Neutral Citation Number: [2024] EWHC 549 (Ch)

Case No: BL-2020-000927

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

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Date: 14th February 2024
Start Time: **14.56** Finish Time: **15.27**

Before:

DEPUTY MASTER BOWLES

- -

Between:

MANOLETE PARTNERS PLC

Applicants

- and -

(1) MOHAMMED JAWED KARIM
(2) MOHAMMED BASSER KARIM
(3) MOHAMMED FAHIM KARIM
(4) MARIAM KARIM
~~**(5) ANNA RACKO KARIM**~~
~~**(6) RICHARD SLADE AND COMPANY LIMITED**~~

Defendants

- -

MR HUGH MIALL, Counsel, for the **Claimant**
MR MIKHAIL CHARLES, Counsel, for the **Defendants**

- -

Approved Judgment

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MASTER BOWLES:

1. As I indicated in the course of argument, I have had the opportunity in this case to read, in some detail, the papers. As a result, I have been able – with the assistance of Counsel – to foreshorten, to some extent, our discussion.

2. I have indicated, in the course of argument – particularly with Mr Charles, who has been, if I may say so, a very helpful and realistic advocate on the part of the Defendants – some of the concerns I have in relation to this application for a stay, which, as I again indicated in the course of argument, is in truth an application to adjourn a 10-day trial, some eights weeks from the date when that trial is potentially to commence.

3. I am not going to grant a stay, and I am not going to vacate the trial or adjourn the trial. I will, as I will develop in a moment or two, make certain changes in relation to the current timetable, in order to give the parties as much time as possible in the next eight weeks, or so, to get this important case into some kind of shape.

4. The sad fact is that because there has been – and I am afraid it is the responsibility of the Defendants – a substantial non-compliance or non-cooperation with the court and with their opposing party, there has been a hiatus in this case of moving towards a year and, as a result, everything is now going to have to be squeezed into a very short span of time. But I am afraid that that is where we are. The problem arises for them from lengthy prevarication, non-compliance, non-cooperation, going back effectively to January of 2023, which has put the parties today in the position in which they are.

5. Coming to the stay / adjournment application, it is put on the grounds of the First Defendant's ill health. It is put on the grounds of lack of finance to secure representation; lack of finance and, arising out of lack of finance, a lack of the funds to secure proper legal representation.

6. The crux of the case is twofold. It is: first, the health of the First Defendant; secondly, the financial situation and circumstances of, it is said, all the Defendants. It is said that taking those two matters together, in order to have regard to Mr Karim's ill health, but also to provide the possibility of legal representation and funding for such representation, there should be an adjournment, put putatively at about six months. That, of course, as I have already indicated, would give rise to the vacating of a trial date, which has been fixed for nearly a year, and in the practical terms of this court, it would give rise to a new trial window – probably in the early part of 2025 – and it would, in reality, throw this litigation back not six months, but the best part of a year. That is a very strong thing, in circumstances where it is one of the fundamentals of the Civil Procedure Rules, that the trial date should be established early, and only in grave circumstances should that trial date be shifted. So the burden, in relation to this application, is a heavy burden, and it lies upon the Defendants.

7. In my judgement, it has not been met.

8. In relation to Mr Karim's ill health, I entirely accept that he is suffering from depression, mixed anxiety, the matters identified by Dr Hussain, in her helpful medical report, and update.

9. What, however, is clear from her report is that save in a pretty limited way, Mr Karim, while depressed, while low, while unhappy about his affairs, has not lost his cognitive functions. There is no suggestion that he has not got the capacity to conduct this litigation. It is not raised at all, at any stage. The most that can be said is that because he is depressed and low, so his memory is not what it was. Well, happily in this case, there are already in place in the case quite a number of factors which can jog that memory because – unlike some cases that come before this Court, where parties, for lack of funding, or for lack of the will to fund, come to court unrepresented – this is a case where, at an early stage, the Defendants were represented by high quality legal advisers, where the defence in this claim was put in by counsel, where Kingsley Napley were acting for them up until January of 2023 That means that in the early stages of this litigation, when the parties had to set up by way of their pleadings what their cases were, the Defendants had the benefit of good quality legal advice and representation. That in its turn means that the transactions, which are at the heart of this case, are transactions which are identified in the pleadings. Explanations by the Defendants as to those transactions are given in the pleadings and are, therefore, available to Mr Karim as an aide-mémoire and so as to assist his recollection of transactions, about which, in the past, he has already given information, in order to enable the defence to be filed.

10. In elaboration somewhat of the foregoing, it is necessary to explain a little bit of the detail of this case. This case is a case where it is said that, in breach of their fiduciary duties, not just Mr Karim but other Defendants in his family, who were involved with him in the business, which went into liquidation and out of which this litigation stems, monies were abstracted from the business and used for improper purposes, for personal purposes, for purposes which were not in the best interest of the company, and so on.

11. It is a series of one by one transactions, where identified sums of money are said to have been paid wrongly away in breach of duty and where, therefore, the position of the Defendants is to explain what went on in relation to those monies, transaction by transaction, in the way they have in their pleadings and such as to justify and say that the transactions in question were in the interests of the company and/or were corporate transactions, and did not, in any sense, constitute breaches of their fiduciary duties.

12. As it was put to me just now by Counsel for the Claimant, basically, this is an accounting exercise, whereby those who have had the benefit, or who organised the extraction of monies from the company, must explain, must account for the use of that monies and demonstrate that it was money used for proper purposes of the company and not in breach of duty.

13. As I have already stated,, the transactions are identified in the pleadings, and what is left in taking this case to trial is the preparation of witness statements and – as I will come to in a moment – disclosure. The Defendants are not beginning at the beginning. They have already set up their case. What is left to do, and what has not been done in the last 12 months, is to substantiate that case. Mr Karim may have some memory difficulties. But as I say, the transactions with which he was concerned are transactions which he has already identified and explained. So his memory is capable of being jogged, and he is otherwise not lacking in capacity.

14. Likewise, although Mr Karim has plainly been the prime mover in relation to the defending of this case, he is not the only Defendant, and the Second and Third Defendants were, as I understand it, equally involved – or certainly largely involved – in the failed business. They are involved in individual transactions. They are, as it seems to me – and I have heard no evidence to the contrary – perfectly capable of assisting Mr Karim, both in relation to his memory and in relation to their own involvement in the case. There is no reason why they cannot deal with the aspects of the case that directly relate to them, or assist Mr Karim, or indeed each other, in relation to aspects of the case, whereby their involvement is less direct.

15. I am simply not persuaded, that there is anything in Mr Karim's medical or psychiatric condition, to either affect his capacity, or to render it impossible or even particularly difficult, for him to take the necessary steps to substantiate his case. That really – once one comes to that conclusion, which I do – brings this application, pretty much to an end.

16. That said, the question of representation raises and the question of finance for representation has been perfectly properly eaised by Mr Charles, in support of his application. He is saying, "Look, the Defendants are at a difficulty because they are currently unrepresented. They will be in a better position to deal with this case if they are represented. That requires funding. They are short of funds. Please can they have time, effectively, to raise funds and secure representation?" They say, or Mr Charles says, that with the aid of representation, his clients will be in a much better position to resolve this case.

17. I would not dispute that representation would assist. But as I have already adumbrated, I do not regard this as a legally complicated case. It actually simply requires the Defendants to give honest evidence and, insofar as they can, produce the material documents, such as to explain what they did in relation to certain transactions and why it was a legitimate thing for them to do. Of course, representation would help. But again, they have had, when it comes to setting up the bones of their defence, good representation, so that the shape of the case is there for all to see.

18. What is also relevant, as I put to Mr Charles in the course of our discussions this afternoon, is that even if I were of the view that there was a fundamental need for representation – and I am not of that view, but even if I was – then the materials which would allow me to adjourn this case, in order for that representation to be purportedly obtained, simply are not there.

19. I am told – I am given precious little financial information, if truth be told – that the Defendants generally are in a poor financial position. I am told that they may be in a position to raise some money by selling property. But what I have not been shown, or told about, at all, is anything significant and serious about their financial position.

20. This is a case, as I indicated in the course of argument, where if an adjournment is sought or is to be obtained, in order to secure representation and in order to secure the finances to secure that representation, then it is incumbent upon those who are seeking the relief of the Court to put before the Court their entire financial circumstances, warts and all, good and bad, so that the Court is aware of their assets, their liabilities, the realities of their financial situation, whether they are in the position to secure money from third parties, etc.

21. If that material is before the Court, and if it demonstrates a position of hopelessness, if I may put it that way, in relation to their finances and if the position is such that representation is fundamental, then that is at least a beginning to a successful application for a stay. But it is only even then a beginning, because if a stay is worth anything, it has got to have some substance. There has got to be a purpose behind the stay, other than kicking a can down the road, or putting off the evil hour. Therefore, to say, "Oh dear, we are very poor, and we cannot afford lawyers", is not, in itself, an answer to anything.

22. In the modern world, persons without the necessary funding for litigation, nonetheless, must – to the best of their ability, and with such assistance as the Court can give – carry on their litigation. It is a sad fact of legal life. Accordingly, if there is to be a stay because of impecuniosity, or the like, then the stay only has a function if something can be done, in order to deal with the situation, remove the problem, secure the funding, and, ultimately, secure the representation.

23. About that, I have been told absolutely nothing, at all. I have been shown – to use my own phrase – no light at the end of the tunnel, no suggestion of any substance about what the assets are which could be sold, what the equity arising out of the sale of the assets might be, when it might be available, what legal representation it might procure. Simply nothing at all.

24. One has to note – and this comes back to another of the discussions I had with Mr Charles, in the course of argument – that although one of the planks of this application is the need to secure finance, so as to secure representation, the reality is that nothing seems to have been done, at all, to raise any finance, save some evidence that a property was put on the market about a month after this application was issued, and about 14 days before this application came to be heard.

25. There is no suggestion, with due respect, that there has been any urgent efforts, or indeed any real efforts, at all, to do anything about the financial predicament. As I have already said, I am not aware what the assets – which might be available to be sold to procure funding – are, and I have seen no evidence that there is any serious timescale within which significant funding might be available. So all that this application does, as it stands – putting aside, because I have already dealt with them, the medical matters – is simply an attempt to delay this litigation, kick the can down the road, put off the time when matters must come to court.

26. Taking all these matters together and having regard to all the matters which I discussed with Mr Charles – and indeed with Mr Miall – in the course of argument, I am going to dismiss this application for a stay.

27. That leaves me with what is not exactly a cross application, but a related application, which is an application for an Unless Order, in relation to the Defendants' failures in relation to disclosure.

28. At the outset of this judgment, I indicated that the sad fact was that the reason matters are so compressed, in terms of preparation between now and the potential trial in eight weeks' time, is because there has been simply no – let us be blunt about it – real effort made by the Defendants to deal with their timetabling obligations, their obligations of disclosure, and the like; pretty much since the CMC in January of 2023.

29. What the evidence shows is a series of applications or requests for extensions to provide disclosure. It shows Collyer Bristow, acting for the Claimants, actually being – if I may quietly say so – generous minded in relation to those extensions. But ultimately, they were forced – when matters were last before this Court in November – to procure a formal order, from M<aster Pester, for disclosure to be concluded. He provided a date for disclosure,, which was actually the date sought by the Defendants, of 29 December. Absolutely nothing has seemingly been done about disclosure within the period provided..

30. Indeed, this application was launched two days before disclosure should have been given, and was lodged on the apparent premise – but an entirely false premise – that their disclosure obligation was contingent upon the failure of their stay application and, therefore, their disclosure obligation did not effectively operate, until such time as this application had been heard.

31. The stay application has been heard and is to be dismissed, but irrespective of that, there was nothing in Master Pester's order last November to indicate, at all, that disclosure could be postponed legitimately, by virtue of the issuing of a further stay application. So what actually happened – and let us be candid, again – is that instead of utilising the time, from November to the end of December, in providing disclosure, nothing was done, except for the bringing of a stay application two days before disclosure should have been effected.

32. It is said by Mr Charles, "Well, look, you know, disclosure is difficult". I disagree. Disclosure in this case is not particularly difficult. There is only one area of the case, where large scale disclosure from the Defendants is called for, and that is in relation to that which I have already discussed – namely, the purpose of the transactions, which are at the heart of the case.

33. The disclosure, which is required, is the disclosure of documents in the possession and control of the Defendants – this is a Model D disclosure – which either sustain or, indeed, undermine their case in relation to the purpose of particular transactions. We are looking not at the corpus of the corporate materials of the defunct company. What we are looking at are the documents in the personal possession and control – electronic or hard copy – of the Defendants and each of them. We are looking at their emails and their hard copy documentation going to each of the particular transactions. These are documents, they will have had and which, as it seems to me, are likely to have been looked at and made available to the solicitors and counsel who drew the defences in this case, not as part of a full scale disclosure exercise, but in the course of the primary preparation of those defences.

34. If the actual documents, if any, were not so provided, then the explanations were, and the task of the Defendants, now in relation to this series of transactions, is simply for each of them – not just Mr Karim, but the others who are involved – to pull together the documents that they have in their possession and control, going to the purpose of the transactions which are in issue. This is not a difficult task. It is a task they are going to have to carry out expeditiously, simply because they have sat on their hands for far too long and, frankly – and I shall be candid again – because they have hidden behind health and financial excuses for far too long. I am afraid, they must now get on with it.

35. Disclosure should have been dealt with by 29 December 202 . I am minded, at the moment, to give the Defendants 14 days, to give that disclosure.; that is to say until the 28th of this month. That, in the context of a case, where there is currently a PTR on 5 March and a trial in mid-April is, it seems to me, as far as I can sensibly extend their time, but it equally seems to me – for the reasons I have adumbrated – that it is a timescale within which they can usefully and sensibly work, to carry out their obligations, if they are so minded. It is nowhere near a difficult or an impossible task, and, as I said to Mr Miall, the importance of giving a realistic period – and I think 14 days is a realistic period – is because I am going to attach sanctions to this order.

36. I am going to make an unless order, and I am going to direct that in the absence of, I will say, substantial compliance with the order, the defences in this case will be struck out, leaving it to the Claimant to apply for judgment.

37. As I discussed with Mr Miall, this is not a case where there is any alternative, by way of sanction. There are cases, even where there has been substantial non-compliance with the Court's orders, where the Court can find something short of a strike out, or short of a debarring order, in order to seek to remedy the situation.

38. In this case, because the delay has been so long and because the trial is so close, there is no scope for any median measure. The only sensible remedy, if there is non-compliance with the disclosure order, is simply that the Defendants be debarred from defending. The Defendants must fully understand that if they do not carry out the tasks of disclosure laid upon them by the Court, then that will be the end of this litigation, they will be debarred from defending and it will be the Claimant's entitlement to apply for judgment on the footing of an undefended claim – effectively a default judgment.

39. I am afraid, the Defendants have simply got to face their reality and get on with the preparation of this case. They do have time and they are not completely without funds. The papers I have seen shows rental payments coming in. There were certainly monies available, as it seems, for private medical treatment for Mr Karim. It may very well be, and I factor this into the equation, that those who are helping the Defendants today – Mr Charles, or those, behind him, Number 12 Chambers, where Mr Ahmed and Mr Alam carry out their business – will be in a position, on an ad hoc basis, if needs be, to assist in the disclosure exercise. That will mitigate the burden, which is – as I have already indicated – not, in my judgement, in any event, an over onerous burden.

40. So 28 February for disclosure, or else they will be debarred from defending. I am inclined, as I indicated in the course of discussions, to vacate the current PTR, which is on 5 March, and to direct that it be relisted, in so far as the court is able to do so, on 19 March, or as near to that date as is available; again, with a half-day time estimate. I will make an appropriate extension in relation to witness statements.

41. Those, I think, are the matters I need to cover.

42. Mr Miall, what about witness statements? What timescale do you think for that?

MR MIALL: Yes, I was just having a look to see where we get to. Well, if the PTR is, say, on the 19th, the bundle for that will probably need to be in by about 14 March, to give

two clear days to the judge, to have a look and skeleton sample. If we said Wednesday – four weeks from now, effectively – 13 March.

MASTER BOWLES: That would be reasonable.

MR MIALL: Which would be two weeks after disclosure.

MASTER BOWLES: I think that is right.

MR MIALL: It is the third and fourth ---

MASTER BOWLES: That is what I am thinking: a fortnight and a fortnight.

MR MIALL: Indeed, and then they can just be quickly slotted into the bundles ---

MASTER BOWLES: Yes.

MR MIALL: --- even if the bundle is already to go, it can be added in at the end.

MASTER BOWLES: Yes. So look, I am going to vacate the PTR on the 5th. I am going to give the direction I indicated – that it should be relisted, insofar as practicable on 19 March, or as near to that date as is available.

(Hearing continues)

(This Judgment has been approved by Deputy Master Bowles.)