



Neutral Citation Number: [2021] EWHC 535 (QB)

Claim No. G90MA195

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Date: 8th March 2021

Before:

MR JUSTICE FORDHAM

Between:

REELWORLD EUROPE LTD
- and -
JAMAL UDDIN

Applicant

Respondent

Mark Manley (instructed by Manley Solicitors) for the **Applicant**
The **Respondent** did not appear and was not represented

Hearing date: 8.3.21

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Application for an ECRO

1. By an application dated 27 November 2020 the Applicant applies to the High Court for an ECRO (ECRO) pursuant to CPR 3.11 and CBR PD3C paragraphs 3.1 to 3.11.

Link to proceedings

2. The application was issued as a ‘stand-alone’ application, but it followed on from a number of claims. The Notice of Hearing for today’s hearing, issued to the parties by the Court, records as the relevant claim number G90MA195. Ms Baker, the solicitor handling the application at the coalface, has confirmed through Mr Manley that the Court was insistent on the application being linked to an identifiable claim. The Court Office was quite right to insist on that link and the Applicant’s solicitors were quite right to then make that link. The reason is this. Under CPR PD3C paragraph 3.2(1) an ECRO bites to restrain any claim or application “concerning any matter involving all relating to or touching upon or leading to the proceedings in which the order is made” without first obtaining a judge’s permission. It is therefore essential to be able to identify “the proceedings in which the [ECRO] is made”. It is important to link the order to proceedings, so that the ECRO is itself an order made in those proceedings. I will use “the Applicant” to describe Reelworld Europe Ltd who have made this application albeit in those proceedings (where they are a defendant). I will use “the Respondent” to describe Jamal Uddin (who is the claimant in the proceedings).

Proceeding in absence

3. There was no attendance at today’s public hearing by or on behalf of the Respondent. I am satisfied – and I have seen some of the documentation – that the Respondent was properly notified of this hearing and communications were sent (including some hearing-related case-management communications emanating from me as the judge) to him at the email address given by him in all the court papers which he has previously used. I am fully satisfied that it is appropriate pursuant to CPR 23.11 to proceed with this hearing in the Respondent’s absence. Not only has he not attended but no communication has been received by the Court, or by the Applicant’s solicitors, from him relating to this hearing or any difficulty which he has regarding it. I am told and accept, moreover, that the papers for today’s hearing were also supplied by post to his known postal address, an address which appears in court papers which the Respondent has himself filed. It is not the first time that he has failed to attend a court hearing. At a court hearing on 29 October 2020 HHJ Sephton QC was dealing with two of the Respondent’s claims and one of his applications. The application had been issued by the Respondent on 6 September 2020. A remote hearing was set up by the Court and he did not attend. Indeed, the evidence before me records that he had failed to provide a telephone number. I am satisfied, having regard to the overriding objective, that it was and is entirely justified, just and appropriate, and proportionate to proceed to deal with the application made today notwithstanding the Respondent’s absence.

Mode of hearing

4. The mode of hearing was a remote hearing by Microsoft Teams. That mode of hearing was properly notified to the parties and no party filed any objections relating to it. Had

a party, on grounds of facilitating their access to justice, said they wished to have a telephone hearing I would have considered sympathetically those representations. A remote hearing by Microsoft Teams requires only that the participant have a laptop computer, tablet, or even smart telephone, it being possible to access the hearing by clicking on a link, as those present have all done. I am quite satisfied that a remote hearing was necessary and justified during this time of the pandemic. A remote hearing involved no prejudice to the interests of the parties, it being perfectly possible to hear submissions in very much the way that I would have done had we all been sitting together in the court room. A remote hearing eliminated any risk to any person from having to travel to a court room or be physically present within one. The open justice principle was secured. The hearing together with its start time were published on the court's cause list in the usual way. An email address was also given, usable by any member of the press or public who wished to have permission to observe the public hearing. The hearing has been recorded and this ruling will be published in the public domain.

Permission to address the Court

5. As part of the case-management communications by email between me as the judge and the parties I dealt with an application for permission for Mr Manley to address the Court today notwithstanding that he does not have higher rights of audience to address the High Court. Having made sure that the application had been copied to the Respondent's email address so that he could respond if he wished to do so, and having allowed time to elapse for any such response, I then communicated that I had decided to give that permission in an email on 3 March 2021 through my clerk. The reasons, as I set out there, were as follows. Whether to allow a solicitor without higher rights of audience to address the High Court at the hearing is a matter of discretion: see eg. North of England Coachworks [2020] EWHC 1972 (QB) paragraph 5. Mr Manley has appeared at previous hearings in the High Court related to this matter: see the transcript before HHJ Sephton QC sitting as a judge of the High Court on 29 October 2020. It is not necessary in the interests of justice or appropriate, having regard to the overriding objective, to require the Applicant to incur the additional costs of instructing Counsel. That is avoidable, by reasonable alternative action, and would serve to increase the costs for the Applicant, and the potential costs liability of the Respondent, for no good reason. The Applicant was right to raise this ahead of the hearing, rather than on the day at the hearing, and the Court has taken steps to ensure the fact of the request was communicated to the Respondent. In all the circumstances it is appropriate in the exercise of my discretion to hear from Mr Manley.

The claims and applications

6. The application for an ECRO arises against a backdrop of a large number of claims and applications made by the Respondent. Those claims, and the applications relating to them, concerned a number of "compositions" (as the Respondent has described them) in which he has asserted intellectual property rights and has sought financial redress from the Applicant and others linked with the Applicant. The nature of the subject-matter is exemplified by a flowchart and a witness statement written by the Respondent, each filed with the Court and dated 22 June 2020. The Respondent has made 6 claims arising out of this same subject matter. Each of them, I am told, was made by the Respondent with fee remission avoiding paying the £10,000 court fee which would otherwise have been payable on the issuing of such a claim.

7. The first claim was E06MA232 and claimed redress of £3.5 million. In the context of that first claim the Respondent issued an application for an injunction. At a hearing on 16 May 2019, attended by the Respondent in person, DJ Ranson (sitting in the county court) dismissed the application for an injunction and struck out the claim. His order was made on 16 May 2019 but subsequently drawn up and sealed by the court on 31 May 2019. He ordered the Respondent to pay the defendants (including the Applicant) costs that he assessed in the sum of £18,588. That costs debt was in due course to become the subject of a statutory demand and bankruptcy petition, and on 26 November 2019 DJ Bever made a bankruptcy order. I am told that such an order usually subsists for 12 months at which point it is discharged and that the Applicant understands the bankruptcy order to have been discharged at the end of November 2020. In his May 2019 order, DJ Ranson said this: that “the claim disclosed no reasonable grounds” and “was an abuse of process” and “did not comply with the CPR”. He added that “the injunction sought lacked any specificity or particulars in terms of identify what ‘assets’ or ‘intellectual property’ [were said to be] subject to the injunction”. That was the first claim.
8. The second claim was F90MA200 which (as I understand it) claimed £3.822 million in redress. At least four applications were made by the Respondent in the context of this second claim. There was an application for an interim payment or interim relief; then an application to strike out the defendants’ application to strike out the claim; then there was an application (on the eve of a second hearing) for interim payment; and finally, there was application (at the second hearing) for permission to serve out of the jurisdiction. This second claim was the subject of two hearings. At a hearing on 8 November 2019 HHJ Bird dismissed the first two applications and ordered costs against the Respondent, to be assessed but with £1,080 to be paid on account. At a hearing on 15 November 2019 DJ Ranson struck out the claim and explained that the third and fourth applications therefore fell away. He ordered the Respondent to pay costs assessed at £7,255. The Applicant was the first defendant to the second claim. In his order made on 8 November 2019 (drawn up by the Court and sealed on 14 November 2019) HHJ Bird expressly recorded in a recital that he had told the Respondent “that he should obtain independent legal advice and that the Court would afford the Claimant a final opportunity before the Strike Out Application Hearing to clarify his claim”. That was a reference to the upcoming second hearing before DJ Ranson on 15 November 2019. At that second hearing DJ Ranson’s order (drawn up by the Court and sealed on 27 November 2019) recorded that the Court had determined that the claim form and particulars of claim “disclosed no reasonable grounds for bringing the claim, that it was an abuse of process and did not comply with the Civil Procedure Rules”. That was the second claim.
9. The third claim was G90MA050 which (as I understand it) claimed redress in the sum of £3.8 million. This claim was accompanied by an application for permission to serve out of the jurisdiction. DJ Ranson dealt with the claim and application on the papers. In an order on 12 March 2020 (drawn up and sealed by the Court on 18 March 2020) he refused permission to serve out of the jurisdiction and struck out the third claim. The order struck out the claim as not disclosing “no reasonable grounds for bringing the claim” and expressly recorded in the body the order that the claim was “totally without merit”. In a recital to that order, DJ Ranson said this: “The court has considered the claim form and particulars of claim which comprise the witness statement and a number of documents attached. The claim form and particulars of claim are vague and, in many

instances, incoherent. The claim form and particulars of claim do not contain any specific details of facts the on a general allegation of what is understood to be a breach of copyright and references to the material upon which copyright is asserted together with reference in one of the attached documents to an agreement and licence without any further particulars of the same or the breaches”. That was the third claim.

10. The fourth claim was G90MA124 and (as I understand it) was a claim seeking redress put at £655 million. This fourth claim was accompanied by an application for permission to serve out of the jurisdiction. HHJ Bird dealt with it on the papers on 4 June 2020 (in an order drawn up and sealed on 8 June 2020). That order recorded that the judge had read the claim form and witness statement comprising a “summary of the case”. In refusing permission to serve out of the jurisdiction HHJ Bird said within his reasons this: “The claim as pleaded is incomprehensible... It is impossible to conclude ... that the pleaded case as reasonable prospect of success. The [Respondent] has in the past be given the opportunity to plead his case simply. He has failed to take that opportunity. The [Respondent] should see this as his last chance to make his claim clear. At present the claim (as well as being impossible to understand) is clouded by the illogical, unsustainable and unhelpful claim for damages of in excess of £655 million”. That was the end of the fourth claim. It is not clear on the chronology – but nothing turns on this – whether the fourth claim was issued prior to or after the bankruptcy order made on 26 November 2019. Nothing in HHJ Bird’s reasoning turns on that. He focused on the substance, incomprehensibility and manifest lack of merit.
11. What happened next were the fifth and sixth claims. The Respondent issued those claims on or about 1 July 2020. At least one of them (as I understand it) was a claim to recover redress of £38.5 million. It was at this stage in the chronology that the Respondent had produced his witness statement and flowchart dated 22 June 2020 to which I have referred. The flowchart, I note, lists as among the defendants named by the Respondents an entity called Sunrise Radio. What happened in relation to the fifth and sixth claims was as follows. Dealing with the matter on the papers on 16 July 2020 (in an order drawn up by the Court and sealed on 29 July 2020) HHJ Bird stayed both sets of proceedings. The basis for that was the bankruptcy order which had been made in November 2019. The judge was alive to the fact that the cause of action was likely to have vested in the trustee in bankruptcy and was concerned that there needed to be service of the Official Receiver. The Respondent made an application, in the light of that order to stay proceedings, to unstay them. There was then the hearing before HHJ Sephton QC on 29 October 2020. This brings me full-circle because this was the hearing which I described earlier in this judgment. It dealt with the Respondent’s application to unstay the proceedings, and it dealt with the fifth and sixth claims, at a hearing which the Respondent did not attend. HHJ Sephton QC dismissed the fifth claim and the sixth claim and dismissed the application to understate proceedings. In separate orders the judge certified in each case that the fifth claim, then the sixth claim, then the application were totally without merit. The judge gave a reasoned judgment the transcript of which was obtained and has been put before the Court for today’s hearing. In relation to the application to lift the stay the judge said of the accompanying flowchart: “The application is supported by a document that I am afraid I simply do not understand. It appears to be some kind of flowchart gives me no way to understand how it is the claimant says the that he is entitled to lift the stay and why the court to exercise its power to lift the stay...” In relation to the fifth and sixth claims the judge explained that he was striking them out: first “on the basis that they have no prospect of succeeding

on the grounds that the [Respondent] is a bankrupt whose rights have been transferred to his trustee in bankruptcy and, accordingly, he has no right to bring the claims which he has put forward". The judge went on to say that the fifth and sixth claims were to be "struck out, in any event, as being an abuse of the process of the court because of the way in which they are pleaded in a haphazard fashion and in a way that cannot be understood". For all those reasons the judge described the claims as having "no prospect of succeeding" and he characterised them as "totally without merit" both based on the bankruptcy point and also based on the abuse of process point. The judge went on to consider the question of an ECRO but concluded that it would be appropriate for that matter to be the subject of an application to a High Court judge. HHJ Sephton QC recorded that "by making the orders that I do make it seems to me that I have given the [Applicant] the ammunition it needs, if it should choose to do so, to make an application [for an ECRO]".

Further features

12. I have gone through the chronology and what happened in relation to each of the six claims in some detail, emphasising where appropriate the express reasoning and warnings given by the relevant judges at relevant stages. There are also a number of further features which it is relevant to emphasise, as Mr Manley has done on behalf of the Applicant. As well as assisting the Court with submissions at the hearing Mr Manley, as the lead solicitor with conduct of the various proceedings on behalf of the Applicant, provided the Court with witness statement evidence for this hearing. That evidence was duly served on the Respondent. The evidence records what happened at the bankruptcy hearing before DJ Bever on 26 November 2019, as follows:

"On 26 November 2019, [the Respondent] was adjudged bankrupt. It should be noted that despite [the] owing [of] some £28,000 [in relation to costs orders] at the time of the hearing, the [Applicant as] petitioning creditor offered, openly, and in the face of the court, to waive the entire debt, and withdraw the bankruptcy petition immediately if [the Respondent] entered into an agreement under which he could not issue any further (hopeless) claims... [H]e declined, and was made bankrupt. He vowed to issue claims during and after his bankruptcy".

The witness evidence continues: "by [the Respondent's] own admission, he will persist until the defendants to the claims pay him money". The evidence goes on to explain that when multiple claims did not produce any offer the Respondent "has taken to attacking by issuing claims against clients of the Applicant to cause the Applicant embarrassment". An example of that is the entity Sunrise Radio, to which I referred earlier in this judgment. The evidence goes on to explain that the Applicant has spent thousands of pounds in defending misconceived claims and the Applicant's concern that unless restrained he will simply issue further claims: "the same vicious circle will then be repeated whereby we must then apply to strike at this point, upon which, costs orders will be made against [the Respondent] in bankruptcy proceedings issued and we will be in the same position as we are in now... [The Respondent] is not afraid of bankruptcy so much that he opted to be declared bankrupt rather than agree to desist in making these claims".

Analysis

13. I am fully satisfied, in the circumstances of this case, that the Applicant has demonstrated that the ECRO which is sought is justified, just and proportionate.
14. An ECRO is one of three species of civil restraint order dealt with in CPR PD3C. It is more intrusive and draconian than a limited civil restraint order (LCRO), that being an order which restrains the making of further applications, in the proceedings in which the order is made, without first having permission from the court. I have considered the less intrusive alternative of a LCRO, but it would plainly be of no practical effect in the present case. The problem is not one concerned with the making of applications within a single set of proceedings. The problem concerns the making of repeated claims (and applications within those claims) relating to or touching on the same subject-matter. A general civil restraint order (GCRO) is the most intrusive and draconian of three species. That species of order is not sought in this case by the Applicant. It would restrain any claims or applications, relating to any subject matter and against any other party, being made without prior permission of the Court. An ECRO, being more intrusive and draconian than a LCRO but less intrusive and draconian than a GCRO, restrains the issuing of claims or making applications without prior permission of the court. But it does so only in relation to claims and applications “concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made” (CPR PD3C paragraph 3.2). An ECRO must be made for a specified period not exceeding 2 years (paragraph 3.9). The order does not block the right of access to a court. What it does is to regulate the process for access to the court so that prior permission of the court must be sought (paragraph 3.2(1)), and prior notice and opportunity to make observations must be provided to any proposed defendant or respondent to any such claim or application (paragraph 3.4).
15. The jurisdiction to make an ECRO is triggered by the Court being satisfied that a party “has persistently issued claims or made applications which are totally without merit” (CPR 3C paragraph 3.1). The case law recognises that “totally without merit” means “bound to fail”; that “persistently” for these purposes means on three or more occasions; that the Court looks to see whether previous courts have certified claims or applications as totally without merit; and that the Court may revisit whether a claim or application, albeit not so certified, was in fact totally without merit. I am quite satisfied in this case that the trigger is met. As I have explained, there have been four certifications of totally without merit. Three of them related to three of the Respondent’s six claims. The fourth related to an application arising in conjunction with one of the six claims. Those certifications in my judgment clearly satisfy the trigger test and it is not necessary for the Applicant through Mr Manley to invite me to consider whether any of the ‘non-certified’ dismissals, rejections or strikes-out are properly to be characterised as the rejection of a claim or application made totally without merit.
16. The fact that the trigger test is satisfied does not mean the making of an ECRO follows. The Court has an important judgment and discretion to exercise as to whether an order is justified and, if so, what order should be made. In addressing the exercise of the judgment and discretion I have had regard in particular to the objective assessment of the risk posed by the Respondent. Put another way, I have evaluated the ‘threat level’. It is not necessary for me to set out the relevant case-law or White Book commentary. I am quite satisfied that, unless restrained, the Respondent would issue claims and make applications which would abuse the court process. I am satisfied that the risk which he poses is a high ‘threat level’: borne out of a refusal to take no for an answer, and a

refusal to accept defeat; and borne out of a strategy of making claims which fail and then making further claims, to seek to burden the Applicant with the objective of seeking a pay-out. Those repeated steps, and clearly threatened future steps, arise in the context where the Respondent has had and has been given repeated opportunities to identify a proper basis of claim, if one exists. I have described the repeated times when judges have referred to the incoherence of the claims being put forward, and the repeated references to ‘last chance’ opportunities. It weighs heavily in this case, in my judgment, that: the totally without merit certification first arose in March 2020 after HHJ Bird’s comments in November 2019 and DJ Ranson’s observations later that same month; and that the three further totally without merit certifications arose in the context of documents produced by the Respondent following the very clear warning given by HHJ Bird in June 2020.

17. In all the circumstances in the present case the high evidential bar which applies in the context of an ECRO has amply been crossed. There is nothing in the nature of an appropriate response or assurance from the Respondent which the Court would be able to consider accepting as an alternative to an order. Quite the contrary: the evidence records the clearly communicated resolve of the Respondent, including in one instance in the face of a court hearing (namely on 26 November 2019 in the bankruptcy court). Having evaluated the Respondent’s overall conduct, I find this is a case of repeated attempts to re-litigate the same subject matter. Having regard to the appropriateness of and need for protecting the Applicant, and others linked with or associated with it, from the waste of time and resources generated by unfounded litigation and having regard to the appropriateness of and need for protecting court resources, I am satisfied that the order sought is necessary and proportionate. I am also satisfied that the appropriate duration of the order necessitated in this case is the full maximum two-year period.
18. I will also order that the Respondents pay the Applicant’s costs which I assess in the full amount of £6,702.45. The Applicant has been driven to make this application and incur those costs by the Respondent’s course of conduct. The Applicant sought to minimise and avoid additional costs, by raising the question of an ECRO with HHJ Sephton QC on 29 October 2020. By making a freestanding application for an order, serving all materials in good time on the Respondent, the Court has been able to evaluate with the appropriate care the circumstances of the case, and the Respondent was thereby given a full and fair opportunity to respond to the application. Finally, by taking the sensible step of avoiding instructing Counsel the Applicant and its solicitors have avoided a much higher cost bill. In all those circumstances, it is just and appropriate to assess the costs in the full amount incurred. The Applicant is in principle entitled in my judgment to this latest in a long line of costs orders.
19. For all those reasons I therefore made the ECRO the material terms of which I will record here at the end of this judgment.

Order (and revision to Form N19A)

20. I made an order – in claim G90MA195 – that the Respondent be restrained from issuing claims or making applications in the High Court and any county court, concerning any matter involving or relating to or touching upon or leading to the proceedings in which this order is made, without first obtaining the permission of Mr Justice Fordham or, if unavailable either (1) another High Court Judge or (2) HHJ Bird sitting as a High Court

Judge. The order will remain in force until 7 March 2023. The Order continued with wording which revised the wording in Court Form N19A to say:

1. If you wish to apply for permission –
 - (a) to issue a claim or make an application in any court specified above concerning any matter involving or relating to or touching upon or leading to the proceedings in which this order is made; OR
 - (b) to make an application to amend or discharge this order,you must first serve notice of your application on the other party...

I will explain the revision here. I accepted Mr Manley's submission that this revised wording in paragraph 1(a) better reflects CPR PD3C paragraph 3.4 read with paragraph 3.2 than does the standard wording in Form N19A (which says "to make an application in these proceedings"). The point is that in the case of an ECRO prior notice to proposed parties is needed before seeking the Court's permission to issue a claim, not just to make an application in existing proceedings. That more restricted position applies in the case of an LCRO: see PD3C paragraphs 2.2(1) and 2.4. Finally, I ordered the Respondent to pay the Applicant's costs assessed at £6,702.45 by 22 March 2021.