Neutral Citation Number: [2024] EWHC 3414 (KB)

Case No: KB-2023-003059

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand,
London WC2A 2LL

Date: Friday, 29th November 2024

Before:

MASTER DAGNALL
Via Microsoft Teams

- -

Between:

MOHAMMED HASSAN EL HADDAD	**Claimant**
- and -	
KHULOOD ABDULLA HASSAN AL ROSTAMANI	**Defendant**

- -
- -

MR. NEIL BAKI (instructed by ^**Penningtons Manches Cooper LLP**) for the **Claimant**

MR. GILES ROBERTSON (instructed by **Allen Overy Shearman Sterling LLP**) for the **Defendant**

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APPROVED JUDGMENT
Re APPLICATION FOR EXTENSION OF TIME and COSTS

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
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MASTER DAGNALL:

1. In this matter, I am first considering what is effectively a combination of the defendant's applications made by application notice of 3rd October 2024 and 16th October 2024 and a question as to whether, in relation to at least one aspect of the application notice of 16th October 2024, I should allow, including by granting any appropriate extensions of time, the defendant to rely on evidential material, being principally the second witness statement and its attachments of Susanna Charlwood of 13th November 2024.

2. The matter arises as follows. The parties have been engaged in various litigation in this jurisdiction and other jurisdictions for some years and which has had the result in this jurisdiction that various claims of the claimant against the defendant have been dismissed with both very substantial costs orders being made in favour of the defendant against the claimant and an Extended Civil Restraint Order being made against the claimant.

3. The costs orders have not been satisfied and the defendant has brought a bankruptcy petition in the Insolvency and Companies Court against the defendant, which petition is presently in the ICC judges' general list.

4. The claimant, however, determined to bring further proceedings against the defendant in relation to matters which he contends are very much separate from the previous litigation and issued a claim form on 18th July 2023.

5. The defendant is located out of this jurisdiction, although she has in the past and now again has solicitors in this jurisdiction instructed.

6. As a result of the Extended Civil Restraint Order, for the claimant to make any applications, he has had to obtain orders from nominated judges in the Chancery Division before any application can be brought and which process he has followed and orders he has obtained. As the defendant would not accept service of proceedings within this jurisdiction, the claimant had to obtain an order for service out of the jurisdiction, which Master Eastman granted on 11th October 2023. The claimant asserted on various occasions that he was unable to serve the proceedings within the six-month time period set out in Civil Procedure Rule 7.5(2) and therefore sought and obtained on paper from me various orders extending time for service of the claim form.

7. Eventually, the claimant contended that the delays in Foreign Process and involved in serving the defendant out of the jurisdiction were such that it would be appropriate for the court to grant an order for alternative service on the defendant's actual or intended solicitors within the jurisdiction and by way of serving by e-mail the defendant. I made an order granting such relief, which provided for service to take place by such means, and in the circumstances which happened for the defendant to have until 2nd October 2024 to file an acknowledgement of service.

8. The defendant was duly served and filed the acknowledgement of service on 2nd October 2024. However, the defendant wished to apply under Civil Procedural Rule ("CPR") Part 11 to have the Court refuse jurisdiction and so as to defeat the Claim.

9. CPR11 reads as follows:

> "11(1) A defendant who wishes to –
>
> (a) dispute the court's jurisdiction to try the claim; or
>
> (b) argue that the court should not exercise its jurisdiction

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.

(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.

(4) An application under this rule must –

(a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence.

(5) If the defendant –

(a) files an acknowledgment of service; and

(b) does not make such an application within the period specified in paragraph (4),

he is to be treated as having accepted that the court has jurisdiction to try the claim.

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including –

(a) setting aside the claim form;

(b) setting aside service of the claim form;

(c) discharging any order made before the claim was commenced or before the claim form was served; and

(d) staying(GL) the proceedings.

(7) If on an application under this rule the court does not make a declaration –

(a) the acknowledgment of service shall cease to have effect;

(b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct; and

(c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed.

> (8) If the defendant files a further acknowledgment of service in accordance with paragraph (7)(b) he shall be treated as having accepted that the court has jurisdiction to try the claim.
>
> (9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file –
>
> (a) in a Part 7 claim, a defence; or
>
> (b) in a Part 8 claim, any other written evidence.
>
> (10) Omitted."

10. The defendant wished to apply for the court to declare either that it had no jurisdiction or that it should not exercise jurisdiction and including, as part of that, to set aside Master Eastman's order granting permission to serve out and, it would seem, also, my orders extending time for service; and consequentially, on the basis that such an application succeeded, for the court to set aside the claim form or to strike it out.

11. In addition, the defendant also, as a secondary step, wished to apply, if the court did hold that it had jurisdiction and would exercise it, for the claim to be struck out under Civil Procedure Rule 3.4(2) on a number of grounds, including for its being an abuse of process.

12. The defendant's position was that to make such applications and, more importantly, the evidence in support of them, would be something which would take a substantial amount of time and legal input; and that, although the court had given a generous period of some 57 days for the filing of any acknowledgement of service: firstly, the defendant was not actually bound to take any steps until service actually took place; secondly, that the work required would be voluminous; thirdly, it would be potentially done over a holiday period if the work was to be done in August or possibly September, and therefore it could only really be done starting towards the end of that period; and fourthly, that in the past, the claimant had asserted fraud and dishonesty on the part of

the defendant's English lawyers, albeit that applications made on that basis have been struck out as being totally without merit, and, therefore, that there was all the more reason for the relevant lawyers to ensure that they scrutinised very carefully indeed the material which they produced in order to avoid or limit the possibilities for such a contention to again be made against them.

13. The defendant sought from the claimant, by correspondence in September 2024, for both allegedly relevant documents which they would wish to consider and take into account in making such applications, and for an extension of time for them to make the application under Part 11, being to 13th November 2024 rather than simply the 14 days from filing of the acknowledgement of service provided for by CPR11(4)(a) and which, as a result of the timetable effectively laid down by CPR Part 10 and Part 11 in the circumstances which had happened, which would have required the Part 11 application to be made by 16th October 2024.

14. The claimant objected to giving an extension unless the defendant was prepared to agree that the progress of the bankruptcy petition would be stayed by agreement until after this particular case had been resolved, and set that out in a letter of 30th September 2024, and which letter also made other points, as have been repeated to me today, that there was no good reason as to why the defendant could not simply get on with the relevant work and carry it out within the usual time limits.

15. The defendant was not prepared to agree to the course proposed and issued an application notice of 3rd October 2024 seeking to extend the time to apply under CPR Part 11 and to set aside the previous orders until 13th November 2024. That was supported by the first witness statement of Susanna Charlwood of 3rd October 2024,

which effectively set out the defendant's reasons for seeking an extension as I have already outlined them in this judgment.

16. The application notice came before me on paper some days after its issue, in circumstances where I was engaged on judicial training on 14th and 15th October. I therefore had my clerk send the parties an e-mail stating I had read the application and that I was concerned that to grant the application on paper would involve may having to give the claimant, under CPR 3.3(5), although it might also be CPR 23.8, a right to apply to set aside or vary any extension which I had granted; and that would cause a potential problem because the claimant, in order to make such an application, would then have to seek permission under the Extended Civil Restraint Order to make it, and which would cause delays, increase cost and be, at first sight, potentially unsatisfactory in so far as it would potentially be contrary to various matters set out in CPR's overriding objective in CPR1.1.

17. I had my clerk add that I was not sitting again until 16th October and:

> "... the Master's preliminary view is that, if the Defendant does not wish to issue the strike-out etc. application in time (although the Defendant can issue now and seek to advance further evidence later) and wishes to contend that that is appropriate, it can be dealt with at the eventual hearing of any application which is issued."

18. I provided further that the defendant should consider what to do in the circumstances, but that the claimant should in any event set out a response to the extension application by 21 October 2024.

19. In those circumstances, the defendant decided to issue the applications under Part 11, and, although they are technically a secondary matter, under CPR 3.4(2); and did so by application notice of 16th October 2024. However, rather than attaching any

evidence as to the basis of those applications to the application notice, the application notice simply referred to the previous events I have mentioned above in this judgment.

20. It was only on 13th November 2024 that the defendant produced the full evidence in support, being the second witness statement of Susanna Charlwood which runs to 43 pages of basic text; together with an appendix chronology which has another 16 pages, and exhibits, one exhibit which runs to some 400 pages and a second exhibit which runs to a further 2,198 pages; that material being relied on in relation to both applications, and where it seems to me that a substantial amount of the material is likely to apply to the CPR Part 11 application alone, or to both applications rather than merely being confined to the CPR3.4(2) application.

21. The claimant's position is that there has been a breach of the rules. The claimant, appearing before me by Mr. Baki of counsel, submits that, under CPR 11.4(b), the application must not only be made within 14 days of filing the acknowledgement of service, but must also be supported by evidence. That is a specific rule, although he could also have drawn my attention to the general rule in CPR 23.7 which provides that application notices must be served as soon as practicable after they have been filed, and where sub-rule CPR23.7(3) is as follows:

> "(3) When a copy of an application notice is served it must be accompanied by –
>
> (a) a copy of any supporting written evidence ...".

22. He contends that there was simply no evidence provided at all and therefore the application is effectively improper or that the defendant requires an extension of time to be able to rely on evidence.

23. He further contends that no good reason or sufficient reason has been given as to why it was necessary to wait beyond 16th October to 13th November for evidence to be produced. He states that the defendant's side has known very well for a long period of time as to what the claimant's case is, and that, even following the service of the proceedings, the court had allowed a further 57 days before the acknowledgement of service had to be filed, thus effectively giving the defendant much more time than is usual in relation to CPR Part 11 to formulate an application and serve it; and that, in any event, the issue should be regarded as relatively confined, and it should not be necessary to engage in some vast substantive process.

24. He further submits, although he only does so to a limited extent, that there is a degree of unfairness to the claimant in circumstances where the defendant is, he would say, delaying in relation to this matter, but seeking to prosecute a bankruptcy petition against the claimant in relation to the costs orders from the other litigation.

25. He further submits that I effectively made a direction by my clerk's e-mail of 15th October, providing that the defendant could choose to issue the application with some evidence and then supplement it later with further evidence. Mr. Baki submits that the defendant has not actually sought to do that. Rather, the defendant has sought to issue the application with no evidence at all, rather than providing some and then seeking to supplement.

26. He further drew my attention to the general principle as set out by Master Shuman in *Daly v Ryan* [2020] EWHC 2672 (Ch), and in other cases, such as *Cherwayko Cherwayko*, (No 2) [2015] EWHC 2436 (Fam), that an extension of time should need to be justified, and that waiving compliance with rules, whether by granting an

extension under CPR 3.1 or simply waiving compliance under CPR 3.10 should not be treated as a mere formality.

27. Mr. Robertson, counsel for the defendant, submits that the court both has jurisdiction to grant an extension and that this is an entirely proper case in which to do so. He directs my attention to the facts: that the application of 3rd October 2024 was made in time, that is before the CPR Part 11 14-day time limit expired; and that it was supported by witness evidence which he submits fully justifies the grant of the extension and including such matters as the holiday period, the volume of material which needed to be considered and the need to get matters absolutely right in order to avoid further allegations being levelled against lawyers of dishonesty, and where the claimant had a track record of doing so. He submits that the bankruptcy petition is effectively irrelevant; but that, in any event, it would be for the ICC judge to consider, in all the circumstances, what adjournments, if any, ought to be granted in relation to it.

28. He submits that since this is an in-time application, the *Denton v TH White* three-stage analysis is inappropriate, but in any event the court should not proceed on the basis of a relief from sanctions approach. However, he would submit, in any event, the claimant has been caused no real prejudice and that this is an important matter involving cross jurisdictional and international comity questions which ought to be properly determined on the basis of proper evidence, and which evidence has essentially been filed and served within a reasonable time.

29. That is, it seems to me, a summary of the most important elements of the parties' respective submissions, although I have taken into account all the submissions of counsel and material before me.

30. In considering this matter, it does seem to me that this is an in-time application and therefore has to be dealt with on the usual, what might be described as, open basis, rather than my being in some way constrained by the relief from sanctions procedure which is set out in CPR 3.9. It does seem to me, and I think this is effectively accepted by Mr. Baki, that where there is an in-time application, the CPR 3.9 and formal *Denton* approach is not in point and it further seems to me that that is supported by the White Book notes in section 11.1.5, dealing with applications for extension of time periods for bringing Part 11 applications.

31. However, it does also seem to me that I should consider the overriding objective in CPR 1.1 generally and I have done. CPR 1.1 is as follows:

> "1.1
>
> (1) These Rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.
> (2) Dealing with a case justly and at proportionate cost includes, so far as is practicable –
>
> (a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;
>
> (b) saving expense;
>
> (c) dealing with the case in ways which are proportionate –
>
> (i) to the amount of money involved;
>
> (ii) to the importance of the case;
>
> (iii) to the complexity of the issues; and
>
> (iv) to the financial position of each party;
>
> (d) ensuring that it is dealt with expeditiously and fairly;
>
> (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases;
>
> (f) promoting or using alternative dispute resolution; and

(g) enforcing compliance with rules, practice directions and orders."

32. Further, I should bear in mind that it is always a useful analysis to carry out the three-stage approach which is set out in *Denton v TH White*, albeit without further applying in an in-time application the rigour of there being a heavy burden on a party seeking relief from sanctions to justify the court granting relief and considering expressly, with extra importance, the matters set out in 3.9(a) and (b); although the question of the effect of the extension on the course of litigation and the importance of enforcing compliance with rules, Practice Directions and orders, comes into play, in any event, under the general wording and application of the overriding objective.

33. In this case, I go through the *Denton v TH White* three-stage analysis as follows. Firstly, as to whether or not the extension is a serious or substantial matter. In general, it seems to me that that question is very case-specific. It depends on such matters as the length of the extension which is sought and the particular context in which the extension is sought. Here, it does seem to me to be something which is serious and substantial, simply because the CPR Part 11 procedure itself sets out a rigorous time limit in the form of the limited 14 days which is allowed after filing an acknowledgement of service for there to be a challenge to the court's jurisdiction.

34. That limited period reflects the policy, as does the sanction of deemed waiver if an application is not made in time as set out in CPR 11(5), that challenges to jurisdiction or the exercise of jurisdiction must be made speedily at a very early stage. Although an extension of what is effectively only 28 days is only a limited one, it seems to me, in that general context, that the court is being asked to do something which is of distinct substance.

35. The second question is whether there is good reason for the extension, and where the claimant submits there is not. It seems to me that there is certainly real reason for the extension in this particular case. The matters which have to be considered in relation to the Part 11 application, it seems to me are of some considerable potential complexity. There is a very sizeable history to this case. It involves, it seems, a distinctly sizeable number of documents, as is clear from the length of the exhibits to Ms. Charlwood's second witness statement.

36. It is further a matter which is potentially legally complex, both because of the jurisdictional aspect itself, but also because of the variety of ways in which the application is framed, including attacking both the order for permission to serve out and the orders for extension of time in relation to service of the claim form.

37. Further, it seems to me relatively obvious that where the defendant is seeking, as a secondary attack, to advance an assertion that the bringing of the claim is itself an abuse of process, that that adds a further degree of complexity, and where it is much the most appropriate course for the Court to be given all the evidence and to be asked to deal with all matters together, rather than in some way or other seeking to split evidential material up.

38. It does also seem to me is that there is force in Mr. Robertson's points that it is highly desirable to have all members of the previously engaged legal teams involved in the process, which may well result in delay where there is a holiday period involved; and that there is an extra level of need for accuracy and very careful checking of what is done and advanced, where previously the other side have made accusations of dishonesty against relevant lawyers.

39. As far as the third stage of *Denton* is concerned, though, and where such is not in any event conditioned by the first two stages, and the general question of discretion, it seems to me there are a number of important considerations to take into account. Firstly, the application was made within time. Secondly, the direction which I made, it seems to me, does not have the weight which Mr. Baki desires to give to it. It was simply an informal set of intimations given by me, as assigned Master, in a particular set of circumstances where the court had difficulty of dealing with the subsisting application, which made a suggested proposal as to how to proceed. It was not in any way an order determining the application of 3rd October 2024. While it still seems to me that my direction made eminent sense in the circumstances, it does not seem to me to be right to treat it as an order which in some way can be said to have been breached.

40. Thirdly, it does seem to me that Mr. Baki does have some force in his submission that what the defendant chose to do was to produce an application supported by no evidence at all, and which did not in any way set out of the grounds for making it. It does seem to me that, particularly if there had not been the application of 3rd October, the defendant might be in some difficulty in saying that it was really a proper application where it had no grounds and where it had no evidence in support. However, it does have to be seen in the general context of what had happened.

41. Fourthly, it does not seem to me that what has happened has in any way disrupted this litigation in any sensible way or to any great extent. What has happened is that the defendant has chosen to make both applications to dispute jurisdiction and to strike out in any event. The making of each of the applications effectively operate as an automatic extension of time for the service of a defence, and this is true simply of the CPR3.4(2) strike-out application alone (as default judgment cannot be obtained until it is resolved – see CPR12.3). The application to strike out under CPR 3.4(2) is

obviously, in any event, a heavy matter. The parties are in fact agreed that, together with the Part 11 application, it deserves a number of days for a proper hearing, and that seems to me to be self-evident.

42. On that basis, it does not seem to me that any delay in making the Part 11 application will have caused any particular delay in the general timetable. There would have to be a substantial hearing in relation to the application under CPR3.4(2) to strike-out some considerable time in the future; and the CPR11 application can be, and always would have been, heard at the same time. There never would have been a separate hearing and thus no overall delay has been caused.

43. I have also borne in mind the fact that at first sight there is at least some form of set of breaches of the rules, in so far as the Part 11 application was not accompanied by any evidence at all. On the other hand, that matter seems to me to have been fully cured.

44. I do bear in mind that, in any event, there was an in-time application which the court could not deal with fully within time, simply because of delays and difficulties within the court itself, and where the court decided not to convene some extremely urgent hearing, both because that seemed inappropriate from the court's point of view and because it would give rise to the ECRO difficulty which I had my clerk mention in my e-mail of 15th October 2024.

45. In all those circumstances, it does seem to me that it is appropriate to grant the extension of time sought. I have borne all matters in mind. It seems to me particularly important is the fact that this was an in-time application made with at least some real reason and where the overriding objective points towards having actual disputes fought out. This dispute was flagged at the early stage. It does seem to me that the defendant has at least made a real effort to seek to achieve the overriding objective and

that there has been no consequent real prejudice. There is also a further matter that the court is always concerned in cross jurisdictional disputes where jurisdiction is challenged to deal with the matter fully in accordance with the law in accordance with international comity and that is a further reason, where an application has been properly made in time for an extension, to grant it.

46. I have balanced all the various matters together and it seems to me that in these particular circumstances I should grant the application and will do so. For all those reasons, I am not in some way or other going to set the defendant's application notice aside. Rather, I will simply grant the extension of time permitting the defendant to rely on the 13th November 2024 evidence and permitting the application notice to proceed.

(For continuation of proceedings: please see separate transcript)

47. As far as costs are concerned, I have to apply CPR 44.2 which I set out as follows:

> "44.2.
>
> (1) The court has discretion as to –
>
> (a) whether costs are payable by one party to another;
>
> (b) the amount of those costs; and
>
> (c) when they are to be paid.
>
> (2) If the court decides to make an order about costs –
>
> (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
>
> (b) the court may make a different order.
>
> (3) The general rule does not apply to the following proceedings –
>
> (a) proceedings in the Court of Appeal on an application or appeal made in connection with proceedings in the Family Division; or

(b) proceedings in the Court of Appeal from a judgment, direction, decision or order given or made in probate proceedings or family proceedings.

(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

(5) The conduct of the parties includes –

(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue;

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim; and

(e)whether a party failed to comply with an order for alternative dispute resolution, or unreasonably failed to engage in alternative dispute resolution.

(6) The orders which the court may make under this rule include an order that a party must pay –

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date, including a date before judgment.

> (7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.
>
> (8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

48. The court has a general discretion but one to be exercised on a principled basis in accordance with that rule; and where the court asks, first, whether or not there is a successful party, the general rule being they would get their costs but, even then, the court has regard to all the circumstances, including partial success, the way in which applications have been put forward, and conduct.

49. It seems to me that as far as this hearing is concerned, much of it has concerned case management, and it would have had to have taken place, in any event, in order to deal with case management. However, it also seems to me that a substantial amount of the hearing has dealt with the question as to whether or not the defendant can effectively mount the Part 11 application or whether it was to be defeated on procedural grounds with regards to evidence. That was in circumstances where the defendant had taken the choice, which it did not seem to me was necessarily totally appropriate, to issue the Part 11 application without referring to any grounds or evidential material at all. Nevertheless, the defendant has succeeded on that particular aspect.

50. It seems to me, therefore, that I really ought to treat the defendant as the successful party as far as that aspect is concerned, but to make a more nuanced order than simply treating the defendant as a successful party who has been fully successful and whose conduct should not result in a different order.

51. What I will do in the circumstances is to order that 50% of the costs of today and of the application are costs in the application and 50% are defendant's costs in the

application. That, it seems to me, is the fair, just and appropriate outcome and in accordance with the rules.

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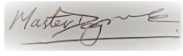
Approved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