

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

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Thursday, 21 March 2024

BEFORE:

MR NICHOLAS THOMPSELL
(sitting as a Deputy Judge of the High Court)

BETWEEN:

ARVAN HANDA

Claimant

-and-

(1) ARAN HANDA
(2) ROSHAL LAL HANDA
(3) THE STATION HOTEL (NEWCASTLE) LIMITED
(4) NEERAJ HANDA

Defendants

Mr Saul Lemur (instructed by **Kennedys**) appeared on behalf of the Claimant
Ms Lara John KC and Mr James Hart (instructed by **Mincoffs**) appeared on behalf of the
Third Defendant

JUDGMENT
(Approved)

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Lower Ground, 46 Chancery Lane, London WC2A 1JE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

THE DEPUTY JUDGE:

1. INTRODUCTION

1. The matters before me today arise from two applications that have arisen in the course of a wider dispute involving a family-owned hotel business. The business is conducted through a company called The Station Hotel (Newcastle) Limited ("the **Company**") and its subsidiaries. The claimant is Mr Arvan Handa. The defendants are his brother Aran Handa, his father Roshan Lal Handa, the Company itself and his son Neeraj Handa. For convenience (and not meaning any disrespect) I shall refer to the individuals by their first names.
2. Whilst the Company and Neeraj are both technically defendants, the principal dispute is between Arvan and Neeraj on one side and Aran and Roshan on the other side. Arvan seeks declaratory and injunctive relief against Aran and Roshan, as well as injunctive relief against the Company, including in respect of the validity of the dismissal of Neeraj as a director and employee of the Company.
3. Arvan alleges that his son, Neeraj, when acting as a director and employee of the Company, discovered misappropriation or misuse of the Company's assets, opportunities and staff by Aran and by Aran's son Aneil Handa. Neeraj brought a private prosecution in relation to this alleged wrongdoing. The private prosecution was stayed on 12 January 2024 as an abuse of process. In response to this prosecution, Aran and Roshan procured that Arvan was subjected to an expulsion notice dated 6 April 2023, purportedly expelling Arvan as a shareholder of the Company on the grounds that he had brought the Company into disrepute. They also procured that the Company dismissed Neeraj as a director of and employee of the Company. A second expulsion notice was later served citing different grounds.
4. Aran and Roshan deny that there was any misappropriation or misuse for Neeraj to investigate. They aver that Neeraj conducted himself in a wholly unacceptable way which brought the Company into serious disrepute; that they had reasonably formed the opinion that Arvan was guilty of conduct bringing the Company into disrepute; that the first and second expulsion notices were valid and effective; and that Neeraj's directorship was validly terminated, and he was validly and properly dismissed an employee.
5. In order to hold the ring between the parties until the issues for trial are determined, Arvan, Aran, Roshan and the Company agreed a Consent Order dated 9 June 2023 ("the **Consent Order**") under which, *inter alia*, it was agreed (at paragraph 1.3) that the Company:

"... shall permit the Claimant to have access to the accounts, books and records of the Third Defendant pursuant to the Claimant's rights under clauses 4.1 and 4.2 of the Shareholders'

Agreement subject to clauses 18 and 27 of the Shareholders' Agreement."

2. ISSUES

6. There are two applications before me.
7. First, Arvan has made an application dated 22 September 2023 for interim injunctive relief against the Company. He seeks an order that the Company provide him with certain categories of document.
8. Secondly, the Company has made a cross application dated 1 December 2023 seeking an order to vary or discharge the undertakings it gave at paragraph 1.3 of the Consent Order to permit Arvan to have access to the Company's accounts, books and records pursuant to Arvan's right under clauses 4.1 and 4.2 of the Shareholders Agreement unless Arvan provides certain undertakings.
9. The parties have been talking and have narrowed down the issues between them. Arvan has narrowed down the categories of document sought by his application. The Company has indicated its willingness to provide the documents subject to the provisions of undertakings as to confidentiality.
10. The key unresolved issue between the parties is that the Company requires, but Arvan is unwilling to provide, an undertaking that he will not share confidential documents with Neeraj. The Company contends, but Arvan denies, that for Arvan to do so would be a breach of Arvan's confidentiality agreements under the Shareholders Agreement. The Company further argues that it would not be appropriate to do this given Neeraj's past conduct.

3. ARVAN'S RIGHTS TO DOCUMENTS

11. Arvan's right to receive documentation derive from paragraph 3 of the Consent Order, the terms of which I have already mentioned, and from provisions in the Shareholders' Agreement dated 2 February 2021 among the shareholders of the Company, Arvan, Aran and Roshan, and the Company.
12. As we have seen, the terms of the order allow access to the accounts, books and records of the Third Defendant pursuant to the claimant's rights under clauses 4.1 and 4.2 of the Shareholders' Agreement, but this is subject to clauses 18 and 27 of the Shareholders' Agreement. The right that Arvan has under the order are therefore coterminous with the relevant provisions in the Shareholders' Agreement.
13. Arvan's right to information derive from clause 4 of Shareholders' Agreement. In particular they derive:

- a. from clause 4.1.2 under which, "*each shareholder shall be allowed access at all reasonable times to examine the accounts, books and records of each group company*" and
 - b. from clause 4.2 which provides for certain documents to be sent to shareholders within certain time periods and includes a sweeper provision that shareholders are to be sent any other information relating to the affairs of any of the group companies promptly upon the request being made by a shareholder.
14. Clause 18 of the Shareholders' Agreement includes confidentiality provisions which the shareholders undertake to one another and to the Company. They are to use their best endeavours to keep confidential any confidential information which they may acquire in relation to the Company or in relation to the client's business or affairs of any other party. They agree not to use or disclose such information except in certain limited circumstances.
15. These limited circumstances include, in summary:
 - a. with the prior consent of the other party or the Company as appropriate (clause 18.1.1);
 - b. as may be required by law including by court order (clause 18.1.2); and
 - c. importantly for the case under consideration, under clause 18.1.3:

"if it relates to a Company (i.e. the Company or any other company in the group) and is disclosed *bona fide* for the advancement of the business of the Company".
16. The Company accepts that Arvan in principle has the right to information provided for in clause 4 but does not accept that as a matter of principle he has any right to share that information with any other person. The Company is prepared to consent to Arvan sharing confidential information with his legal advisers or with accountants advising him, but is not prepared to waive confidentiality any further than that to allow Arvan to disclose the information to Neeraj. The Company has also indicated that it would be willing and able to provide a cross-undertaking in damages if this restriction causes Arvan any loss.
17. Arvan argues that the rights of shareholders under clause 18.1.3 to disclose material *bona fide* for the advancement of the business of the Company, provides grounds for him to share confidential information with Neeraj where this is for the purpose of Arvan obtaining advice on matters with a view to advancing the business of the Company. He points out that Neeraj has agreed to enter into a confidentiality undertaking that he would only use this information for this purpose; that he would not disclose information to a named rival of the Company and that he would not use the

information in the context of litigation proceedings. Arvan argues that the court should accept this undertaking and conclude that the proposed sharing of information with Neeraj would be purely for the purposes of providing advice to Arvan and with a view to Arvan using this advice to advance the business of the Company.

18. I do not accept that the exception to confidentiality included in clause 18.1.3 of the Shareholders' Agreement can be construed this widely. In my view, the clause was there to allow the parties to the agreement to be able to conduct the day-to-day conduct of the business of the Company, as it is primarily use. It was not intended to neuter the confidentiality provisions by allowing a shareholder to disclose confidential material whenever there was, in the opinion of the shareholder in question, some prospect of the result of that disclosure providing some prospect of benefit to the Company.
19. To take an example that we discussed in court, I do not think, for example, a shareholder could rely on this exemption to provide confidential information to a competitor against the wishes of the Company in the hope that the competitor might make an advantageous offer for the Company or its property.
20. Of course, application of clause 18.1.3 needs to be looked at against the particular facts where it is being applied and nothing I will say today should be taken as prejudging the application of that clause to something which has happened in the past. However, I do need to apply this clause to Arvan's current stated aims for sharing information with Neeraj. These are to obtain advice on how to benefit the Company. This is at least one stage removed from actually benefitting the Company. Any benefit to the Company is speculative at most. The matter needs to be looked at in the context that as a minority shareholder (assuming he remains a shareholder) there is very little that Arvan can do directly to benefit the Company.
21. I do not consider therefore that Arvan would be able to rely on this exemption for these stated purposes. His argument that he would have a right under the Shareholders' agreement to share confidential information with Neeraj for these purposes is a weak one. I do not think that the Company is being unreasonable in withholding permission for him to share the information for these purposes.
22. Given that I find Arvan has no right to share information with Neeraj for his stated purposes, I will find for the Company. However, even if there is the possibility that I am wrong and the clause can be interpreted as widely as is claimed on behalf of Arvan, I do not think Arvan fares any better when we consider the application of the principles for interim relief outlined in *American Cyanamid*.

3. APPLYING *AMERICAN CYANAMID*

23. The first issue to consider when applying the principles in *American Cyanamid* is whether there is a serious question to be determined. Here, the question is the sharing by Arvan with Neeraj of documents provided to Arvan in his capacity as a shareholder and whether this would be in breach of Arvan's confidentiality agreements under the

Shareholder Agreement. Both parties agree that this is a serious issue for these purposes and so do I.

24. The Company argues that a breach of confidentiality obligations could not be adequately compensated in damages and the mischief which the Company seeks to protect itself from is the prospective breach leading to misuse of its confidential documents. Arvan would equally say that a breach of his rights to obtain documents would equally not be adequately compensated in damages. I agree with both propositions.
25. Each party claims prejudice if the court does not make the order that that party is seeking. In judging prejudice, I am considering the position that each side has said that it is offering. In the case of the Company, it includes the Company's offer to provide the types of document which have now been agreed between the parties and to allow Arvan to share this information with professional legal or accountancy advisers but not with Neeraj. In the case of Arvan, this includes the undertakings as to the use of the confidential information that he has said he and Neeraj are prepared to offer.
26. Considering first the inconvenience that Arvan would suffer if the court were to make the order sought by the Company, it is simply this: he will not have the benefit of advice from his son. The court has been told this is important to him in view of his son's knowledge of the business having worked there for years and been a director for a short time. But given that Arvan, too, was an experienced businessman and has also worked in the business and been a director in it for many years, and that he would be allowed to obtain professional legal or accountancy advice as regards any question that he found too difficult, this does not seem to me that great a level of inconvenience.
27. Looking at the alternative, if the court were to make the order sought by Arvan with the benefit of the undertakings offered by Arvan and Neeraj, the Company's case is that this is objectionable in itself in providing confidential information to someone who is not entitled to it and that the Company is worried that Neeraj, despite the undertaking that he offers, may benefit from the information in a way that is contrary to the interests of the Company - for example, learning things that may advantage him in the various litigations that he is involved with where the Company is a counterparty. The Company cites the fact that Neeraj and his close relatives are in various disputes with the Company and Neeraj has a history of aggressive litigation, not least in unsuccessfully bringing a private prosecution and of taking other action such as interfering with the Company's filings at the Company's registry to challenge his removal as a director, even after this has been agreed among the shareholders. Neeraj has indicated that he is prepared to undertake that he would not use information he obtains in the course of litigation, but even if he does not attempt to produce the document in the course of that litigation, I agree with the Company that he may obtain knowledge that would inform his conduct of such litigation and once he knows something, it would be difficult to unknow it.

28. Whilst it is not for me today to say whether Neeraj was justified or not in all the actions he has taken, I am satisfied that in the litigious atmosphere that exists between different factions amongst the Company's shareholders, that there is a real prospect of disadvantage to the Company in allowing Neeraj to view its confidential information. To my mind, this is not sufficiently balanced by a good reason why the Company should allow Neeraj to be given this information.

4. CONCLUSION

29. My findings are that I consider that Arvan has no right under the Shareholders' Agreement or Consent Order to disclose information to Neeraj for the purposes that he states, and that even if there may be such a right, in applying *American Cyanamid* principles I should not make the interim order that he requests. If Arvan wants a specific order for disclosure of material, this should be broadly in the form suggested by the Company, including the restriction on sharing confidential information with Neeraj.
30. That being my judgment in the matter, I will now invite discussion for the finalisation of an order and for the parties, if they wish, to address me on costs.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge