Neutral Citation Number: [2024] EWHC 1886 (Ch)

Case No: CH-2023-000053

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22/07/2024

Before :

MR JUSTICE ADAM JOHNSON

- -

Between :

LEE JON BOOTH

Appellant

- and -

LLOYD EDWARD HINTON
(AS LIQUIDATOR OF ACTIVE TICKETING LIMITED)

Respondent

- -
- -

The **Appellant** appeared in person
Mr Jon Colclough (instructed by **Brecher LLP**) for the **Respondent**

Hearing date: 17 July 2024

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Approved Judgment

This judgment was handed down remotely at 2pm on Monday 22 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Adam Johnson:

1. I have to deal with two related applications. The first is an application to vary or set aside an Order of Rajah J dated 18 December 2023, striking out Mr Booth's intended appeal. That Order was made without a hearing, and provided that Mr Booth could apply to set it aside. He has done so. The second application is Mr Booth's application for permission to appeal.

2. Mr Booth was one of the founders of a company called Active Ticketing Limited, a start-up involved in mobile ticketing services. Mr Booth was the CEO. There were ambitious plans for the company, including a possible IPO. Mr Booth and his co-founder Mr Goring were to be substantial shareholders. Initially they were allotted 1,050,000 shares each. At a board meeting in April 2017, a mechanism was agreed for payment of the subscription price. This involved offsetting against the amounts due the value of certain invoices rendered to the company by Mr Booth and Mr Goring, for services rendered to the company in setting up and operating its business.

3. As it happened, more shares needed to be issued. There was an AGM in June 2017 which approved a further capital raising. Mr Booth's evidence was that this was to be on the same basis as before: i.e., he and Mr Goring would subscribe for the additional shares by writing off the value of work they had done for the company. There was a difference, however, during this later period, because Mr Booth and Mr Goring did not render invoices straightaway. Mr Booth nonetheless kept a ledger of accruals, and he said at trial that it was always understood that payment for his further shares would be effected in the same manner as before. On 2 October 2017, a board meeting was held and shares were allotted to a number of different shareholders. When it came to Mr Booth, he was described as a subscriber for 10,000,000 ordinary shares, which were said to be "*unpaid*". Essentially the same information was contained in a form SH01, *Return on Allotment of Shares*, filed afterwards at Companies House.

4. Sadly things did not work out well for the company. A creditor presented a winding up petition and the company was wound up in June 2018. Mr Hinton was appointed as liquidator.

5. Mr Hinton commenced proceedings against Mr Booth for the amounts unpaid in respect of his shares, which at a subscription price of £0.01 per share, came to some £100,000. He brought an application under s. 150 IA 1986 and/or Insolvency Rule 7.91(1). That application was heard by ICCJ Prentis, who gave an oral judgment on 27 January 2023 in favour of Mr Hinton. The essence of his reasoning, as I see it, was that whatever may have been intended as regards the proposed method of payment for Booth's shares, nothing had materialised. No invoices had been raised, and so the shares remained to be paid for, and Mr Booth was thus liable to respond to a call on him as a contributory and to pay £100,000 cash.

6. Having set the scene generally, I can turn then to the two matters before the Court today (set aside of Rajah J's Order and permission to appeal). As it seems to me, these run together, because the potential injustice of striking out the appeal before it is substantively dealt with is obviously greater if the appeal is one which would otherwise have a real prospect of success.

7. Some procedural background is necessary.

8. Rajah J's Order of 18 December 2023 striking out the appeal has its origin in the difficulty faced by Mr Booth in obtaining an approved transcript of ICCJ Prentis' Judgment. One important factor contributing to this was the fact that the recording made by the Court's recording system was of poor quality, and could not successfully be transcribed.

9. After a series of earlier Orders, Rajah J made an Order on 18 July 2023 extending time for the filing of an Appeal Bundle to 31 July 2023. In light of the problem over the recording, in his reasons Rajah J said that the Appellant – Mr Booth – should seek to obtain an agreed note of the hearing from counsel who had attended on behalf of the Appellant and the Respondent, and seek the approval of ICCJ Prentis.

10. According to the correspondence, Mr Booth received Rajah J's order on 24 July 2023 when he returned from holiday. Again from the correspondence, it seems that he attempted to reach Mr Karia, the barrister who had represented him at the hearing, but was not able to do so immediately. Given the shortness of time, on 25 July 2023 he sent a copy of his own note of the hearing to ICCJ Prentis and asked him to consider it and if possible approve it.

11. No approved Note was available by 31 July 2023, and so Mr Booth applied for a further extension.

12. That resulted in a further Order of Rajah J dated 16 October 2023, after the Summer vacation. But before then, emails exchanged between Mr Booth and Mr Karia's clerk show an ongoing issue about payment of outstanding fees. Notwithstanding that, in emails dated 6 September and 28 September 2023, Mr Booth asked for a copy of Mr Karia's Note of ICCJ Prentis's Judgment. The reply he received on 9 October 2023 was to the effect that Mr Karia was planning to speak to opposing counsel, Mr Colclough, because he did not feel his own note would be sufficient for an appeal.

13. Rajah J's further Order of 16 October extended time for filing the Appeal bundle to 15 December 2023. Not knowing what Mr Booth had been told by Mr Karia, he also gave directions. These required that (1) Mr Booth should serve his own Note of the Judgment on the Respondent Mr Hinton by 20 October; (2) the Respondent to agree the Note or comment on it by 3 November; and (3) the note as agreed between the parties then to be provided to ICCJ Prentis by 6 November.

14. Unfortunately, more problems were to follow. Mr Booth's account before me was that he sought to send a copy of his Note to the Respondent's solicitors by email on 19 October 2023, but the email bounced-back. Mr Booth said he then tried to send it again on 22 October 2023, and it is true that he sent an email to the Respondent's solicitors on that date; but the copy of that email produced appears only to attach a copy of Rajah J's Order of 16 October, and not a copy of Mr Booth's Note of the Judgment.

15. Before me Mr Booth accepted that he could have been acted more diligently in response to Rajah J's Order, but said that in mitigation he had already taken other steps to secure an approved Note. So he had, because a few days earlier, on 9 October, Mr Karia's message via his clerk was that he was going to try and speak to Mr Colclough.

16. Further time passed. By 12 December 2023, with the 15 December 2023 deadline approaching, Mr Booth had heard nothing further. He sent a chaser email to Mr Karia's clerk on 12 December 2023, in response to which the clerk said that a note would be provided by Thursday 14 December 2023 at the latest, for Mr Booth's consideration.

17. On the same day, 12 December 2023, two further things happened. One was that Mr Booth took the initiative and wrote direct to Mr Colclough asking for a copy of his Note of the Judgment. He said in his email, "*I had expected to receive your notes via Mr Karia before this point*". In fact at the time, and unbeknown to Mr Booth, Mr Colclough had not yet been contacted by Mr Karia. Understandably and correctly Mr Colclough said that the inquiry would need to be channelled via his solicitors. The second thing though was that Mr Karia also now approached Mr Colclough, asking for a copy of Mr Colclough's Note of the Judgment. Fortunately, Mr Colclough had one available, and a clean copy was sent to Mr Karia on 14 December and agreed on 15 December. It was provided to Mr Booth on the same day, and he then sent it to ICCJ Prentis for approval. A corrected and approved transcript was provided on 5 March 2024.

18. In the meantime, however, although Mr Booth applied by letter to Rajah J for a further extension beyond 15 December 2023, Rajah J by his Order of 18 December 2023 struck out the appeal, in light of the continuing default. It is that Order that Mr Booth now applies to set aside. I therefore have to consider the matter afresh, in light of the documents filed and the oral submissions I have now had from both parties.

19. I have come to the view that the Order made by Rajah J should be set aside, and Mr Booth's appeal restored. I will also grant Mr Booth permission to appeal. To the extent necessary I will also extend the time for filing a complete Appeal Bundle accordingly, to 5 March 2024, when the approved transcript of the Judgment under appeal was made available (an Appeal Bundle minus the approved transcript having already been filed by Mr Booth).

20. The reason for this conclusion is that in my view, the justice of the case demands it.

21. Mr Colclough in his submissions said that one should have regard to the overall picture, including defaults by Mr Booth in the periods before the Orders made by Rajah J on 18 July and 16 October. I agree it is important to look at matters in the round, and I also agree that Mr Booth was initially slow off the mark, for example in actually requesting a transcript. All the same, such points must be looked at in context. One aspect is that such early defaults have effectively already been dealt with, in the series of Orders made by the Court before July 2023, none of which was appealed or set aside or varied at the time. Another aspect, perhaps more important overall, is the fact that the Court's recording system had on this occasion failed, and so no transcript could be prepared even when requested. Mr Booth was entitled to assume that a recording had been made, and that the tape could be transcribed when he asked for that to happen. Much of what followed can be traced back to that original problem, which was certainly not Mr Booth's fault.

22. Before me, Mr Booth fairly accepted that he could and should have been more pro-active in the period between October and December – especially in the period after Rajah J's Order of 16 October. That is certainly true. He did not properly implement

the directions given by Rajah J, or at any rate did not follow up after 22 October 2023 after his email to the Respondent's solicitors. All the same, Mr Booth's answer was that he thought things were in hand, because he had been told by Mr Karia on 9 October 2023 that Mr Karia would be in contact with Mr Colclough with a view to agreeing a transcript. That seems to me an entirely fair point. I think Mr Booth was entitled to assume that a process was in train which would lead to progress and fix the problem caused by the Court's own lack of a reliable recording, even though it was not precisely the process contemplated by Rajah J's directions, which were made by Rajah J without him being aware of the steps already taken by Mr Booth.

23. In his submissions, Mr Booth said he felt let down by what had happened. I think that looking at matters in the round, he was entitled to feel that way. Systems should be in place to ensure that Judgment transcripts are available in a timely manner. That did not happen in this case, for a number of reasons. Certainly, some of those reasons were due to Mr Booth's own approach; but in my opinion other contributing factors were also in play, and given that, I think it would be unfair and wrong to strike out Mr Booth's appeal for what is essentially a technical default, in particular where (as I consider to be the case) the appeal has at least a real prospect of success.

24. As to that, as I read the Judge's reasoning, it proceeds on the basis that some form of agreement or understanding *was* reached that Mr Booth's shares would be paid for by offsetting accrued amounts owed in respect of services rendered. The Judge's point was rather that that process was not implemented, and from that he concluded that the relevant sums (£100,000 each in the case of Mr Goring and Mr Booth) were instead to be paid in cash. I think one can see that from the Judgment at [38], where the Judge said, "*There was a mechanism to be applied before the shares were paid up, whether in part or full*." He then went on to say at [39]: "*What Mr Booth describes is a mechanism. He is not saying in his statement that the liabilities had been crystallised, rather that they would be crystallised.*" He said again at [46], "*There is simply no evidence that the mechanism proposed to meet the liability on the shares was ever effected*".

25. In my opinion, if it is accepted that there was an agreed mechanism for discharging the debt due on allotment of the shares – in other words, an agreed form of consideration – then there must be a real prospect of arguing that that was intended to be the sole and exclusive form of consideration due. It that is correct, then it was also arguably wrong for the Judge to reach the conclusion that £100,000 *cash* was payable in lieu of any invoices having been provided. It may be relevant to the argument to consider what else the Judge might have done – for example, would it have been an option to require the appropriate invoices to be provided? It seems that the relevant work had already been done and the charges accrued, and corresponding benefits had already received been by the company, so it must be a fair question to ask whether the default could possibly have been fixed. Perhaps that would give rise to other complications, but at this stage I am concerned only to assess whether there is an arguable point; and in my opinion there is.

26. In his submissions, Mr Colclough said that this point was a new one, which did not feature in Mr Booth's Grounds of Appeal. I disagree. It seems to me that, given Mr Booth's status as a litigant in person, the Court needs to take a pragmatic view in construing his Grounds, and should not be over-technical. Paragraphs 7 and 8 of the Grounds both contain the submission that the agreement or understanding reached

was that his shares would be paid for by means of a debt/equity swap, with accrued liabilities being exchanged for shares. Mr Booth's overall point in his Grounds is that, in light of what was agreed, he is not liable to pay £100,000 cash for the shares the Board determined to allocate to him. That seems to me to be essentially the point I have described: there was an agreed form of consideration, and the Judge was wrong to conclude that, consideration in that form not having been made available, another form (cash) had to be provided instead. That would particularly be so if the agreed form of consideration could still be provided, or perhaps in substance already had been, by the relevant work having been undertaken and by Mr Booth having agreed not to claim payment for it but to take shares in the company instead. It is well established that an agreement not to claim a debt can amount to consideration: see Chitty on Contracts, 35th Edn. para. 6-048. The Judge arguably overstated things when at [38] of his Judgment, he rejected what he said was Mr Booth's belief that "*intention produces result*." Sometimes it can, if (for example) the intention reflects an agreement not to claim payment for services which have already been rendered.

27. Taking all these points together, and of course at this stage only for the purposes of deciding whether to grant permission to appeal, I consider there is a real prospect of an appeal succeeding on the basis I have described.

28. The overall result is that I will set aside the Order made by Rajah J on 18 December 2023, and will restore the appeal and give permission to appeal. The appeal will be listed for hearing before a High Court Judge, with a time estimate of half to one day, with a half-day pre-reading.