



Neutral Citation Number: [2024] EWHC 3459 (Ch)

Case No: BR-2022-000154

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF HRH PRINCE HUSSAM BIN SAUD BIN ABDULAZIZ SAUD**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

7 Rolls Building  
Fetter Lane, London,  
EC4A 1NL

Date: 10 December 2024

**Before:**

**Mr Justice Thompsell**

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**Between:**

**MOBILE TELECOMMUNICATIONS COMPANY KSCP**

**Petitioner/  
Respondent**

**- and -**

**HRH PRINCE HUSSAM BIN SAUD BIN ABDULAZIZ AL SAUD**

**Debtor/  
Applicant**

**Mr Stephen Moverley Smith KC and Ms Catherine Hartston** (instructed by **Pillsbury  
Winthrop Shaw Pittman LLP**) for the **Respondent**  
**Mr Geraint Jones KC and Mr Marc Glover** (instructed by **LK Law LLP**) for the **Applicant**

Hearing dates: 8 and 14 November 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 10 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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**THE HONOURABLE MR JUSTICE THOMPSELL**

**Mr Justice Thompsell:**

1. This hearing has been convened to deal with some procedural issues which relate to a trial that is due to take place in December 2024 with a time estimate of five days. The trial concerns the bankruptcy petition presented by Mobile Telecommunications Company KSCP (which I will refer to as “**MTC**”) against HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud (who I shall refer to as “**Prince Hussam**”).
2. The procedural matter relates to the application by Prince Hussam for the trial to take place by means of a hybrid hearing. In short, he wishes that he and two important witnesses: his mother, Princess Noorah; and his wife, Princess Sarah, should all give evidence at trial remotely via a video link.
3. Prince Hussam has put forward some evidence relating to his own circumstances that are material to this issue, which he claims is confidential, and as a preliminary matter has sought the permission of the court pursuant to rule 12.39(9) of the Insolvency (England and Wales) Rules 2016, to preserve the confidentiality of a witness statement and Exhibit so that this evidence shall not be made available to any person without the permission of the court and so that any application for such permission shall be made on 14 days’ notice to the Respondent and the court.
4. MTC complains that this latter application, and the evidence to which it relates, was made on short notice. Having heard the reasons for the late notice, having considered the pertinence of the new information, and considering the matter in the round including the seriousness of the issue and the effect on the parties of allowing this evidence to be considered, I determined that the late evidence should be admitted but that MTC should be given more time to consider the evidence, and a short opportunity to gather evidence that might rebut it. I determined that meanwhile, I should allow the application to maintain confidentiality. I accordingly cleared the court of any non-party whilst this matter was being considered. Having considered it, I agreed to an order relating to confidentiality broadly in the form requested by Prince Hussam in this regard.
5. After this adjournment, I have heard the representations of the parties as to the probative value of the new evidence and on the main issue for the hearing, which is whether the December trial should proceed as a hybrid hearing and which, if any, of the witnesses should be allowed to appear remotely.
6. This is a question of case management where the matter is to be decided at the discretion of the judge.

**Background**

7. Today’s hearing, and the December bankruptcy hearing, come after a long series of hearings and orders. It is not necessary to recite the full history. Suffice it to say that MTC has received an award following an arbitration regarding a loan agreement against Prince Hussam totalling some US\$817 million. Prince Hussam has not paid any amount of this loan. Instead, he has taken steps to undermine the award and to avoid enforcement, including reviving proceedings in the Saudi courts in breach of the arbitration clause applicable to the loan and in breach of an injunction made by the court.

8. Following non-compliance with the injunction, the court declared Prince Hussam to be in contempt of court and has committed him to prison for a period of 12 months from the date of his apprehension. That order remains outstanding and provides him with a considerable disincentive to travel to the United Kingdom, where he faces arrest.
9. The bankruptcy petition is resisted principally on the grounds of jurisdiction, a key issue being evidence as to whether Prince Hussam had a place of residence in the jurisdiction during the relevant period. His evidence, and that of his mother and his wife, will be extremely important to this issue.
10. Before considering the arguments, it is worthwhile considering the issues that the court takes into account when using its discretion whether to allow witnesses to appear remotely. These were explained in the judgment of Bryan J in *Deutsche Bank AG v Sebastian Holdings Inc* [2023] EWHC 2234 (Comm) at [44] onwards. The principles to be adopted by the court may be summarised further as:
  - i) A direction should be given only where there is a good reason and the direction serves a legitimate aim.
  - ii) The court should consider the guidance provided by Annex 3 to Practice Direction 32, which recognises that having a witness present by video is not as ideal as having the witness physically present in court and its convenience should not be allowed to dictate its use. A judgement must be made not only as to whether it will achieve an overall cost saving, but also as to whether its use will be beneficial to the efficient, fair and economic disposal of the litigation, having regard in particular to the recognition that the degree of control a court can exercise over a remote witness may be more limited than that which it can exercise over a witness physically before it.
  - iii) Convenience should not be considered to carry much weight.
  - iv) The court should be satisfied that the remote location proposes an appropriate venue, that appropriate technology will be available and that there will be sufficient safeguards in place to ensure the integrity of the trial process.
11. However, it is important not to overstate the degree of difficulty to the court caused where the remote appearance of a witness is allowed under well-regulated conditions. Lord Carswell in *Polanski v Condé Nast Publications Ltd* [2005] 1 WLR 637 (“*Polanski*”) at [93] considered, as do I, that the technology is now well established, and its use would not cause much prejudice to the other side. This point is also made within the decision in *Al Jabar v Al Ibrahim* [2023] EWHC 719 (Comm) at [10] and in particular a quotation there from *Deutsche Bank AG v Sebastian Holdings* [2022] EWHC 1555 (Comm) where Molder J expressed the view that:

“The experience of the pandemic has demonstrated that counsel are able to cross-examine witnesses effectively over a link and the court is able to assess the evidence of witnesses and form a view on the credibility of witnesses who give evidence remotely.”

12. As regards this last point, Prince Hussam has proposed safeguards that broadly match those requested by MTC and generally appear appropriate. I will consider these in more detail when I consider the form of an order.
13. The court has been informed that Saudi Arabian law does not impose any impediment to the giving of remote evidence in Saudi Arabia for the purpose of foreign proceedings.
14. I next turn to the reasons put forward as to why it is said to be appropriate for each of the witnesses to appear remotely.

### **Prince Hussam**

15. The Prince has put forward a number of reasons why he would not be able to attend the court in person, but at this hearing, the principal one that he relies upon is that, as a senior member of the Saudi Royal Family, and as the Emir of a province, [Redacted].
16. [Redacted].
17. [Redacted]
18. [Redacted]
19. [Redacted] having regard to the next point, which is that if he were to set foot in the United Kingdom he faces arrest and a period of incarceration so his absence would not be merely for a period of a few days but might be up to a year.
20. This then brings us to the second reason that the Prince has put forward to excuse him from physical attendance at the hearing in London. This is that, with the committal order hanging over him, it is fanciful to believe that he would come to London and face arrest and imprisonment. Accordingly, if the court denies him an opportunity to participate remotely in the trial, it would, it is argued, thereby deny him a fair trial contrary to Article 6 of the European Convention on Human Rights.
21. The Prince prays in aid a series of cases commencing with *Rowland v Bock* [2002] EWHC 692 (QB) where at [9] Newman J found that full access to the court in a civil matter should not, except in exceptional circumstances, be at the price of a litigant losing his liberty and facing criminal proceedings.
22. The same point was taken up in *Polanski*. In that case Mr. Polanski was the claimant in a libel action in relation to an article published in the UK but did not wish to come to the UK to give oral evidence at the trial as he was a fugitive from justice in the US and did not wish to be at risk of being extradited. The House of Lords determined, by a majority, that a claimant's unwillingness to come to the UK was a valid reason and could be a sufficient reason (see Lord Nicholls at [34]).
23. MTC argues that being a fugitive from justice is not invariably a sufficient reason and in the current case Prince Hussam should not be allowed to benefit from his own wrongdoing and in any case the matter can be distinguished on the basis that he can easily prevent arrest by purging his contempt.
24. As to the question of the purging of contempt, I have doubts whether this is now possible.

25. Also, as noted by Neuberger J (as he then was) in *Shalson v Russo* [2002] EWHC 399 (Ch) at [18], a distinction is made between the coercive element and the penal element of committal for contempt, although this distinction may not always be quite as clear as it may seem at first sight. Purging the contempt will not cause the penal element of the committal to go away. This approach was also taken by Hamblen and Holroyde LJ in *Financial Conduct Authority v McKendrick* [2019] EWCA Civ 524 (see at [41]). Only the coercive component of a sentence of committal for contempt can be remitted, not the penal component. Thus, even if it were possible to purge the contempt in some way, it is unlikely that this would have the effect of discharging in its entirety the committal order. Prince Hussam might be able to reduce his period of incarceration from 12 months, but he is unlikely to be able to reduce it to nothing, unless the court could be persuaded that a fine might be sufficient punishment.
26. I find that, even if there is some prospect of purging the contempt, it is unlikely that this could be done in a manner that would completely take away from the Prince the risk of incarceration, and certainly that it would not be possible for the Prince to be assured of this prior to the date that has been set for trial. Therefore, the prospect of arrest and imprisonment will continue to play on the Prince's mind, and also would be something that the King would take into account in deciding whether to grant permission to leave the country. Therefore, this prospect does not alter the position that it remains fanciful that the Prince would attend, and would be allowed to attend, the trial in person.
27. Accordingly, I consider that this matter needs to be considered in the manner that it was considered in *Polanski* and to pay attention to the fact that a fugitive from justice should not be as such precluded from enforcing his rights in the courts of this country. I consider that if the court were to insist on Prince Hussam attending the trial in London, he would not consider that he had any option but to fail to attend, and if this meant that his oral evidence (and perhaps his witness statements, if not allowed as hearsay) were to be excluded he would not have a fair trial.
28. Taking this point alongside the disputed issue concerning whether he is under any duty not to leave Saudi Arabia at present, and balancing this against the minor disadvantage to MTC and to the courts in not having Prince Hussam present in the courtroom, I consider that this is an occasion where it is suitable that the court makes use of its discretion to allow him to give his evidence remotely, subject to appropriate safeguards being in place.
29. Prince Hussam has also raised concerns that, if he were to come to prison, he might be at particular risk as a high-profile prisoner. This, I consider, does not provide a reason of itself for allowing him to appear remotely, but it does fortify the point already made that it is unrealistic to believe that he would come to the United Kingdom whilst he faces a period of imprisonment.
30. The Prince has in addition raised concerns about his security whilst attending the court. I have not found this reason very convincing. Neither do I accept a claim that the process of cross-examination might be considered an affront to the dignity of the Saudi royal family. Whilst due respect must, of course, be paid to the ruling family of an important ally, this does not put them above the law in this country. In any case it is difficult to see how the dignity would be more affronted by a personal appearance in the United Kingdom than it would be by an appearance by video link. There was a suggestion at one stage that Prince Hussam's official engagements prevented him from

giving witness evidence. Given that he has had ample time to manage his diary, which appears to be flexible, and in any case he is not saying that he is not available to give witness evidence in Riyadh at the relevant times, I have given no weight or attention to this argument.

31. Whilst I do not accept the reasons set out in the previous paragraph, I do consider the evidence that Prince Hussam would need the permission of the Saudi King to leave this country at this time and is unlikely to obtain this given all the circumstances. I also consider that the committal issue should be taken into account, and that denying him the permission creates a real risk that he would not have a fair trial, in breach of Article 6. When I weigh these matters against the disadvantages of not having the Prince available in court, but instead appearing remotely in the manner proposed (and it is relevant that he, through counsel has communicated a willingness to give an undertaking to the court that if he is allowed to appear remotely, he will do so), I consider that these matters do weigh far more heavily than those disadvantages. Accordingly, I will accept his application to appear remotely.

### **Princess Noorah**

32. It is asked that Princess Noorah should be given permission to attend the trial remotely on the grounds of her ill-health/infirmary.
33. At the time of trial Princess Noorah will be almost 80 years old.
34. Evidence of her ill-health is given in the form of a medical report undertaken by Dr Saleh Ali Aldammas following a visit on 29 October 2024. As well as explaining Princess Noorah's various health conditions, Dr Aldammas has strongly urged her not to travel to cold countries, especially during the winter.
35. MTC has questioned the relevance and implications of the medical evidence and had this considered by Professor Jeremy Levy, an independent consultant physician at Imperial College, London who concluded that he could see no reason why she should have been advised not to travel to the United Kingdom in December or at any other time. MTC also points out that she was able to fly to Germany as recently as February this year and that the weather in the United Kingdom is generally temperate and in any case she would be exposed to cold weather in the United Kingdom even in December only for the time it would take her to step from a car into a heated building and back again.
36. In considering the medical evidence, I prefer that of a physician who actually examined the Princess to that of someone who merely reviewed that medical evidence. On balance, I consider that the risks to the health of the Princess and the prospect of her suffering discomfort outweigh the desirability of having her appear in person and I will therefore allow her to appear remotely.

### **Princess Sarah**

37. It is asked that Princess Sarah should be given permission to attend the trial remotely on the grounds of her personal and official commitments and that she is a non-party witness who would be put to large expense and inconvenience in travelling to London

and that MTC has not identified any prejudice that would occur by reason of her evidence being given remotely.

38. As to official commitments, these are said to arise principally from her active membership of the Mawaddah Association for Family Stability as a member of that organisation's legal rights committee and as a board member of the Family Affairs Council. She has a board meeting of the latter organisation on 9 December 2024 which she is expected to attend and several meetings in preparation for that board meeting. Her family commitments comprise her being a grandmother to 11 grandchildren and wishing to support her daughter-in-law who is expecting a child that will be Princess Sarah's 12<sup>th</sup> grandchild in the first week of December 2024.
39. I do not consider the case has been made out as regards the official commitments. It appears that the board meeting on 9 December is in any case a remote meeting. As regards her family commitments, almost anyone could say that they have family commitments. There is something in the specific matter of wishing to support her daughter-in-law who is expecting a grandchild in the first week of December, but given that there are many other relatives and the girl's mother who could also support, and given that the Princess should not be asked to attend the trial for any longer than one day, in this case I consider that the answer produced by balancing these concerns against the desirability of her personal attendance goes in favour of attendance.

### **Conclusion**

40. It will be apparent from the discussion above, that I am minded to allow Prince Hussam, Princess Noorah but not Princess Sarah to attend the trial remotely.
41. In doing so I am influenced also by two matters. First, it appears that suitable arrangements are being made in Riyadh for the remote witness appearances. I have asked the parties also to make backup arrangements in case it turns out that Prince Hussam is prevented from travelling to Riyadh so that the arrangements can instead be made in his home town.
42. I should mention that during the course of the hearing there was some discussion about where the translators should be present. I have accepted MTC's contention that this should be in the courtroom, rather than with the witnesses in Saudi Arabia. This is to minimise the extra difficulties that the court has in controlling the courtroom when parties are appearing remotely.
43. I have asked the parties to seek to finalise by consent the terms of an appropriate Order, to reflect the terms of this judgment. I will also entertain on paper representations from the parties as to costs.