Neutral Citation Number: **[2024] EWHC 3462 (Comm)**

Case No: CL-2022-000240

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

The Rolls Building
7 Rolls Building
Fetter Lane, London
EC4A 1NL

Date: 22 November 2024

Before:
MR JUSTICE ANDREW BAKER

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Between:

KHASHOGGI HOLDING COMPANY	**Claimant/ Defendant to Counterclaim**
- and -	
(1) MR MAURIZIO MOLINARI **(2) MR MICHELE MOLINARI** **(3) MR ALESSANDRO PRIVITERA** **(4) STEMIC FINANCIAL LIMITED** **(5) FINNAT FIDUCIARIA SPA**	**Defendants/ Counterclaimants**
- and -	
METAENERGIA UK LIMITED	**Additional Counterclaimant**
- and -	
MR MOTASEM ALMOTAZABELLAH KHASHOGGI	**Additional Defendant to Counterclaim**

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MR EDWARD ARMITAGE (instructed by **Mishcon de Reya LLP**) for the **Claimant and Additional Defendant to Counterclaim**
MR TOM ROSCOE (instructed by **Lawdit Solicitors**) for the **Defendants/Additional Counterclaimant**

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APPROVED TRANSCRIPT

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MR JUSTICE ANDREW BAKER :

1. I do not propose to give a lengthy judgment, or to reserve judgment. I have been persuaded by the submissions of Mr Armitage that something more than merely a new deadline intended to set the Meta parties up to succeed and a listed date for a further hearing if required is appropriate. I have not been persuaded by his submissions that what is necessary or appropriate at this stage is, if I can call it this, the full fat unless order of a strike out and debarring of defences in the absence of compliance.

2. My judgment overall, balancing the different factors in play that have been addressed by counsel, I will describe in a moment; but the principal factors to balance, as it seems to me, are, firstly, the overall chronology, that is to say the room we have between now and trial which is still in absolute terms substantial, although there is nonetheless some force in Mr Armitage's submissions that there is not much room for further slippage beyond the sort of date I am about to direct for disclosure, secondly, the need, to which I have adverted already, within reason to err on the side of setting the Meta parties up to succeed rather than to fail again, and, thirdly, the legitimate concerns that have been raised that the problems that appear to be evident in how disclosure has been attacked to date on the Meta parties' side make it desirable that it is clear that whilst, of course, the KHC parties will still be in a position to review whatever is produced and put forward any further applications they may be advised to do, there will be some immediate consequence of substance to either a failure to meet the new deadline completely or substantially, or even a failure to meet it fully in the sense of it becoming apparent at some later point that the exercise was not complete and there are more documents that have not therefore been yet disclosed.

3. Striking the right balance in this case bearing the various factors in mind, including those factors particularly, in my view the appropriate order is that is to the following effect (and I will ask counsel to perfect this into written form and tidy up the drafting so it is as clear as possible as to where the parties stand):

    - the deadline by which the KHC parties are to give their extended disclosure, expressed in that simple way, is extended to 4pm on Wednesday, 8 January 2025. I appreciate that in the way of litigation generally, particularly hard fought commercial litigation, particularly hard fought commercial litigation where allegations of fraud and dishonesty are raised, parties become reluctant to produce anything by way of disclosure beyond initial disclosure otherwise than by exchange. That is a matter I leave in the hands of the KHC parties and their advisers. There is no obligation on them not to provide their extended disclosure earlier if they chose to do so but they should not be under any obligation to have done so until there is something substantial to exchange with. So it will be that the deadline for them is now 4pm, 8 January;

    - by the same deadline, the Meta parties are to give such extended disclosure as they are by that deadline in a position to give, which is to be given by extended disclosure list, disclosure certificate, adapted if at all only so far as is necessary to reflect, if it be the case, that the Meta parties' extended disclosure exercise is still not yet complete, and a witness statement either, and I think wording along this line I would ask you to put into the order, either confirming that the Meta parties' extended disclosure exercise is to the best of the knowledge and information of the solicitor signing the witness statement complete having been conducted fully

in accordance with the disclosure review document, or identifying and explaining the reasons for any: (i) incompleteness of the extended disclosure exercise as at the date of the witness statement; or (ii) departure as at that date from the disclosure review document in the conduct that far of the extended disclosure exercise;

- there should be a direction that spells out that always without prejudice to the Meta parties' ongoing disclosure obligations to give further disclosure of adverse documents, they, the Meta parties, will not be entitled to rely on any document disclosed by them in the proceedings later than 4pm, 8 January 2025 in the absence of permission being granted on separate application either prior to or at trial.

4. That, if drafted up by counsel, as I am sure they will be able to do, in a way that reads well and is clear to all concerned on paper, seems to me to do justice to the substantive considerations.

5. There will then also be a direction for a further disclosure hearing to be listed now for Friday, 14 February, time estimate two hours. That is the bit that is subject to my just checking that our current published lead times for hearings up to two hours which simply say Friday, 24 January, means what it says, i.e. there is no particular Friday in the first part of next term after the first couple of weeks that would give a problem that I would need to take into account in terms of imposing on other litigants or other existing listings. Parties at liberty to have that hearing vacated if it will not be required provided they confirm jointly to the Commercial Court listing office by 4pm, Friday, 7 February, that they agree the hearing is not required.

6. So unless you are agreed by 4pm on that Friday, and tell the court office so, that you do not need the further hearing, then you are to come for the further hearing so that the matter can be reviewed. That again emphasises the onus on the Meta parties either to have done what is necessary to satisfy the KHC parties' concerns, or only to have failed to do so in respect of concerns that will prove not to be justified and therefore there will not be any further consequences. Very good.

(For proceedings after judgment see separate transcript)

7. It seems to me that the approach adopted by Mishcon de Reya and then on their instructions Mr Armitage has been reasonable and helpful. The degree to which the background, the history, and the serious difficulties evident in the approach so far on the Meta parties' side to their disclosure obligations was set out was important to put this application properly into its context. I gave the parties at the outset of the hearing, having invited them to indicate whether they were content for me to deal with the hearing in that way, the provisional indication reasonably firmly expressed that it was not a case for what I then described in my short substantive ruling as a full fat unless order.

8. It seems to me, stepping back from where we are now, having dealt with I hope appropriate balance with the interesting submissions on both sides, is one can see how close to it being a case where a full fat unless order would have been justified this was. The fact, therefore, that the real scope of the issue on which I ultimately had to take a view was, if not that, how close to it, what species of sanctions, what species of

sufficient both encouragement and deterrent to attach, in my judgment can only really be considered a substantial interim victory on this application by the KHC parties that should be accompanied by a separate costs order following that event. I do also think in that regard that there is room in the circumstances of this case for that being and being seen as an encouragement of better performance now in this case and in relation more generally to how litigation is conducted in this court a discouragement from at least some of the worst elements that are seemingly on display here in the way in which disclosure has been attacked so far on the Meta parties' side.

9. So I do say costs will be – well, I think formally it is both applications, albeit the KHC parties' separate protective application will only have generated very small costs, I imagine, but it is costs of both applications to be paid by the Meta parties in any event and unless I am invited to do something different, I would propose summarily to assess those now.

(For proceedings after judgment see separate transcript)

10. It seems to me that the numbers of hours being claimed in relation to the grade A fee earners is quite modest and in relation to the grade C and grade D fee earners the degree to which their hourly rates are above guideline rates is relatively modest such that I do not propose for the purposes of a summary assessment notionally to calculate a specific hourly rates based deduction from the bill.

11. I do take into account that all of the rates are above guideline rates, and that although a very sizeable claim and although involving issues of fraud it is not in other respects the most complex or difficult of pieces of litigation by the standards of this court, and so I will bear in mind that I may wish to err even more slightly in favour of the paying party than might otherwise be done more generally. I am not sure I see, given the nature of the material and the extent to which I have already indicated I found it helpful, that there is much room for criticism of duplication between Mr Armitage's fees for pre-hearing work and the time spent by the solicitor team.

12. Bearing those factors in mind and bearing in mind that one does not expect, if one sent the matter off for a detailed assessment, 100% recovery, but bearing in mind on the other side that relative to the nature and potential importance of this application in the context of an important piece of litigation, my overarching reaction to a schedule of costs of £23,739 is that it is by no means large or *prima facie* excessive or disproportionate, I propose in the circumstances to assess the costs summarily at a rounded off 85% of the sum claimed and the figure payable will therefore be £19,800 payable in the normal way within 14 days.

(For proceedings after Judgment see separate transcript)

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