IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

BUSINESS LIST

[2019] EWHC 174 (Ch)

No. BL-2018-002235

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 24 January 2019

Before:

MRS JUSTICE FALK

B E T W E E N :

(1) MOKE INTERNATIONAL LTD
(2) CARAIBCAR S.A.R.L — Claimants

- and -

(1) MING INTERNATIONAL HOLDINGS LTD
(2) GUNTHER SCHMALZ
(3) NATALIE JONES — Defendants

MR F. TREGEAR QC (instructed by Mr M Littlestone of Rosenblatt Limited) appeared on behalf of the Claimants.

THE DEFENDANTS were not present and were not represented.

J U D G M E N T

MRS JUSTICE FALK:

1 This is a hearing of an application to obtain an order to enable a previous order of Snowden J dated 4 December 2018 to be complied with. That order was a judgment in default made in favour of the claimants, under CPR r.12.42. The default was a failure to file an acknowledgement of service.

2 The order made by Snowden J provided that the first claimant, Moke International, is entitled to the ownership of all of the shares of a Monaco company called Start Having Fun SCP ("SHF"), and is entitled to be registered as the holder of those shares. It also ordered that the second and third defendants, two individuals, transfer the shares they hold in SHF to the first claimant, that the second and third defendants pay the claimants' costs, and certain other matters to which I do not need to refer.

3 In summary, the order has not been complied with, and in particular the shares in SHF which are registered in the names of the second and third defendants have not been transferred.

4 The order sought from the court now is to appoint a named Master of this division to sign the necessary share transfer documents by a certain date, and related orders in particular that the costs be paid by the second and third defendants.

5 The power of the court to make an order of this nature derives from what is now s.39 of the Senior Courts Act 1981, and is reflected in CPR r.70.2A. That makes it clear that if a mandatory order has not been complied with, which is the case here, the court may direct that the act required to be done may be done by another person appointed by the court. I was pointed to examples of that, including an example where a Master was appointed to undertake an act: *Astro Exito Navegacion SA v Chase Manhattan Bank NA* [1983] 2 AC 787.

6 It is also clear from *Astro Exito* that there is no restriction on the type of document, or on the purpose for which such an order might be made. I therefore consider that I have the power to make the order requested.

7 I am also satisfied that the conditions in CPR r.70.2A are met, and I am satisfied that the order is practicable and should achieve its objective of ensuring that the order of Snowden J is finally complied with.

8 Much of the discussion before the court this morning related to another matter, namely the position of the defendants. As things stand, neither of the second nor third defendants at whom Snowden J's order was aimed have in fact applied to set aside the default judgment or taken any other step in these proceedings, including any attempt to file an acknowledgment of service or to do so retrospectively out of time.

9 I note that the defendants are now eighty-five days late in filing an acknowledgement of service with no apparent good reason, and it seems highly unlikely in those circumstances that a late acknowledgment of service made now could possibly be accepted under *Denton* principles: see the judgment of Popplewell J in *Taylor v Giovani Developers* [2015] EWHC 328 (Comm) at [19] onwards.

10 There have however been certain communications with the court. There was a communication from the second defendant to Snowden J shortly before the hearing before him, to which he referred in his judgment. Prior to this hearing, the court or various individuals at the court received a series of emails from a Mr Edward Peters, who I understand was at one stage associated with the first defendant, Ming International Holdings Limited. In addition, as this hearing was about to start, my clerk received an email from the second defendant, Mr Schmalz.

11 Taking the second defendant's email first, it was a request, or a demand, to vacate the hearing and fix it by telephone at a later time, on the basis that the third defendant, Natalie Jones, was ill, and an urgent medical assessment was awaited.

12 I am afraid this is simply too late. The defendants have had ample opportunity over some months now to engage with the process of the court, and at no stage have they done so. The only communications have been very shortly before the hearings, before Snowden J and now the hearing before me. The timing of those communications suggests a pattern of behaviour.

13 There is no reason why the second and third defendants could not have taken some steps to acknowledge service. The second defendant at least clearly has some legal knowledge. They appear to have conducted a business as patent attorneys. They are not unsophisticated. Despite appearing to operate out of Monaco, they seem to be based in the UK, and there are clearly no difficulties with language or understanding.

14 The second and third defendant have taken no steps to engage in the litigation process. Furthermore, they appear to be asserting no real rights or making points that go to the appropriateness of the order being made.

15 I have also mentioned other correspondence to the court, from Mr Edward Peters. This comprised a number of things, one of which was an attempted renewal of what appears to have been an application of sorts, or an attempt to make an application by him, on behalf of the first defendant.

16 No application has successfully been lodged on the Court’s systems. Mr Peters complains about the well-publicised IT issues affecting the courts in recent days and suggests that this is why no application has successfully been filed. I have made my own enquiries. I understand that at no stage have those IT issues prevented users from filing applications in this Court. I have also confirmed that there is nothing outstanding that is not shown on the Court’s electronic system (CE file). I have also checked the CE file personally.

17 What Mr Peters appears to have done is to attempt to file an application with the wrong label, either as a defence or as an amended claim. In both cases it was rejected, and I am assured that he was given the correct advice about how to file an application correctly.

18 Notwithstanding the failure to file it, I have received a copy of the application, and I have shown it to the claimants' advisers who are in court.

19 A key point is that Mr Peters is not in fact authorised to act on behalf of Ming International Holdings, the first defendant. He is also not able to act on behalf of the second or third defendant.

20 The first defendant was placed in liquidation in December 2018 (not 2015 as Mr Peters has suggested). It is a Hong Kong company, and I have been informed that the only person that would be authorised to act on behalf of that company at the moment is the Official Receiver in Hong Kong.

21 In addition to the application, Mr Peters included a significant amount of additional correspondence which he marked as confidential. He made a number of allegations in that correspondence, including allegations that the court has been misled. I have considered that correspondence, but I have also considered the submissions made before me, and the Claimants' evidence, and I have decided that I should give no weight to Mr Peters' comments. Not only is he not able to act on behalf of the first defendant, but the first defendant is not even the subject of the application before me. That application is directed at the second and third defendant. Mr Peters is not able to represent the second and third defendants.

22 In any event, I am confident that comments made by Mr Peters to the effect that the court has been misled are fundamentally inconsistent with the documentary evidence provided by the Claimants.

23 I should also make the point, as Snowden J did, that a default judgment is not a judgment on the merits of the case (*Football Dataco Ltd v Smoot Enterprises Ltd* [2011] 1 WLR 1978). Nothing that the court has received from Mr Peters or the second defendant goes to the substance of the application being made today, which must be judged on its own merits.

24 I am persuaded that the correspondence received is essentially a spoiling operation, or an attempted spoiling operation, to which the court should not have regard, and that it is appropriate to make the order requested. There has been a very clear failure to comply with an order of the court, which cannot be permitted to continue.

CERTIFICATE

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This transcript has been approved by the Judge