NEUTRAL CITATION NO: [2025] EWHC 110 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

KB-2023-002680
Royal Courts of Justice
Strand
London
WC2A 2LL
21 JANUARY 2025

Before
THE HONOURABLE MR JUSTICE MARTIN SPENCER

BETWEEN:

ADNAN OMANOVIC

Claimant

-v-

1) SHAMAAZI LTD
2) ISMAEL ABDELA MOHAMMED (also known as Ismael Dainehine)

Defendants

PHILIP COPPEL KC (Instructed by **Ballinger Law**) appeared on behalf of the Claimant
DAN MCCOURT FRITZ KC and JOHN ELDRIDGE (Instructed by **Russell-Cooke LLP)** appeared on behalf of the Defendants

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APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

MR JUSTICE MARTIN SPENCER:

1. By an application made on 7 January 2025, the defendants seek an order that the details of terms on which the claims of the second and third claimants were compromised be declared inadmissible in evidence at the trial of this claim for want of relevance, or alternatively should be excluded from evidence pursuant to the provisions of rule 32.1 CPR.

2. That application is supported by a fifth witness statement of Michael Timothy Stacey dated 7 January 2025.

3. The context of this application is that, by these proceedings which were issued on 12 June 2023, claims were made by three claimants for breach of contract and additional claims of tortious conspiracy, inducing breach of contract et cetera against a company called Shamaazi Limited and its director, the second defendant, Mr Ismael Dainehine.

4. The proceedings arise out of a concept which Mr Dainehine conceived, in about 2016, to facilitate the making of charitable donations in the final ten days of Ramadan each year, the final ten days being the most auspicious in relation to the duties of those following Islam during Ramadan, which includes other duties such as fasting.

5. The fact that the last ten days are auspicious meant that certain charities were overwhelmed with applications in the last ten days, making difficulties for both those donating and the charitable causes. The concept of MyTenNights was that they would enlist charities which would then have charitable donations made through MyTenNights distributed in the last ten days of Ramadan to the benefit of all.

6. The claimant, Mr Adnan Omanovic, was involved with Mr Dainehine from a very early stage and he gave generously of his time, it is said, to put together a pilot in the first year, which was 2017, Ramadan having started that year on 27 May 2017.

7. The project appeared to be viable and therefore was repeated in 2018. It is the claimant's case that, pursuant to a meeting between him and Mr Dainehine, in a café on

25 April 2018, he was promised in return for his services and in recognition of his position as a founding member of the project, a 25% interest in the equity of the first defendant, which was the corporate vehicle through which MyTenNights was operated.

8. In addition to the claimant, Mr Dainehine also enlisted the assistance of a Mr Jacob Lester, through Mr Lester's company Saxon Consulting Ltd, and also the assistance of a Mr Matteo Gilardoni who gave technical assistance, for example in the case of Mr Lester through his abilities in coding. All three claimants alleged that they were promised equity in the company, although the positionS of Mr Lester and Mr Gilardoni were very different to that of Mr Omanovic, not least in relation to the quantum of the equity which they were promised. There were also other significant evidential differences between the claims of the first claimant and the other claimants.

9. So, although there were superficial similarities, and certainly convenience in having all three claims tried together because of the evidential overlap, the way in which each claimant sought to prove its case was different.

10. The trial was listed to start in a window starting on 20 January 2025, but not long before the trial started the claims of the second and third claimants were compromised and only Mr Omanovic remains as a claimant in the action.

11. At the trial involving Mr Omanovic, the claimant seeks to adduce evidence not merely of the fact of the compromise by the second and third claimants, but also of the quantum of those settlements on the basis that Mr Omanovic's case is that Mr Dainehine has acted not merely in breach of contract but dishonestly towards him and in particular that in his defence, supported by a statement of truth and also in his witness statement, Mr Dainehine has asserted matters which are inconsistent with him having compromised the claims of the second and third claimants in sums which are significant as opposed to being, for example, nuisance payments.

12. It is clear that the claimant would wish to cross-examine Mr Dainehine as to his honesty and bona fides, and part of the basis of that would be his compromise of the claims of the second and third claimants.

13. For Mr Dainehine, Mr McCourt Fritz KC submits that the reliance upon the evidence of settlement of the second and third claimants' claims is a case strategy based upon a triple fallacy; the three fallacies being, firstly, because the defendants settled the claims of the second and third claimants, those claims should be treated as having been proved or admitted by the defendants; secondly, because the defendants are to be treated as having admitted the claims, the defence of those claims was dishonest; and thirdly, the court should infer, from the dishonest defence of the second and third claimants, that the defence of the first claimant's claim is equally being conducted dishonestly. By "conducted", it is meant the substance of the defence, not of course the way the litigation is being conducted. This submission has no bearing on the conduct of the claimants' lawyers.

14. Mr McCourt Fritz submits that each of these steps in the reasoning is wrong and only if they could be substantiated could it be claimed that the evidence of the quantum of the settlement against the second and third claimants could be relevant.

15. Mr McCourt Fritz points to the correspondence with the claimant's solicitors where it is acknowledged that the claims of these three claimants are different. He submits that if I am satisfied that the evidence is not relevant, then I have a duty to exclude it.

16. In so submitting, Mr McCourt Fritz relies on, among other things, a decision of the Court of Appeal in Gnitrow Limited v Cape Plc [2000] 1 WLR 2327 where, at page 2331C, Pill LJ said:

> *"I agree with Mr Owen, however, that the terms of the settlement between the defendant and Newalls are not relevant to the task which it is the duty of the judge to perform, that is, to apportion responsibility for the damage in question as between the three parties."*

I interpose that the context was a claim for damages arising out of mesothelioma by multiple claimants where there were three different defendants who sought contribution from each other in relation to the damages. This claim was a claim by one of those defendants, Gnitrow, against one of the others, Cape Plc. Another defendant, Newalls, had settled its liability in relation to the contribution proceedings. Continuing with the quotation from Pill LJ, he went on to say:

"His task is the same whether Newalls is a defendant in the action, a third party brought in by Cape, or not a party at all. The judge will assess the evidence which the parties to the action choose to call but, on the basis of that evidence, apportion responsibility as between the claimant, Cape and Newalls. It will involve assessing Newalls's responsibility, because, in the present context, Cape will only be responsible for that share which is the responsibility neither of the claimant nor of Newalls. The claimant and Cape are entitled to call evidence to prove Newalls' share. The position is the same in contract as under the 1978 Act because, under the contract pleaded, Cape is liable to indemnify the claimant only for loss and damage arising "by reason of any breach of duty (statutory contractual common law) on the part of the defendant, (Cape) its servants or agents.

"The relevance in the present action of the agreement between the claimant and Newalls is in the fact that the claimant is not permitted to recover more than it has paid to its employees. To ensure that there is no excess recovery, it is necessary to know what contribution Newalls has made to the relevant sums. Disclosure is appropriate for that reason. It is also information relevant to Cape making a realistic part 36 payment and responding realistically to a part 36 offer from the claimant. That accords with the overriding objective of enabling the court to deal with the case justly.

"I would confine such disclosure to the defendant. While a judge would normally be relied on not to be influenced by his knowledge of the terms of a settlement between a party to the action and one who is not a party, it is preferable not to permit the judge to see it until it is necessary for him to do so in order to ensure that there is no excess recovery by the claimant. The settlement may have been reached for commercial reasons, such as the saving of costs, and with the intention of achieving a global settlement covering all cases without the need for detailed analysis of the merits of each particular case or even each particular shipyard. The agreement may not accurately reflect the view even of its parties with respect to a particular case."

17. Mr McCourt Fritz submits that if that is true of a case where the claimants who were seeking damages were claiming the same damages from all three defendants arising from the same cause of action, it is equally true here, or is true a fortiori, where the claimants are different, where they have different claims, and where their causes of action are not the same and where the damages alleged are different.

18. The relevance of the quantum of the settlement in *Gnitrow's case* only arose after the apportionment had been made in order to ensure that the recovery of damages did not exceed 100%, which principle would have created a ceiling for the respective contributions of the three defendants. Thus, the apportionment reached by the trial judge and the damages flowing from that apportionment needed to be calibrated against

the settlement made by Newalls in case that settlement caused the apportionment decided by the judge to exceed 100%.

19. For the claimant, Mr Coppel KC submits that the evidence is relevant or at least potentially relevant. He submits that, before ruling the evidence inadmissible, the court should, firstly, know what the evidence is, and that includes the quantum, and then would need to be convinced that the evidence could not form a reliable basis upon which the claimant's case could be substantiated.

20. He submits that the extent to which any settlement has the effect of acknowledging the merits of the claim by the claimants is indeed informed by the quantum of the settlement. He submits that a settlement for a few hundred pounds has wholly different connotations to a settlement for a few hundred thousand pounds.

21. He points to the terms of the defence which was to deny any contract at all with all three claimants. He submits that the claimant's case is that the amounts for which the defendant settled the claims of the second and third claimants is inconsistent with the defence as pleaded. In other words, no defendant who honestly and truly believed in the defence as pleaded would ever have settled for the amounts for which the second and third claimants' claims were settled in this case. He submits that the degree of relevance is a matter of weight, not admissibility.

22. He submitted that *Gnitrow* is not relevant and addresses a different issue. Thus, if the court were able to conclude that, by settling the claims of the second and third claimants in the sums that he did, the defendant must be taken to have at least implicitly acknowledged that there were contracts with those claimants, it considerably strengthens the claim of the first claimant that there was a contract with him.

23. It also goes, he submits, to the second defendant's credibility. If, having denied that there was any contract at all in the defence and endorsed that denial with a statement of truth, he settles at a certain level, that implies that he never had any true or honest belief in his defence, despite the terms of the statement of truth, whereby his credit or credibility is impaired.

24. Mr Coppel thus submits that the force of the settlement with the second and third claimants in relation to the claim of the first claimant is dependent upon knowing the quantum of the settlement.

25. In reply, Mr McCourt Fritz made further submissions to support his case relating to the triple fallacy argument. But he makes two further points which in my judgment are important points. Firstly, the admission of the evidence would result in the second defendant, Mr Dainehine, being faced with cross-examination about the settlement. If the claimant relies upon the terms or the fact of the settlement against the second and third claimants as evidence supporting an allegation of dishonesty, it would only be fair for Mr Dainehine to be cross-examined about that. Indeed, it would be counsel for the claimant's duty to do so. But Mr Dainehine would be in an impossibly difficult position, if not an impossible position, because the reasons for the settlement would be covered by legal professional privilege.

26. The other point which Mr McCourt Fritz made was that there is a policy of the courts to promote settlement, and for Mr Dainehine to be faced with not just the fact of his settlement but the amount of his settlement in relation to the residual claim of Mr Omanovic, would undermine the policy of promoting settlement.

27. He submitted that the argument for the claimant that the court needs to know the numbers is in fact inconsistent with the decision in *Gnitrow*, at least at this stage, and also that the suggestion that there is a tipping point in relation to settlement of a claim whereby the quantum becomes relevant, having been irrelevant, is wrong or bad in principle.

28. In my judgment, Mr McCourt Fritz's arguments are sound in this matter. It seems to me that the court should decide this case on the basis of the evidence relating to the events surrounding the formation and working of MyTenNights, and the documents and oral evidence relating to what was or wasn't agreed and the legal outcome relating to that. Of course, Mr Omanovic remains able to assert dishonesty on the part of Mr Dainehine, and I have no doubt will do so, but in my judgment it puts Mr Dainehine in an impossible position, and the court in a very difficult position, where that is based upon a decision to settle the second and third claimants, which

could have been based upon a multitude of reasons, none of which recognise either the validity of this claimant's claim nor form an acknowledgement, implicit or otherwise, of Mr Dainehine's own dishonesty in defending the claims of the second and third claimants until shortly before trial.

29. The fact is that the courts are faced all the time with denials of liability supported by a statement of truth in claims which then are eventually settled. It would be extraordinary if, in so many cases, it could be said that the decision to defend the case in the first instance implied dishonesty because the case had been settled.

30. In my judgment, the nexus between the settlement and the issues in the case of the remaining claimant would need to be allied to a particular decision of the court, such as that in *Gnitrow*, where the court would have to decide eventually whether there had been overpayment to the claimants of damages because the combination of the court's decision and Newalls' original settlement would otherwise take the quantum over 100%. But the clear implication from the judgment of the Court of Appeal in that case was that, until or unless there is such a close nexus with a decision of the court, it is preferable that the terms of the settlement should not be disclosed to the trial judge.

31. Furthermore, even if I am wrong about the question of the relevance of the settlement and its quantum in relation to the second and third claimants, I would exercise my discretion to exclude the evidence, not just because of its prejudicial effect (in relation to which I recognise the ability of courts to put out of its mind prejudicial matters which are not particularly probative) but more importantly because of the difficult or impossible position it would put Mr Dainehine in if the court were to admit the evidence, and because of the need to promote the policy to encourage settlement in all cases.

32. For those reasons, the application is allowed.

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

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