TRANSCRIPT OF PROCEEDINGS

Case Numbers. BL-2018-000544
BL-2019-000304
BL-2018-002541

NEUTRAL CITATION NUMBER:[2020] EWHC 1739 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

7 Rolls Buildings
Fetter Lane
London EC4 1NL

Before THE HONOURABLE MR JUSTICE ZACAROLI

BETWEEN:-

TONSTATE GROUP LIMITED & OTHERS (Claimants)

- v -

EDWARD WOJAKOVSKI & OTHERS (Defendants)

MR A FULTON appeared on behalf of the Claimants
MR M HAQUE QC appeared on behalf of the Defendants

APPROVED JUDGMENT
4th MAY 2020

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MR JUSTICE ZACAROLI:

1. I am asked, on the application of Mr Wojakovski, to direct that the proceedings in relation to the account be heard at the same time as the pending trial in the shares claim, which is now listed for June this year. A preliminary point is taken, but not pressed hard by Mr Fulton on behalf of the claimants, that Mr Wojakovski should be precluded from making this application because he remains in contempt of court, being in breach, in particular, of the previous proprietary injunction.

2. This issue raises an important question of case management in relation to the trial, and I do not think it is appropriate to shut out Mr Wojakovski from raising it.

3. Looking at the substance of the application, it is common ground that there is a substantial degree of overlap between the issues to be determined on the account and the issues that will be raised at the trial in June.

4. The trial, however, is about overarching issues of entitlement to the shares and to an indemnity and an overarching arrangement termed by the parties a "Hechbon". It is not concerned with the details of the payments made. A lot hangs on the resolution of those overarching points because if Mr Wojakovski is and remains a 50% shareholder in the entire group, then the shape of this case and its resolution is very different than if he is entitled to no shares at all in TGL. I bear in mind that I would wish to minimise as far as possible the risk of disruption to the trial and the resolution of those overarching points.

5. Against that background, this is a very late application, the trial being just over a month away. The shape of that trial was agreed in principle in January and in final form at the beginning of March at a time when it was known that the account would be occurring and the general tenor of the account was known, but no attempt was then made by Mr Wojakovski to expand the scope of the trial to include the account. I note in this respect that it is accepted by Mr Haque, something which I think is obvious, that the account can only go ahead on a bilateral basis, that is that the objections raised to Mr Wojakovski's account be resolved at the same time as the objections raised in relation to Mr Matyas's account.

6. It is relevant to note that Mr Wojakovski has been in breach of the disclosure requirements in the account. As I noted in my judgment on the debarring application, his compliance was woefully short of what was required. He has only produced account

statements very late in the day. Indeed, there are still gaps in the disclosure provided by him, so the court cannot know even yet with certainty what further issues will need to be resolved on the taking of the account.

7. Mr Haque raises a concern as to inconsistent findings. It is difficult, however, as he accepts, to see how there could be inconsistent findings given that the findings of fact based on the cross-examination of witnesses at the trial on issues that overlap with the account will be binding in the account proceedings. To the extent that disclosure is necessary and appropriate in the share claim trial, then that disclosure should be provided. The fact that it overlaps with disclosure in the account is neither here nor there.

8. I am also concerned that to shoehorn the taking of the account into the existing trial window could give rise to a serious risk of being unable to conclude the trial within its allotted time. Mr Haque's submission that everything can be fitted in is, I think, based more on hope, or speculation, than expectation.

9. I think the reality is that there is a significant difference between the evidence and cross-examination required for the purposes of, and the time required to determine the points of principle relevant to, the shares claim and the granular examination of detail required to resolve many separate objections in respect of the account so to arrive at a final and as precise figure as possible. I am told that there are something like 260 transactions to be scrutinised as things stand and that there may be more, on the basis of further disclosure still to come.

10. In the round, I am not persuaded that it would be appropriate to join the account proceedings to the existing trial, but both should take their separate course as was ordered in March this year. For that reason, I dismiss this application.

(Proceedings continued – please see separate transcript)

MR JUSTICE ZACAROLI:

11. I turn to the question of security for costs which the claimants now seek in respect of the additional claims brought by Mr Wojakovski at the trial in June this year. As a matter of

principle, the only point taken against the application by Mr Haque is delay on the basis that these claims, the additional claims, were first made in the pleading some many months ago. I record it is not being submitted that Mr Wojakovski is not in a position, by reason of impecuniosity, to satisfy any security ordered. Mr Haque, frankly, accepts that, on the basis of the evidence as it stands, that is not a submission that is open to him.

12. So far as delay is concerned, I think Mr Fulton provides a satisfactory answer given that real concerns over whether Mr Wojakovski would satisfy a costs award arose from relatively recent disclosure by him as to the extent to which his assets were tainted, as a result of breaches of court orders by him for payments of costs and as a result of breaches by him of the proprietary injunction.

13. In those circumstances, I do not find that delay is a sufficient reason to deny the application. That leaves only the question of the amount. I accept that there are bound to be some additional costs as a result of the additional claims, notwithstanding there will be very substantial overlap between the issues raised by those claims and the matters on which the claimant needs to succeed in the shares claim itself.

14. The additional matters will include legal arguments surrounding the indemnity and its enforceability et cetera, and some additional submission and cross-examination in relation to the existence of the Hechbon. That is something which is pleaded as different from the agreement for the transfer of shares and would survive even if the agreement to transfer shares was set aside. Those I think cannot be described as so de minimis as to make it not worthwhile ordering security at all.

15. Mr Haque suggests that the amount at stake here is so difficult to discern and so small in value that it is not an appropriate case to order security at all. As I say, I do not accept that. However, it seems to me the amount that would need to be ordered is indeed relatively small. I am not in a position to identify that amount because the claimants have not yet identified the precise amount they say would be appropriate.

16. The amount they have claimed in the application notice is based on the wrong underlying figures. I shall leave the parties to discuss the precise amount, but I make it clear

that it is nowhere near the 15% of the overall trial costs which the claimants are asserting would be the right amount. It is substantially smaller than that.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.