

Neutral Citation Number: [2022] 448 EWHC (Ch)

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

The Rolls Building

7 Rolls Buildings

London

Before THE HONOURABLE MRS JUSTICE FALK DBE

BETWEEN

TONSTATE GROUP LIMITED

TONSTATE EDINBURGH LIMITED (In Liquidation)

DAN-TON INVESTMENTS LIMITED (In Liquidation)

ARTHUR MATYAS

Claimants

- v -

EDWARD WOJAKOVSKI AND 11 ORS

Defendants

MR S GOODMAN appeared on behalf of the Claimants

MR C DAW and MR M LAUREL appeared on behalf of the Defendant

**MR T BESWETHERICK appeared on behalf of the Trustees in Bankruptcy of Edward
Wojakowski**

JUDGMENT

4th FEBRUARY 2022

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MRS JUSTICE FALK:

1.

This hearing was originally intended as a directions hearing in relation to a contempt application that was made against Mr Wojakowski on 6 July 2021. The directions hearing was ordered by Zacaroli J on 8 December 2021 at a hearing at which he also dismissed, as totally without merit, Mr Wojakowski's application to stay the contempt application.

2.

The contempt application alleges a number of breaches of orders, in particular proprietary and freezing injunctions. It further alleges that a false statement was made, for which permission to bring contempt proceedings would be required.

3.

The directions order required Mr Wojakovski to file evidence by 14 January, with reply evidence by 28 January. As already indicated, this should have been the directions hearing that followed the filing of evidence.

4.

In fact - and it is fair to say that Zacaroli J's judgment, which has just been approved, anticipated that this might be the case - the process of obtaining legal aid, which Mr Wojakovski failed to seek prior to the hearing before Zacaroli J, has taken a little time. Although it was applied for once he finally instructed solicitors, shortly after that hearing, it was initially obtained only in a very low amount. Funding was only extended to what I understand to be a more appropriate level on 6 January this year.

5.

The solicitor now acting for Mr Wojakovski is Ms Karen Todner. Following a meeting with Mr Wojakovski, Ms Todner determined that she had concerns about his mental capacity. Her concerns about Mr Wojakovski's mental capacity are reflected in her first witness statement. She has raised those concerns both in relation to his capacity to participate in proceedings now and, potentially, his capacity at the time of the alleged contempts. She and counsel acting for Mr Wojakovski have sought a stay of the contempt proceedings while the issue of capacity is addressed.

6.

I was told this morning that an appointment has now been made for Mr Wojakovski to see a forensic psychiatrist who has not previously been involved with him on 3 March, with a view, it is hoped, to a report being produced by 31 March. This is partially, but not fully, reflected in a second witness statement from Ms Todner. So although the directions originally sought on behalf of Mr Wojakovski were open-ended, what was proposed to me this morning was that a report could be provided by 31 March. I had raised the suggestion of a single joint expert rather than having one report on behalf of the defendant and possibly a competing report on behalf of the claimant. However, I accept Mr Daw's submissions on behalf of Mr Wojakovski that, given the quasi-penal nature of the proceedings, it would be preferable to follow the general approach in the criminal courts, which would allow expert evidence from each party, should that be required. I will therefore not insist on attempting to use a single joint expert.

7.

I also understand that an application has been made for funding from the Legal Aid Agency for the report and that a response, on a normal 10 working day turnaround, should be due within 10 days or so.

8.

Mr Goodman for the claimants made a number of criticisms of the time taken. As indicated earlier, I do criticise Mr Wojakovski. He evaded service of the contempt application for some five months. He then sought a stay which was found by Zacaroli J to be an application that was totally without merit. He only then made a very belated application for legal aid, after his stay application was thrown out, and he has not chosen to use funding that has apparently been available to him for certain other

purposes, including spending a significant sum on an expert report for which the court has not given approval in the bankruptcy proceedings. He has chosen to arrange funding for matters such as that, but not for an assessment of his capacity, even though the evidence indicates that he has, relatively recently, and more than once, seen a private psychiatrist.

9.

I also criticise the fact that Mr Wojakovski has sought a stay of the contempt proceedings whilst attempting to continue to pursue applications in the related bankruptcy proceedings (BR-2020-000450). In particular, he seeks to persuade the court that it should, next week, hear an application that the trustees in bankruptcy have brought in those proceedings to suspend Mr Wojakovski's discharge from bankruptcy, even though, quite properly, once the trustees learnt of the capacity issues being raised in these proceedings, they sought his agreement to vacate that hearing.

10.

I want to put on record that the trustees acted entirely properly. I made very clear in correspondence yesterday that I was not going to limit myself to considering the contempt application today. The issue of capacity having been raised, and the court being conscious of applications in related proceedings next week, it is important that all those matters are properly managed, and that the issue of capacity is considered in relation to all of them.

11.

It would be quite improper, and a waste of everyone's resources, to proceed with hearing applications in the bankruptcy proceedings next week, given that a solicitor acting for Mr Wojakovski has raised a serious issue of capacity. There is no question in my mind that, at this stage, a consistent approach needs to be taken.

12.

I am aware that neither Mr Wojakovski, nor his McKenzie Friend Mr Marx, who has been assisting him, are present in court today. I understand that Mr Marx was unable to be present. I do not know about Mr Wojakovski (his legal representation was limited to the contempt proceedings). I did, exceptionally, invite the trustees to attend because they were available. I am obviously aware that, in relation to the bankruptcy proceedings, I am acting in the absence of Mr Wojakovski and his assistant Mr Marx. The order that I make in those proceedings will include a right for Mr Wojakovski to apply to set aside or vary it.

13.

My clerk has, however, been in quite material email correspondence with Mr Marx, and in that connection I wish to deal with one point. At a late stage in the hearing this morning, at around 11.30am, my clerk received a further email from Mr Marx attaching a certificate of suitability to act as a litigation friend, dated 6 November 2021, which he says was filed on that date in the bankruptcy proceedings. My clerk has checked and it is on CE file, but it is not properly flagged. For the benefit of the trustees' solicitors, it is event id 135. It was filed as "Notice Other" on 6 November, but was clearly not served.

14.

The point I want to make clear in relation to this is that, on my reading of CPR 21.5, that notice cannot have effect. It was filed too late. Mr Marx was very active in those proceedings before the notice was filed. Indeed, he was before me the previous month, in October. As a result, the ability to appoint a litigation friend under CPR 21.5 did not apply and any litigation friend would need to be

appointed by the court under CPR 21.6. In any event, of course, the certificate begs the question as to whether Mr Wojakovski does or does not have capacity.

15.

But I come back to the fact that Mr Wojakovski, through Mr Marx, is still seeking to pursue other proceedings, and is refusing to agree to a delay of the hearing of the trustees' application to suspend his discharge from bankruptcy.

16.

The trustees have also informed me that they anticipate an imminent application by Mr Wojakovski to annul the bankruptcy, again to be made with the assistance of Mr Marx.

17.

Mr Beswetherick for the trustees has explained to me that, typically, any such application would have to be dealt with by the petitioning creditor, with the trustees, although involved, effectively not spending resources in dealing with it. I understand that the petitioning creditor is an individual, a Mrs Robertson, who is a litigant in person.

18.

Coming to the approach that I intend to adopt, it is not disputed, and it is very important, that contempt applications ought to be dealt with without delay. I have described the significant delay that has already occurred since last July, largely due to Mr Wojakovski's actions, which I strongly criticise.

19.

It is also, as I have already indicated, extremely important that a consistent approach is taken. It is not acceptable, and it is in fact an abuse of the process of the court, for it to be claimed in one set of proceedings that Mr Wojakovski may not have capacity and so there should be a stay of those proceedings, whilst in other proceedings, the court receives correspondence and applications complaining about a quite proper attempt by the trustees to halt those proceedings while the issue of capacity is addressed.

20.

The court has to be mindful not only of its own scarce resources, but those of the parties, including the trustees who are seeking to preserve assets, or whatever assets they can secure, for the benefit of the estate. So whilst an open-ended stay in the contempt proceedings is certainly not appropriate and a clear timetable is required, I am also going to ensure that there is an appropriate stay in relation to other proceedings involving Mr Wojakovski while the issue of capacity is dealt with.

21.

I understand from Mr Daw that the restrictions that come with legal aid are likely to mean that the report that is being commissioned on behalf of Mr Wojakovski will need to focus only on the contempt proceedings, rather than also being directed to the question of his capacity in other proceedings. Strictly, because questions of capacity are issue specific, it is possible that Mr Wojakovski could have capacity for one set of proceedings rather than the other. I suspect, in this case, that that is more of a theoretical than real difficulty, because the proceedings are all closely related and the underlying facts are similar, but nonetheless it is a possibility. So I have been somewhat concerned about the possibility of a report being obtained that was limited to capacity in the contempt proceedings and it then being said "Oh well, that can't apply in other proceedings".

22.

I think we have arrived at a pragmatic solution to that, which is that Ms Todner will obtain a report for the contempt proceedings, and the claimants in these proceedings will have an opportunity to view that report. Obviously, if they do not accept it, they will be able to commission their own report. The terms of the order will allow the scope of that report to cover other proceedings. The court would then deal with any dispute.

23.

In practice, if the report commissioned on behalf of Mr Wojakowski concludes that he has capacity, that is likely to be the end of the matter, both in the contempt proceedings and the other proceedings, at least as regards his current capacity to conduct proceedings. I will leave to one side the separate question of his position at the time of the alleged contempt. That will not be addressed at this stage.

24.

If the conclusion of Mr Wojakowski's expert in the contempt proceedings is that he does not have capacity, then in practice the claimants or the trustees may be able to address the question of capacity to participate in other proceedings through any report that they obtain. But more prosaically, should there be a conclusion in the contempt proceedings that there is no capacity, and Mr Wojakowski nonetheless wishes to contend that he has capacity in other proceedings (assuming that differs from the trustees' position), then it seems to me that he will have an uphill struggle without medical evidence in his favour.
