

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Friday, 24 November 2023

BEFORE:

MRS JUSTICE JOANNA SMITH

BETWEEN:

- (1) **TRANSOMAS LIMITED**
(2) **TRANSOMAS INVESTMENTS LIMITED**

Claimants

-and-

- (1) **KHERI TRADING LIMITED**
(2) **TARNJIT SINGH GILL**

Defendants

The Claimants were unrepresented and did not appear

MR MARK ANDERSON KC, MS GABRIELLA McNICHOLAS and MR JASON MITCHELL (Instructed by Macfarlanes LLP, 20 Cursitor Street, London EC4A 1LT) appeared on behalf of the Defendants.

JUDGMENT
(As approved)

Daily Transcript by John Larking Verbatim Reporters
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No of folios: 57
No of words: 4101

(Friday, 24 November 2023)

MRS JUSTICE JOANNA SMITH:

1. This is the consequential hearing following my dismissal of this action on 13 November 2023, which was the first day of the trial. My reasons for dismissing the action on that day are fully set out in the *ex tempore* judgment that I gave at that time. By an order of the same date, a consequential hearing was listed for today, i.e., 24 November 2023.
2. At the end of the hearing on 13 November, I made the following observation to Ms Kaur, as recorded in the transcript:

Ms Kaur, Mr Anderson has invited me to, as I am sure you have realised, have a hearing to deal with the consequential matters following on from my dismissal of the action at the end of next week. There are a number of consequences, as you know, that will flow from that dismissal, including costs. He has asked me to provide for two days because they may be complex. I am hoping that they will not take two days, but I am going to ask Listings for two days. There should be skeleton arguments, ordinarily, in advance of such a hearing. I know that you provided a skeleton argument for the application to adjourn. You did not provide a skeleton argument for the trial, perhaps for obvious reasons now, but it might be in your best interest to provide some form of argument in relation to the hearing next week, and once again, I say to you what I have said to you before; that it is obviously in your interest to obtain legal representation. Lawyers helping you next week would not need to understand all the ins and outs of the factual matters relating to the trial and causes of action in the trial. They would need to understand a rather more limited compass and I see no reason why, between now and the end of next week, it would not be possible for you, if you wish to do so, to obtain legal representation. I strongly recommend that you do that.

3. Notwithstanding what I said at the hearing, Ms Kaur has not attended today and she has made it clear, in circumstances to which I will come in a moment, that she does

not intend to attend. The Claimants have no other representative appearing before me today. No formal application to adjourn today's hearing has been made.

4. The background circumstances that I need to identify are as follows. On 20 November at 4.06 p.m., Ms Kaur sent an email to my clerk saying only this: "For the attention of her Ladyship, an appeal has been filed". In the subject line, a filing approval case number – CA-2023-002266 – was given. There was no attachment to that email. My clerk subsequently made enquiries to the Court of Appeal and was provided with a copy of an Appellants' Notice in respect of my decision made on 27 October 2023 to refuse the Claimants' application to adjourn the trial. Having seen that Appellants' Notice, I asked my clerk to send an email in the following terms to the parties:

The judge notes that the Claimants have filed an Appellants' Notice with the Court of Appeal in respect of her decision dismissing the Claimants' application to adjourn the trial of this matter, and she is grateful to Ms Kaur for drawing it to her attention. The judge wishes to record that she does not recall that any request was made by the Claimants for permission to appeal at that hearing and accordingly, she has not determined any such application, notwithstanding what is said in the Appellants' Notice at Section 5.

Further, the judge notes that in section 11 of the Appellants' Notice, a request is made for a stay of execution on all matters in the litigation pending the final determination of the appeal. There is a one-day hearing fixed for Friday 24 November for the court to hear argument on consequential matters following the dismissal of the Claimants' claim. It is most unlikely that the Court of Appeal will determine the application for a stay in advance of that hearing. Accordingly, in the event that the Claimants wish to seek a stay, they should attend at that hearing and apply to the court explaining their reasons. The Claimants may be assisted by considering CPR 52.16 and the notes in the White Book at 52.16.1, to 52.16.3.

5. That email was sent to Ms Kaur by my clerk on 21 November 2023 at 13:25. The court then heard nothing further from Ms Kaur, until an email sent to my clerk at 1.14

am today (24 November) sending a bundle containing documents relating to the appeal. That email said this:

Please excuse the late circulation of Claimants' appeal but - as always - if only we had more time - if we knew better we would do better - but we are learning as we go - and if only due process was a consideration in favour of Claimants' it would be clear that we would not be forced to continue the onslaught of the past 3 & ½ years of minimal notice and minimal time to jumble together whatever documents we can still find, extract, collate and present in the face of persistent hacking and tampering - despite Defendants' well-funded war chest and the Macfarlanes monster machine (all funded unfortunately by my late father's lifetime of achievements which he intended to leave for our 85 year-old mother recently diagnosed with cancer).

6. I should say that some of the allegations in that email are strongly resisted by the Defendants. There was no indication in that email as to whether Ms Kaur intended to attend the hearing today and whether the Claimants intended to instruct any alternative representation. I infer, however, from its content, which does not make any reference to the involvement of lawyers, that the Claimants had not sought legal representation at that time.
7. At 9.21 a.m. today, a further email was sent to the court by Ms Kaur in the following terms:

As Her Ladyship is aware, we continue to struggle with the depth and breadth of data hacking, which has not yet been overcome. As we need time and resources to address this, it has been hugely unhelpful to experience the surprising continuation of this Court's deadlines being pushed on us. The IT provider cut off access to a large portion of our digital files last week, after an unknown length of time of unauthorized access into our systems rendered files corrupted, removed, or jumbled. Despite their promise to us and the police that they will furnish the audit logs, thus far they have refused to do so, but I myself and my assistants have witnessed such unauthorized access and

intend to present this evidence if we are given leave to do so instead of being forced to meet yet another short yet hugely significant deadline while both the Court and Defendants are fully aware of these ongoing difficulties. It should be pointed out to Her Ladyship that when the IT provider was finally asked to turn over all the administrative credentials so that we could take back control of the data, they refused, for precisely 15 days, and turned it over only after Her Ladyship dismissed the case. Such new evidence lends further support to the precise data targeted and the timing being of great significance given the work stopped was this litigation. And this clearly was of no benefit to us. But clearly benefitted Defendants.

We have had to decommission over 16 computers for IT forensics and due to the embedded remote access systems of the IT company and can barely function at a basic level while this is being resolved. So we reiterate the same refrain, please accept that more time is needed than routinely might be required, not relentless short deadlines and increasing submissions to be met.

We have already requested the Court of Appeals *[sic]* intervene. So we are at a loss to understand while trying to assemble and present our Appeal how we are supposed to meet ever increasing demands from this case. This is precisely the injustice that we are trying to seek help for both when we applied for adjournment and now in the Appeal.

I have not been able to fully review the recent lengthy and varied submissions of Defendants in the few days that we had it and then there were additional submissions to try to keep track of. **I was trying to figure out a way to address it but there simply has not been adequate time to get legal advice on it in these few days or see how to respond.** Despite its summary appearance this is essentially a case of malicious prosecution being lodged against me. An exceptional construct rarely used due to its *[sic]* rarely being applicable. I request such a harmful allegation against me be properly presented with the usual timelines of a regular case so that due process may be served. In so doing, I will be afforded an opportunity to have adequate

time to respond to each and every one of the allegations as is required by all notions of fundamental fairness and codified in the rules of procedure. This process is inapplicable here and if given proper time, I would demonstrate my submissions more fully on this point and have been unable to do so in the few days given.

8. There was then a paragraph dealing with privileged documents which I do not need to read out in full and then the final paragraph was as follows:

I cannot attend the hearing today as I understood it would be stayed automatically due to the Appeal but I read late last night that Ms. Reid [*my clerk*] had sent us a message that we are required to apply to you for a stay. I tried to prepare it last night but was unable to complete it and will try to get it in this morning but **frankly I am soo [*sic*] exhausted and sick that I cannot guarantee it will be in before she starts to read in. I can only try to meet yet another impossible deadline.** It does not feel like due process or justice at all. But it is what I have been subjected to relentlessly for the past 3 and a half years since my father died. (**emphasis added**).

9. I make the following observations about this email.

(a) Ms Kaur raises the issue of data hacking and issues with digital files. These are issues that she has raised before, but she has presented no evidence to the court to support them. It seems that Ms Kaur has once again been focusing on perceived issues with documents (as she did at the adjournment application), rather than concentrating on dealing with issues arising in connection with this consequential hearing.

(b) I do not know how or why Ms Kaur obtained the impression that this hearing would be stayed automatically following her appeal. Nor do I know why she only "read late last night", the email from my clerk of lunchtime on Tuesday of this week. As far as I can tell, that email was sent to the address she usually used to correspond with the court. It made abundantly clear the need for the Claimants to seek a stay today if that is what they wished to do. It

also pointed Ms Kaur in the direction of the relevant rules. CPR 52.16 reads as follows:

Unless –

(a) the appeal court or the lower court orders otherwise..."

...

an appeal shall not operate as a stay of any order or decision of the lower court.

- (c) Ms Kaur asserts that there has been inadequate time to obtain legal advice, but she has had almost two weeks since the day of the trial (Monday 13 November 2023) to get such advice. I can only infer that no attempt has been made to obtain it.
- (d) Ms Kaur complains that she is being subjected to a malicious prosecution, but it was the Claimants that started these proceedings and they have pursued them until the first day of the trial. I have made observations about this allegation in previous judgments.
- (e) The email does not even try to address the detail of the applications made against the Claimants at this hearing, save in the one paragraph that I did not read out, dealing with privileged documents. Instead, its primary focus appears to be on the application now made to join Ms Kaur into the proceedings for the purposes of seeking a non-party costs order against her. This is perhaps unsurprising, but tends to support the submission made today by the Defendants in their skeleton argument, that Ms Kaur's focus here appears to be on her own interests rather than on those of the Claimant companies.

10. At approximately 11 a.m. – this hearing was due to start at 11.30 a.m. – I received from Ms Kaur a bundle entitled, "Inter-party bundle Re: Privilege and Inappropriate injunction". There was no covering note. That bundle is 397 pages long and I had no time to read it. I have no doubt that the Defendants' counsel also had no time to read

it in advance of this hearing. It is unclear what its relevance to today's hearing is, although I suspect it may go to an issue in relation to an application for indemnity costs, to which I shall turn later.

11. At 11.10 a.m. this morning, my clerk received another email, which Ms Kaur asked me to read. That email said, "I apologise profusely again to her Ladyship for the wholly inadequate and tardiness of the minimal submissions we have been able to cobble together in this exceedingly short timeframe, however if her Ladyship can read only one thing, it is this email below."
12. The email then goes into some detail about issues arising with lawyers in Texas; the injunction that has previously been granted by this court; correspondence with a Texas attorney (whose name I do not need to identify for these purposes) into which the court has been copied (for reasons that I do not understand); an allegation that Mitch and his brother have forced themselves into her and her mother's home over some 7 to 8 weeks in July and August and further allegations about the use by the Defendants of litigation tactics to evade a fair trial on the merits. The email concludes by referring to the fact that these and other reasons are why the Defendants have lodged an application for permission to appeal.
13. At 11.19 a.m., my clerk received a yet further email from Ms Kaur saying this:

Please excuse yet again our tardiness and inadequate submission in the short timeframe allocated. Attached is our application notice requesting her Ladyship stay these proceedings due to the claimants exercising their right to file an appeal. Any determination of defendants' requested matters today shall be premature and prejudicial to the due process rights of claimants and its director. One must not forget, Mitch has not paid one single penny for the hotel he claims to own, and that he is bankrolling his defence against a fair trial on the merits against those companies of his father that lost almost all their assets due to him and claimants' funding challenges are the direct result of his actions to strip those companies and encumber them with the ten million pounds of debt to the Bank of Singapore. I believe defendants'

lawyers omitted presenting claimants' huge debts to the court when erroneously maintaining they were flush with funds and/or equity.

14. Attached to that email is an application for a stay of the proceedings dated today, 24 November 2023, together with a bundle of documents which appears to contain documents pertaining to the Claimants' intended appeal.
15. In light of the content of the email sent by Ms Kaur at 9.21 a.m., including her statements that (i) more time is needed to obtain legal advice; (ii) she cannot attend today because she had understood that these proceedings would be stayed by reason of her application for permission to appeal and (iii) she is too sick and exhausted to prepare for this hearing, I must treat that email as an application to adjourn this hearing pursuant to CPR 3.1(2)(b). That application is opposed and Mr Anderson KC, on behalf of the Defendants, invites me to proceed with this consequential hearing. I should say that the Defendants notified Ms Kaur that it was their intention to invite me to proceed in an email that they sent to her at 10.36 a.m. this morning, in which they said, "[t]o ensure that the position is entirely clear, we inform you now that if you do not attend we will be inviting the court to proceed in your absence".
16. In considering whether to adjourn, I must have regard to the overriding objective to deal with cases justly and at proportionate cost. Having regard to the matters to which I have already referred, I do not consider that it would be appropriate or consistent with the requirements of the overriding objective to adjourn today's hearing. My main reasons are as follows.
17. The Claimants have known about this hearing since the dismissal of the action and I explained to Ms Kaur the steps she would need to take to prepare for it. Nevertheless, the Claimants do not appear to have even tried to obtain legal advice – certainly Ms Kaur does not say that she has made any efforts to instruct new lawyers and nor does she explain what efforts she would make to instruct lawyers were the Claimants to be given more time in which to do so. In any event I reject the suggestion that the Claimants have had insufficient time in which to obtain legal advice in advance of this hearing. Legal advisors could have been instructed immediately after the hearing on

13 November. They could, in my judgment, have got up to speed with what had happened to date in general terms, and they would then have been in a position to respond to the written submissions served by the Defendants on Wednesday of this week. Had those advisors found themselves in a position where more time was needed because they could not understand the case owing to their late instruction, they could then have applied for an adjournment with full and proper justification. However, it seems that the Claimants have made no effort whatever to obtain any such help and nor have they attempted to provide the court with evidence of funding difficulties which might have prevented them from taking such a step. Accordingly, there is no reason to suppose that the Claimants would have representation on the next occasion, even if I were to consent to an adjournment of today's hearing.

18. Ms Kaur is, as I have said before, a sophisticated individual who has practised as a litigator previously in the United States. Whilst she might perhaps have mistakenly thought that the Appellants' Notice would stay the proceedings, the email from my clerk of 21 November 2023 would swiftly have disabused her of any such impression. She does not explain in any of her emails to the court why she only saw that email "late last night" and I find it difficult to believe that she would not have read an email from the court upon receipt. There is no explanation as to why her application for a stay was made ten minutes before this hearing was due to start (beyond what she says in the emails to which I have referred), and of course, she has not in fact attended to advance that application.
19. Ms Kaur has provided no evidence that she is medically unfit to attend the hearing, which is the only possible excuse that she appears to have given for her non-attendance on behalf of the Claimants. This excuse was not raised until the email of 9.21 a.m. this morning, but I note that Ms Kaur has, notwithstanding that email, been able to bombard the court and the Defendants with lucid emails all morning, none of which suggests that she is not well enough to attend court and represent the Claimants. She has also been able to complete an application for a stay which runs to 10 coherent paragraphs. If it was Ms Kaur's view that she is not personally in a position to represent the Claimants, for reasons she gave at the trial, it was incumbent upon her as

director to make appropriate arrangements for them to be represented and for their interests to be protected.

20. As with the trial, the Defendants are once again here, ready to proceed and they have no doubt spent considerable costs in arriving at this point. The first time that Ms Kaur indicated she would not be attending to represent the Claimants was in her email of 9.21 this morning. It is very difficult, in all those circumstances, not to arrive at the view, in light of Ms Kaur's conduct (including her conduct in advance of, and at, the trial), that the Defendants are being deliberately messed around with a view to delaying the inevitable.
21. Furthermore, in so far as Ms Kaur's own position is concerned, which as I have said, she was plainly very concerned about in the 9.21 a.m. email that she sent to the court, it is true that the Defendants today seek an order joining her as a party to these proceedings for the purposes of applying for a non-party costs order against her. But that application does not require the court to consider, at this stage, the merits of that application. If I were to make an order joining Ms Kaur, she would have plenty of opportunity, at a subsequent hearing required under CPR 46.2(1)(b), to respond to the allegations made against her. The hurdle for the court's initial determination is low and I can see no real unfairness to Ms Kaur in determining that application at this stage and in her absence, particularly where I have found there is no good reason for that absence.
22. This case has already taken up a considerable amount of the court's time and resources. Furthermore, given the nature of the matters that are now before me at the consequential hearing, it is difficult to see that an adjournment is likely to make any material difference to the outcome. As for the stay application, that can be dealt with as part of this hearing in the usual way. It does not, to my mind, impact upon the question of whether to grant an adjournment.
23. I remind myself that the Claimants are now effectively litigants in person and that Ms Kaur is no doubt under considerable pressure given the position she finds herself in, not least in circumstances where there is an intention to join her to the proceedings for

the purposes of seeking a costs order against her personally. In all those circumstances, I must be scrupulously fair. But having regard to all of the matters I have identified and, in circumstances where Ms Kaur simply has not provided the court with a good reason for her non-attendance today or with any comfort that, if an adjournment were to be granted, she would obtain representation for the Claimants at any adjourned hearing, I consider that the only fair and appropriate course, consistent with the overriding objective, is to continue with this hearing today.