costs which would, if accepted, have resulted in the trial being vacated. The scheme which was proposed was that "our clients" would be allowed a short but unspecified period of time to pay the BVI judgment debt in full, and if they failed to do so they would cease to resist the application for the charging order to be made final. It is submitted that if these offers had been accepted the claimant would have either done far better than he could do in these proceedings, because the judgment debt is greater than the value of the Property, or he would have done as well.

13. I have no evidence as to why these offers were not accepted. I must therefore decide whether they ought to have been, and if so, how that should impact on the costs order.

14. The first point is that the offers were very late. This is true not only in the sense that they were made within just a few days of the start of the trial, but also in the sense that Mr. Akbar was offering to pay a sum of money which he had agreed to pay in the Tomlin Order nearly two years earlier. That debt had been enforceable in this jurisdiction since 20 February 2019, 18 months before these offers to pay it.

15. Secondly, the letters are very unclear about who, exactly, is making the offer. DWF, who wrote them, acted for Mr. Akbar and Legacy. The first letter uses the word "clients" in the plural but also refers to the person making the offer as "him". The offer is described in this extract:-

> (a) to give our clients a short period of time in which to finalise arrangements for a transfer to your client of shares and the net proceeds of a bank loan together totalling the value of what was owed under the BVI Tomlin Order, but on the basis that:
>
> (b) if that if either of those transactions could not be done for any reason within that short timeframe, our clients effectively would give your client everything which he could expect to achieve from these proceedings (i.e. by not opposing the charging order application, nor order for sale, albeit with <u>him</u> having an option, in place of the sale, to pay an equivalent amount to your client to what your client would receive from the property sale i.e. net sale proceeds less an existing charge, based upon an independent valuation).

The second letter simply refers to the person making the offer as "clients", plural. Both these letters described these "clients" as being in the process of making arrangements for the payment of the BVI judgment debt by the transfer of shares and a bank loan. There is no explanation of why the directors of Legacy (a company which owns no shares) would be going to all this trouble to pay Mr. Akbar's personal debt which, on their joint case, had nothing to do with Legacy at all. Why would they abandon their interest in the Property, the company's only asset, because Mr. Akbar had failed to pay his debt? This is unexplained. If nothing else these offer letters demonstrate that my finding at paragraph [43] of the main judgment is absolutely true, and both Mr. Akbar and Legacy well knew it in the days before they fought a trial trying to persuade me to come to another conclusion. If there is regulatory interest in the conduct of Equiom, these letters should be drawn to the attention of the Regulator.

16. Acceptance of the offer would have resulted in the loss of the trial date in return for a promise to do something within a "short timeframe" which Mr. Akbar had been obliged to do for nearly two years and had failed to do. That debt itself arose out of what became uncontested allegations of fraud against him. His conduct of these proceedings has been described above, and trying to avoid them ever ending is a feature of it. If the offer was rejected on the basis that it would succeed only in putting off the day of reckoning in return for assurances which would probably turn out to be worthless, that would have been an entirely reasonable approach to take.

17. Finally, the suggestion that acceptance of the offer would give the claimant "everything which he could expect to achieve from these proceedings" is not true. There is no offer to pay the costs of the proceedings which were, on any view, very considerable by that date.

18. Accordingly, except for the additional light these offers shed on the true nature of the relationship between Mr. Akbar and Legacy, I decline to give them any weight in dealing with any of the issues I have to decide.

The interim payment on account of costs

19. I shall, in accordance with the normal practice order an interim payment on account of the costs. It does seem to me that the claimant's bill of costs is very substantial and that it is not presented in a way which makes it easy to form a view, even provisionally, about how much is likely to be recovered. A statement of Mr. Sohail's personal account with the claimant's solicitors is not the same thing as a costs schedule showing the costs which the claimant has incurred in the prosecution of these proceedings. I note that the costs order which I made in respect of the disclosure application in the sum of £35,828.00 on 24 August 2020. The absence of a costs schedule means that I have no way of knowing which items have been covered by that sum, and what remains outstanding and why. I intend therefore to take a precautionary approach to the interim payment and will order an interim payment on account of £175,000 by 31st January 2021.

Mrs. Akbar: the 3rd Defendant

20. In July 2019, at the first hearing of these proceedings, Mrs. Akbar was served with the proceedings very shortly before the hearing on 30 July 2019, and she indicated an intention to oppose the making of a charging order. At that hearing she was directed to file and serve, if so advised, points of defence by 23 August 2019. She did not do so. Instead her solicitors wrote to the claimant on that date as follows:-

> Further to the Order of 30 July 2019 our client, having now had the opportunity to fully consider the matter, has decided not to serve points of defence or to continue to contest the proceedings.
>
> If you are agreeable we will submit a draft order removing our client from the proceedings. We would suggest there be no costs order as our client's involvement was very limited and does not appear to have caused your client more than incidental time spent. If this is acceptable we will forward a draft.

21. Accoring to her solicitor's, no reply was received to this letter, despite reminds, until 24 July 2020 when this rather mysterious letter was sent by the claimant's solicitors:-

> Your client remains a party to the proceedings having applied to join. We note that she has not advanced any positive case since joining and out clients rights on costs are fully reserved..

22. It was pointed out that this was not really a reply to the proposal of 23rd August 2019, but nothing further was heard.

23. Mrs. Akbar's lack of participation in these proceedings is recorded in paragraph [1] of the main judgment.

24. I regret to say that in these circumstances, the claimant's application for costs against Mrs. Akbar is wholly without merit. She has done nothing in regard to her being involved in the proceedings since 23rd August 2019 and the claimant has not even troubled to answer her letters, and so has done even less. Prior to that date she did nothing which could have added in any material way to the costs of the claimant in dealing with the other two defendants. There will therefore be no order for costs against Mrs. Akbar.

The Form of the Order

25. The second paragraph in the prayer for relief seeks "A declaration that the First Respondent is the beneficial owner of the Second Respondent".

26. In paragraph [45] of the main judgment I identify this claim as one of the issues which I intended to resolve. In paragraph [51] I did so, saying "for these reasons I grant the declarations sought by Cobussen".

27. It is pointed out this this should properly be expressed as a "declaration that the First Respondent is the beneficial owner of the entirety of the shareholding in the Second Respondent". So be it.

28. I agree that there is no need for a recital in the order to refer to the making of claims for costs against DWF or Equiom. Those applications should be pursued, if so advised, in accordance with the CPR and the directions which will be given on application to the court.