TRANSCRIPT OF PROCEEDINGS

Ref. LM-2021-000201

IN THE HIGH COURT OF JUSTICE
COMMERCIAL COURT
QUEEN'S BENCH DIVISION
Neutral Citation Number: [2021] EWHC 3768 (Comm)

7 Rolls Buildings
Fetter Lane
London

Before HIS HONOUR JUDGE PELLING QC

HURRICANE ENERGY PLC & ORS (Claimants)

-v-

CHAFEE & ORS (Defendants)

MR R PERKINS appeared on behalf of the Claimants

THE DEFENDANTS did not attend and were not represented

JUDGMENTS
20th SEPTEMBER 2021
(APPROVED)

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JUDGE PELLING QC:

1. This is the hearing of an application by the 11th Claimant for an order setting aside an order made by me on 6 August 2021 striking out the claim and an application for a default judgment, both of which I certified as being totally without merit. The 11th claimant applies for an adjournment of the hearing of its set aside application. I should also say that there is an application by the 1st to 9th Claimants and Defendants for an order striking out the set aside application on the basis that it is apparently signed by a person who the 1st to 9th Claimants and Defendants maintain does not exist. The 11th Claimant's application to set aside m,y previous order was listed on an expedited basis in a window identified by the 11th Claimant as being one in which its application should be listed. The 11th Claimant is a company registered in accordance with the laws of the Marshall Islands and has been dissolved although it would appear that it continues to exist as a legal entity for at least some purposes.

2. Directions were given in relation to the set aside application which required it to be listed today because of the obvious urgency that surrounded the application and because the applicant (or those that control it) had made it clear that they were able to attend within the window within which this hearing was fixed. The Applicant does not appear and is not represented. It has however applied for an adjournment. I am satisfied that both that application and the application to set aside my order should be dismissed. My reasons are as follows.

3. There is no proper basis for applying for an adjournment for the following reasons: (1), the application was listed within a window which the applicant had indicated it or those who represented it would be available to attend the hearing; (2) there is obvious urgency about these proceedings which mean that the application should proceed urgently for the reasons I identified when giving directions for the listing of the application and (30 no proper or indeed any particularised reasons have been given for the inability of any of those who apparently gave evidence on behalf of the 11th Claimant to attend this hearing.

4. It follows that the application to set aside my order must also be dismissed. The order was one that plainly ought to have been made for the reasons identified by me when making it. The 11th Claimant has not appeared for the purpose of making its application and it has made not the slightest attempt to comply with the directions given for the determination of the application which included a requirement that all those who had given evidence on paper on behalf of the 11th Claimant should attend in person, should bring identification documentation with them and should make themselves available for cross examination.

Given that it is the claimant's case that these individuals are all pseudonyms of Mr Rizwan Hussain apart from Mr Hussain himself, the failure of any of these parties to attend is highly significant particularly when considered in the context of findings by a number of other judges to the effect that Mr Hussain operates by using pseudonyms.

(There followed further submissions – please see separate transcript)

5. The issue I now have to determine is whether the application for an adjournment that I referred to and dismissed a moment ago should be certified by me as an application totally without merit.

6. Three submissions are made as to why I should certify that application as totally without merit, though they are interlinked. First, no reason was supplied by any of the applicants for the adjournment as to why the individuals concerned, principally, Mr Hussain and Mr Godfrey Hicks, to the extent that Mr Hicks is independent of Mr Hussain, were unavailable to attend the hearing.

7. That was exacerbated by a number of factors, the first of which is that this was listed on an expedited basis for the reasons I indicated when dismissing the application. That is because the issues that arise in these proceedings are inherently those which need to be resolved on an expedited basis and secondly, it was maintained by the applicants that the application need to be dealt with on an expedited basis and the application was fixed to be determined in a window that they, the applicants, had indicated they were able to attend.

8. Secondly and related to those points, none of those who claim to be unavailable have given any particularised reason why that is so. Even assuming for the purposes of this exercise that Mr Hicks is a pseudonym for Mr Hussain, that does not apply to Mr Hussain who is an individual who exists and who was capable of giving an explanation as to why he and/or others who are associates of his could not attend on the dates fixed for the court.

9. The third point is that by conducting themselves in the way they have, Mr Hussain and his associates have wasted court time public resources in consequence and have wasted costs cfor no good reason. Similar considerations apply to the application to seet aside my order. .

10. In those circumstances, I have no hesitation so to find that the application for an adjournment and to set aside my order are totally without merit.

(There followed further submissions – please see separate transcript)

11. The issue I now have to determine is whether I should make a civil restraint order, and if so, whether it should be a general extended or limited civil restraint order, in each case pursuant to practice direction 3C of the civil procedure rules. I am satisfied that the only practical civil restraint order that could be made is either an extended or general civil restraint orders, because the object of the exercise to protect the Hurricane Group companies from further vexatious litigation.

12. Civil restraint orders have to be proportionate which means that if one is to be made at all, the court should adopt the least extreme model that is capable of delivering the required objective. Under the circumstances of this case, that is an extended civil restraint order.

13. In order for the court to have power to make the civil restraint order, it must first be satisfied in jurisdiction that the party who brings in the order that is sought, has persistently issued claims or made applications which are totally without merit.

14. This application is sought against Saret. There are no less than four applications for all claims which have been certified as totally without merit in these proceedings. My order at 6 August 2021 certified the original claim as being totally without merit and I struck it out, and likewise and for similar reasons, the default judgment application was struck out as totally without merit.

15. Today, the application to adjourn today's hearing of the set aside application made by Saret to set aside the order I made on 6 August, was dismissed as totally without merit for reasons that I gave earlier this morning, and the application to set aside was also dismissed. It too was totally without merit for the reasons which I have identified, but which in summary comes to this. That this was an application which has not been moved, notwithstanding it has been fixed in a window for hearing identified by Saret and those who stand behind Saret, but Saret and those who stand behind it have not appeared, are not represented, and in any event, the application was bound to fail for all the reasons identified when striking out the original claim and the application for default judgment.

16. In those circumstances, I am satisfied that Saret has persistently issued claims or made applications which are totally without merit. The next question, therefore, is whether in the exercise of my discretion, I ought to make an extended civil restraint order. I am entirely satisfied that I should, for at least the following reasons.

17. First of all, Saret is a company which formed under the laws of the Marshall Islands, is dissolved and thus in a twilight world between full existence and full striking off. It claims to be represented by a Mr Godfrey Hicks. There is every reason to suppose that Mr Godfrey Hicks does not exist, for all the reasons identified by Mr Griffiths, the solicitor who acts on

behalf of the Hurricane Group in the application notice issued on 13 September to strikeout the set aside application I have dismissed this morning. Secondly, the litigation is entirely vexatious, but has exposed the Hurricane Group companies, as previously other companies has been exposed, to a very substantial costs in order to defeat entirely pointless and vexatious litigation that has been commenced against them.

18. In this context, today's application has been listed for two days. It had been listed on an expedited basis. It had been listed on the basis that all the witnesses who purported to give evidence on behalf of Saret, were to attend and give evidence and be available for cross-examination, bringing with them evidence in the form of passports that they were the people they purported to be. As I have explained, none of these witnesses have attended today's hearing, and in consequence, the cost of preparing for a hearing on behalf of the Hurricane Group on the basis that it would last two days, and involve the cross-examination of numerous witnesses in highly contested proceedings, has all been entirely wasted completely unnecessarily.

19. Third, the evidence which is filed in support is, at least in part, obviously dishonest. Mr Hussain claimed to be a substantial shareholder within the Hurricane Group or the parent company of the Hurricane Group, but the evidence that has been subsequently obtained, demonstrates that Mr Hussain first acquired a share a few weeks after my order of 6 August had been made, and then acquired one share at the price of £0.02. On that basis it is obvious that Mr Hussain's evidence on this point was dishonest.

20. Finally, this is litigation affecting a closely held company with a limited number of shareholders and other investors. This is a company which is quoted on the AIM market in London. It has numerous shareholders who are members of the public investing either directly or through pension schemes, and the like. It is quite wrong that they should be exposed to losses incurred by this company as a result of activity of this sort. In those circumstances, I propose to make an extended civil restraint order. The nominated judge for these purposes would be me, or in the event of my absence, the Honourable Mrs Justice Cockerill, judge in charge of the Commercial Court.

(There followed further submissions – please see separate transcript)

21. The issue that I now have to address concerns the assessment of the Hurricane Group's costs of and occasioned by the various applications that were due to be heard today. Formally, these now are the costs of the first to ninth claimants and the defendants. The first

point which I need to make is that I have directed that these costs be assessed on the indemnity basis. The significance of the indemnity basis for present purposes is that costs are assessed not by reference to what is proportionate but by reference to what is reasonable, with any issue of genuine doubt being decided in favour of the receiving party.

22. The first issue which arises concerns the hourly rates which have been charged by the solicitors concerned, which it is conceded is in excess of the London 2 rates identified in the guideline rate material published only perhaps a fortnight ago. I have thought long and hard about whether or not I should confine the first to ninth claimants and defendants' solicitors to the guideline London 2 rates.

23. In my judgment, having regard to the nature of these proceedings, which are extraordinary and unusual, the very significant amount of work that had to be done over a very short period and the importance to the first to ninth claimants and defendants of this litigation needed to consider, a rate in excess of the London 2 rate would be appropriate in the circumstances. I am satisfied that the rates which have been charged by the solicitors are ones which are reasonable in all the particular circumstances of this particular case.

24. I am satisfied that the work done by way of attendance on clients is reasonable and, therefore, is allowed as asked. Likewise, attendances on opponents is modest in the extreme and is allowed as asked.

25. The biggest particular item which does need to be thought about concerns attendance on others, including counsel at court and Hargreaves Lansdowne. Hargreaves Lansdowne were the brokers from whom was obtained the evidence concerning the single share owned by Mr Hussain to which I referred in one of the substantive judgments I gave earlier this morning.

26. I fully accept that there would have been significant interaction between counsel and solicitors in a case of this sort, having regard to the nature of the issues that arise and the extreme time pressure which applied to the proper preparation of the dispute. Nonetheless, 28 hours for the category B fee earner - who in fact is a grade A fee earner, albeit at a lower rate than the partner in charge of the litigation - is, I am satisfied, marginally in excess of what is reasonable under the circumstances. I cap the sum recoverable in relation to that line at £10,000 rather than the £12,055.50 that has been claimed.

27. The next issue that arises concerns attendance at the hearing which has been claimed for two solicitors, the partner in charge and the senior associate, and has been claimed for 14 hours for each of them. Not unnaturally, this was arrived at on the assumption that the hearing would last two days and be fully contested. In the result, the hearing started at a little

after 10.30, it is currently 20 past 11 and so, obviously, there must be a very substantial reduction there. I take account of the fact that there will have been some time taken up before the court sat and the sums recoverable must be calculated on the basis of one and a half hours per solicitor concerned.

28. The second question that arises is whether it is appropriate, in the circumstances, for two solicitors to attend. At many trials and most applications, the attendance of more than one solicitor will not be justified. This case is on the margin, but I am satisfied that it is appropriate that there should be two solicitors attending, essentially for the following reasons:

(a) Mr Griffiths, the partner in charge of this litigation, is both a witness as well as the lead solicitor involved in this litigation. As such, he would have to attend irrespective of whether or not he was attending as a solicitor because he was a witness and may have to have given oral evidence as well.

(b) Much of the work which would normally have been done by the 11th Claimant had it been professionally represented has had to be carried out by the applicants solicitors. In particular, for example, the applicants would have to ensure that a solicitor was present to enable witnesses to find their way through the relatively lengthy bundles that have been prepared for the hearing of this case. Where one of the solicitors is attending, at least in part as a witness, it is necessary and certainly reasonable to have another solicitor whose sole focus of attention is assisting counsel in the presentation of the case.

I am satisfied, in the circumstances, therefore, that two solicitors should each recover their charge-out rates for one and a half hours each.

29. The next question that arises concerns counsel's fees. That breaks down into two, being a fee for the hearing of the previous hearing, which was for £20,000, and the fee for today's hearing, which is £50,000 plus a £5,000 refresher. The refresher has to be deducted because there will be no second day and the hearing at £50,000, in my judgment, is in excess of what is reasonable. If the hearing for 9 September was reasonable at £20,000, then that would suggest that the brief fee for today's hearing should be between £20,000 and £30,000. In fact, the fee for 9 September is in excess of what is reasonable as well.

30. What I propose to do is to allow a fee for the hearing of 9 September at £10,000 and I propose to allow a brief fee for today's hearing at £20,000. Subject to those adjustments, the 1st to 9th Claimants and Defendants costs are otherwise assessed as asked.
