

Neutral Citation Number: [2020] EWHC 3112 (Ch)

Case No: BL-2018-002028

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CH D)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 November 2020

Before :

Tom Leech QC (sitting as a Judge of the Chancery Division)

Between :

BARROWFEN PROPERTIES

Claimant

-- and --

(1) GIRISH DAHYABHAI PATEL
(2) STEVENS & BOLTON LLP
(3) BARROWFEN PROPERTIES II LIMITED

Defendants

APPROVED JUDGMENT

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment is handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 2 pm on 18 November 2020.

Tom Leech QC :

Introduction

1. On 16 September I made an order (the "**Order**") upon the applications for disclosure of the Claimant, Barrowfen Properties Ltd ("**Barrowfen**"), and the Second Defendant, Stevens & Bolton LLP ("**S&B**"), against the First Defendant, Mr Girish Patel ("**Girish**"), and the Third Defendant, Barrowfen

Properties II Limited (“**Barrowfen II**”). On 24 September 2020 I handed down a reserved judgment setting out my reasons for ordering disclosure of documents which would otherwise have been the subject of legal professional privilege.

2. In paragraphs 3 to 12 of the Order I set a revised timetable for disclosure, witness statements and expert evidence. In particular, in paragraph 9 I extended time for service of witness statements and hearsay notices to 22 December 2020. In paragraph 14 I ordered Girish and Barrowfen II to pay the costs of the disclosure applications. In paragraph 15 I ordered them to pay £38,650 to Barrowfen on account of those costs by 4 pm on 13 October 2020 and in paragraph 17 I ordered them to pay £14,557.50 to S&B on account of their costs by the same date and time.
3. I add that Girish has not provided an email address to the other parties or to the Court and that all communications to and from him can only be made by telephone or by post. I also add that in the course of the disclosure applications I was taken to a number of emails to and from Girish which show that he has had access to the internet and both sent and received emails in the past.

The Application

4. By Application Notice dated 12 October 2020 (received by the Court on 13 October 2020) Girish applied to extend the time for compliance with paragraphs 15 and 17 until the Court determined the conclusions to be drawn from a report identified in his fourth witness statement (“**Girish 4**”).
5. I was informed by the Court staff that Girish 4 was accompanied by seven appendices in hard copy which Girish had filed in support of the application. In the covering letter Girish stated that in due course he intended to file a further witness statement in support of the application.
6. The Court did not receive anything further from Girish in the next few days and by email dated 16 October 2020 (by which time compliance with the two orders had expired) I extended time for compliance with the Order by 21 days to Tuesday 3 November 2020 to enable Girish to file his further evidence and

for the Claimants to respond. I also stated that I would determine the application on paper.

7. By letter dated 26 October 2020 Girish submitted a letter and a number of accompanying documents to the Court and on 30 October 2020 Prashant made a third witness statement in answer to the application (“**Prashant 3**”). Unfortunately, these documents were not put before me until 17 November 2020 when I chased for any further information about the application.
8. In Prashant 3, Prashant referred to a fifth witness statement made by Girish (“**Girish 5**”): see paragraphs 5 to 8. This witness statement had not been filed on the Court file and no hard copy had been received by the Court. I therefore had to ask the Court staff to obtain a copy from Barrowfen’s solicitors, Withers LLP. Paragraph 6 referred to an Appendix on a USB stick which the Court did not receive either.

The Evidence

9. In the first part of Girish 4, Girish referred to a medical condition which prevented him attending the hearing on 15 and 16 September 2020 and from making submissions about costs: see paragraphs 3 to 9. In my judgment dated 24 September 2020 I dealt with Girish’s medical condition and his failure to attend. I also made an Order which would have given him sufficient time to make an application to set aside the Order if he had acted promptly. He has not made such an application.
10. In the remainder of Girish 4 and Girish 5, Girish made a number of allegations of misconduct against members of his family which were primarily related to the activities of a company called Aum Commodities Pte Ltd, which appears to have been registered in Singapore: see Girish 4, paragraphs 10 to 28 and Girish 5, paragraphs 3 to 13. The thrust of Girish’s evidence was that he was unable to make the payments which I had ordered him to make as a result of the misconduct of other family members or had spent his available funds on legal costs in relation to other proceedings (including a criminal prosecution).

11. In Girish 5, paragraph 14 Girish asked the Court to appoint an investigative body to look into the issues raised in Girish 4 and 5 on the grounds that they involved money laundering and the proceeds of crime. He also asked for permission to write to the Singapore authorities and the liquidators of Aum Commodities Pte Ltd.
12. In his letter dated 26 October 2020 Girish also stated that Barrowfen had “full knowledge that First Defendants have no funds and have been stripped of all family assets”. He also made a number of other allegations or repeated allegations which he had made in his two witness statements. At the end of the letter he stated that he could not meet the fees of a mediator.
13. In Prashant 3, Prashant stated that Girish was attempting to use irrelevant wider family disputes to circumvent his duty to comply with the Order. He also stated that those disputes had been settled and were the subject matter of a confidential settlement agreement. He also pointed out that Girish had provided no information or documents about his financial position and he stated that he believed that Girish had more than sufficient funds to comply with the Order. He referred to a “luxurious property” and that Girish had been paid substantial funds from the family business. Prashant also drew attention to the fact that Girish had not complied with paragraphs 1 to 4 of the Order.

Decision

14. I will extend time for compliance with paragraphs 15 and 17 of the Order until 4.30 pm on 25 November 2020 on the terms of the approved Order enclosed with this judgment. I do so for the following reasons:
 - i) It is not possible for me to resolve any of the issues raised in Girish 4 and Girish 5. But even if it were, those issues are irrelevant to the question whether I should extend time. At best, they would have provided no more than background to the application and or an explanation for the inability of Girish and Barrowfen II to make the interim payments in the Order.

- ii) But in any event Girish has identified no evidence in either of his witness statements or his letter to support his assertion that he is unable to make those interim payments or sought to explain his financial position at all. I extended time for compliance until 3 November 2020 to enable him to put in such evidence. But he has failed to produce any bank statements or other financial information which would justify an extension of time.
 - iii) But even if Girish had produced evidence of his financial position and been able to demonstrate that he was unable to make the two payments by 13 October 2020, it is highly unlikely that I would have extended time for payment for more than 28 days. As it is, I am prepared to give him seven days from the date of this judgment to make the payments.
 - iv) Finally, Girish has provided no explanation for the failure to comply with paragraphs 1 to 4 of the Order. The Court is, therefore, only prepared to give very limited indulgence to Girish and Barrowfen II.
15. I make it clear that I am not granting an extension of time to Girish or Barrowfen II for compliance with any other provision of the Order or excusing their failure to comply. I also make it clear that I will not entertain any further applications to vary the terms of the Order, especially when Court staff are working remotely, Girish cannot or will not file documents on the CE file and it is possible for documents sent by post to go missing. Any further application to vary or extend the terms of the Order must be made to the Master and properly listed in the normal way.
16. Finally, I add for completeness that the Court is not prepared to entertain the applications set out in Girish 5, paragraph 14. The Court has no jurisdiction to appoint any investigative body far less to appoint anyone to investigate matters which fall outside the pleaded allegations in this action. Moreover, if Girish needs permission to write to the authorities in Singapore or the liquidators of a Singapore company, this Court cannot give that permission. If anything, the requests demonstrate the collateral nature of the evidence upon which Girish relied.

Costs and Service

17. I propose to make no order as to the costs of this application although I will give Barrowfen permission to apply for its costs of the application if it wishes to do so (including the additional costs of service). I will also order that Barrowfen's solicitors, Withers LLP, serve a copy of this judgment and the accompanying order by post on Girish.