26 November 2014

PRESS SUMMARY

HRH Prince Abdulaziz Bin Mishal bin Abdulaziz Al Saud (Appellant) v Apex Global Management Ltd and another (Respondents) [2014] UKSC 64
On appeal from [2014] EWCA Civ 1106

JUSTICES: Lord Neuberger (President), Lord Clarke, Lord Sumption, Lord Hughes, Lord Hodge

BACKGROUND TO THE APPEALS

This appeal arises out of a joint venture between Apex Global Management Ltd ("Apex"), a Seychelles company owned by Mr Almhairat, and Global Torch Ltd ("Global"), a British Virgin Islands company owned by Prince Abdulaziz ("the Prince"), Mr Abu-Ayshih and Mr Sabha. Apex and Global set up an English company Fi Call Ltd ("Fi Call"), and then fell out badly. In December 2011, Global issued a petition under sections 994-996 of the Companies Act 2006 against Apex, Mr Almhairat and Fi Call seeking share purchase orders, and pecuniary and declaratory relief. Ten days later, Apex issued a very similar cross-petition against the Prince, the Prince's father Prince Mishal, Global, Mr Abu-Ayshih, and Fi Call. Allegations and counter-allegations of seriously unlawful misconduct are involved, including money-laundering, financial misappropriation, and funding of terrorism. The two petitions were ordered to be heard together. The relief sought by Apex included a claim for just under US$6 million plus interest, which it contended was owing to Apex by the Prince. The Prince denied that the $6m was owing on the ground that he had paid it into the bank account of certain companies.

In July 2013 Vos J made a number of directions, including that each party file and serve a disclosure statement certified by a Statement of Truth signed personally. The Prince, who had objected to the order, failed to comply. This was on the basis that, as a member of the Saudi Royal Family, he was bound by a "protocol" which prevented him from taking part in litigation personally or from signing court documents. Apex applied to Norris J for, and obtained, an order that unless the Prince complied with the order, and in particular signed a Statement of Truth, his Defence be struck out and judgment be entered against him (an "Unless Order"). The Prince maintained his position and Apex applied to Norris J for, and obtained, judgment in its favour under Civil Procedure Rules ("CPR") r.3.5(2). The Prince applied under CPR 3.1(7) for a variation of the Vos J's order and for relief from sanctions. Mann J refused to vary Vos J's order and rejected the application for relief from sanctions under CPR 3.9. In July 2014, Hildyard J refused an application for summary judgment in relation to the question of whether the $6m had in fact been repaid. The Prince unsuccessfully appealed the decisions of Vos J, Norris J and Mann J to the Court of Appeal, and was given permission to appeal to the Supreme Court on terms that he paid $6m to his solicitors to abide the order of the Court. The issue in this appeal is therefore whether The Prince is entitled to the relief he seeks.

JUDGMENT

The Supreme Court dismisses the appeal by a majority of 4-1. Lord Neuberger (with whom Lord Sumption, Lord Hughes and Lord Hodge agree) gives the main judgment. Lord Clarke gives a dissenting judgment.

REASONS FOR THE JUDGMENT

The language of the CPR and of the relevant Practice Direction suggests that the standard form of disclosure by a party does require personal signing by the party and such an order reflected the normal practice **[12-13]**. Vos J's decision to make the order was well within the margin accorded to case management decisions **[15]**. Similarly, the approaches taken by Norris J to making an Unless Order and of Mann J to refusing relief from sanctions each represented a correct approach in principle and a careful consideration of the competing arguments, and Norris J's second decision was almost administrative in nature **[18]**. The decisions of Vos J, Norris J and Mann J are individually unassailable **[20-21]**. The contention that the *consequence* of these orders is disproportionate is difficult to maintain; the importance of litigants obeying court orders is self-evident and if the disobedience continues notwithstanding the imposition of a sanction, the enforcement of the sanction is almost inevitable **[23]**. There are no special factors which justify reconsidering the original orders, and the Prince had two very clear opportunities to comply with the simple obligation to give disclosure in an appropriate fashion. **[24-25]**.

The strength of a party's case on the ultimate merits of the proceedings is generally irrelevant when it comes to case management issues of this sort, though there may be an exception where a party has a case the strength of which would entitle him to summary judgment. A trial involves directions and case management decisions, and it is hard to see why the strength of either party's case should, at least normally, affect the nature or the enforcement of those directions and decisions **[29-31]**. The Prince would have a good prospect of establishing that the $6m was paid as he contends in his defence, but his prospects cannot be said to be any higher **[33]**.

It is true that the question of whether the Prince has paid may be determined in the very proceedings which he would have been debarred from defending. However, it is inherent in orders such as default judgment that the claimants will obtain judgment for relief to which it may subsequently be shown they were not entitled. **[36-37]**. The Supreme Court should be very diffident about interfering with the guidance given or principles laid down by the Court of Appeal when it comes to case management and application the CPR **[39]**.

Lord Clarke would have allowed the appeal on the basis that justice requires that the Prince should be allowed to challenge the claim against him, and all parties would be protected because the court would be able to resolve all the issues between the parties **[46]**. Lord Clarke would not limit the relevance of the merits to a case where the strength of a party's case would entitle him to summary judgment. **[75]**. Nobody had suggested that it will not be possible to have a fair trial because of the Prince's breach of the orders which led to judgment being entered against him **[77]**. Lord Clarke agrees with Lord Neuberger's comments on the role of the Supreme Court in relation to case management and the CPR **[79]**.

Postscript

After the oral argument on this appeal had been concluded and the Court had notified the parties of its conclusion, but before judgment was handed down, the Court was advised of recent judgments of Hildyard J in the principal action, given on 3 and 5 November, when he reluctantly adjourned the trial to 2015 on the application of Mr Almhairat. It would not be right for this Court to address the question whether to reconsider its decision to dismiss the Prince's appeal in the light of these developments, and in particular in the light of any breaches of the CPR or any orders by any of the Apex parties. If, in the light of events which have occurred since the Court heard and decided the Prince's appeal, reconsideration, revocation or modification of any of the orders is appropriate then that is a matter which should be raised before a Judge of the Chancery Division, who should also be responsible for deciding how the $6m should be dealt with **[42-44]**.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
www.supremecourt.uk/decided-cases/index.html