Neutral Citation Number: [2020] EWHC 699 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. QB-2019-000097

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 24 February 2020

Before:

MR JUSTICE SAINI

B E T W E E N :

TARIQ SIDDIQI — Claimant

- and -

JOHN AIDINIANTZ
& OTHERS — Defendants

MR A. VAN DELLEN (direct access) appeared on behalf of the Claimant.

THE FIRST AND FOURTH DEFENDANTS appeared in person (Mr. John Aidiniantz).

THE REMAINING DEFENDANTS DID NOT APPEAR AND WERE NOT REPRESENTED

A P P R O V E D J U D G M E N T

MR JUSTICE SAINI:

1 There are a number of applications before the Court. Not all of them are going to be decided by me today for reasons that I hope will become clear in the course of my judgment. The procedural history underlying this claim is somewhat complicated and it is relevant to the applications. I will therefore need to set it out in some detail.

2 The proceedings themselves were commenced by Mr Tariq Siddiqi, the Claimant, by a Claim Form lodged with the Court on 10 January 2019. Soon after issuing the proceedings, the Claimant issued an application notice seeking an injunction to restrain the Defendants from publishing certain material on a website. Shortly after being served with the proceedings and this application, the Defendants made an application to strike out the Claimant's claims and/or for summary judgment.

3 That substantive application was heard by Warby J and was the subject of a detailed judgment dated 24 May 2019: see *Siddiqi v Aidiniantz & Ors* [2019] EWHC 1321 (QB).

4 Warby J's judgment provides a comprehensive description of the nature and identity of the parties, the underlying dispute and the claims then being pursued by the Claimant. I can accordingly summarise matters more briefly.

5 The underlying action is essentially a spin-off of a long-running dispute over a family business, that is the Sherlock Holmes Museum in Baker Street, London. As described in more detail by Warby J, the particular claims made by the Claimant in this claim can be seen as an aspect of that underlying dispute. Before Warby J, and in response to the application to which I have just made reference (that is, the Defendants' application for striking out and summary judgment), the Claimant expressly abandoned his original claims in their entirety and sought to respond to that application by substituting new wording in a draft amended

Claim Form. I refer here to paragraph 10 of Warby J's judgment where he explained the position as follows:

> "The defendants now apply, by notice dated 12 April 2019, for orders striking out the claims and entering summary judgment in favour of the second to fifth defendants. The claimant has responded by indicating that he now wishes to abandon the original Claim Form and Particulars of Claim, and to substitute entirely new wording by amendment. His draft amendments would drop the claims for blackmail and defamation. They would retain the claim in harassment. But they would add further causes of action. The draft Amended Claim identifies five causes of action, as follows (except that I have added the numbering in square brackets):
>
> > "The Claimant claims damages for **[1]** conspiracy to injure by unlawful means and/or **[2]** wrongful interference and/or **[3]** breach of confidence and/or **[4]** harassment and/or **[5]** interference with his Article 8 rights by (i) the creation of websites in his name and without his consent namely [*Web addresses specified*] and the use of them to publish and promote false derogatory and damaging allegations of him and his family (ii) the publication of false derogatory and damaging allegations of him and his family both online and to third parties and (iii) the publication of private and confidential information relating to him and his family."
>
> …"

6 Following what was clearly a lengthy and involved hearing, Warby J came to certain conclusions in paragraph 85 of his judgment. He said:

> "For all these reasons, I refuse permission to amend the case against the first defendant in the form of the draft proposed. This decision is final so far as it relates to the claims in conspiracy, wrongful interference, and under the Human Rights Act. The conspiracy claim has no real prospect of success. I would not grant permission to plead either of the economic torts relied on, even if the pleaded case was in good order. The direct claim under the Human Rights Act is hopeless, as a matter of law. As to harassment, breach of confidence and misuse of private information, my decision is that the Claim Form and APoC cannot go forward as they stand; but this is not a decision that there is no claim in any of those torts that might succeed. The claimant may wish to re-apply for permission to amend. To keep that option alive, I shall not strike out the entirety of the existing Claim Form. It must be amended to cut it down to a claim for damages for harassment, but the possibility of adding to it will remain live."

7 I have cited these passages in their entirety because they provide the immediate context for the next procedural development in this case. It will be noted that, as at the date of Warby J's

judgment of 24 May 2019, the entirety of the Claim Form had been struck out, save for the possibility of the Claimant applying for permission to amend as regards at least the harassment claim.

8 I say no more about that issue of amendment at this stage because, depending upon how far this action progresses, there may be a further debate concerning the nature and scope of any permitted amendments and to what extent Warby J's Order (as read with the judgment) confines the Claimant. At this stage, I am not considering that issue and, as I will describe in more detail in due course, the issue as to whether the Claimant should be permitted to amend the claim is not a matter I will address in my judgment today.

9 Following Warby J's judgment, he made an Order dated 24 May 2019. Insofar as relevant to the issues before me today, I need to record that Warby J made what are accepted to be final costs orders against the Claimant in respect of his unsuccessful injunction application, an unsuccessful disclosure application, as well the success of the Defendants on their summary judgment and strike out application.

10 The costs in respect of those applications were the subject of an order for an interim payment, with a provision for detailed assessment in due course of those costs in the normal way. The total amount of the interim costs, which is a sum in the region of about £30,000 were to be paid by the Claimant by 14 June 2019. By paragraph 10 of Warby J's Order, he also granted an extension to the Claimant until 12 noon on 5 June 2019 to apply to him for permission to appeal.

11 As I understand matters, no application for permission to appeal was made and, therefore, as Counsel for the Claimant rightly accepts before me today, the costs orders to which I have just made reference are final orders and they were and remain fully binding and enforceable.

12 Returning to the chronology, on 13 June 2019, in accordance with paragraph 7(1) of Warby J's Order of 24 May 2019, the Claimant provided a draft amended Claim Form and draft amended Particulars of Claim in respect of the harassment claim that he wished to continue against the First Defendant. It will be recalled from what I said a few moments ago that Warby J left open the opportunity for the Claimant to pursue such a claim.

13 The First Defendant opposed this amendment by a letter to the Claimant dated 26 June 2019 and, by operation of the provisions of paragraph 7(3) of Warby J's Order dated 24 May 2019, the Claimant was required to apply for permission to amend his Claim Form and Particulars of Claim by 5 July 2019.

14 Accordingly, on 27 June 2019, the Claimant made an application ("the second amendment application") to amend his Particulars of Claim and Claim Form. On 5 July 2019, Warby J gave directions for the filing of certain evidence in relation to this application and, in due course, the First Defendant filed submissions in opposition from his legal representatives. On 19 July 2019, Warby J gave the Claimant an extended period of time to reply to the submissions, that is to 16 August 2019.

15 Rather than replying to these submissions by the First Defendant, the Claimant took a different course and, on 4 August 2019, he filed an application notice ("the third amendment application") seeking permission to amend the Claim Form and Particulars of Claim, to set aside paragraph 7(3) of the Order of Warby J and to stay the costs which were ordered by Warby J to be paid by his Order of 24 May 2019. Those are the costs to which I have already made reference, and which were the subject of the interim payment order. The Claimant asked for an oral hearing of his application.

16 On 23 September 2019, Warby J made certain case management directions. At that point in time, Counsel acting on behalf of the Claimant indicated that the Claimant would be applying for certain relief from sanctions. In due course, on 26 September 2019, an application notice was issued on an *ex parte* basis to strike out Warby J's costs order of 24 May 2019 by reason of what was said to be the Defendants' non-compliance with CPR 47.7 in failing to provide a bill of costs. That application has been called "the sanctions application" in the papers before me.

17 I can skip over the next few procedural steps and turn to the next substantive application that was made, which was an application by the Claimant on 7 October 2019, applying for relief from sanctions for failing to comply with Warby J's Order of 19 July 2019, which was, it will be recalled, an order under which the Claimant was given a certain amount of time to respond to the First Defendant's opposition to the second amendment application.

18 On 9 October 2019, in the face of a substantial number of procedural applications and what was undoubtedly becoming quite a procedural mess, Warby J made firm case management directions to get this claim back on course. Warby J directed, by an Order of 9 October 2019, that two particular applications were to be heard orally on the first available date after 4 November 2019, with a time estimate of 1.5 hours. The first was the Claimant's third amendment application of 4 August 2019, but, importantly, only in respect of that aspect of the application which concerned the stay of the costs order. He also ordered that the *ex parte* application for sanctions dated 26 September 2019 be heard, as well as what I have referred to as the "relief from sanctions application" dated 7 October 2019.

19 Importantly, Warby J also made provision for the First Defendant to make an application in respect of the outstanding costs. That application had been intimated by the First Defendant in a letter to the Court of 27 August 2019 sent by the First Defendant's solicitors. The First

Defendant made such an application dated 16 October 2019, and the relief sought had three parts: first, the First Defendant asked for the costs of dealing with the Claimant's abandoned second amendment application; secondly, that the further proceedings in this claim should be stayed until payment of those costs and/or the costs which the Claimant was ordered to pay on 24 May 2019; and, thirdly, the First Defendant sought a civil restraint order.

20 I will return to the issue of the civil restraint order towards the end of this judgment but, as far as the first element of relief is concerned, which is an order for the costs of dealing with the Claimant's second amendment application, Counsel for the Claimant accepted before me today that the First Defendant was entitled to those costs and, following argument this morning from the First Defendant in person and Counsel for the Claimant, I made an order that those costs be finally summarily assessed in the sum of £6,500, to be payable within the normal fourteen-day period. That disposes of the first limb of the application of 16 October 2019.

21 What is still before me today are the second and third limbs of that application, which is that there effectively be a stay on the further prosecution of this claim until the costs of 24 May 2019 have been paid and that there be a civil restraint order. As provided for by Warby J's case management order of 9 October 2019, he directed that all applications in this claim, specifically the applications by the Claimant to amend the claim, should await the outcome of the First Defendant's application for a stay of the proceedings pending payment of the costs. With respect, that was clearly the right and sensible course, and the parties before me today have accordingly agreed that the first issue for me to decide is the question as to whether or not there should be a stay of the proceedings pending payment of the costs directed to be paid by Order of 24 May 2019.

22 I accordingly turn to that issue as the first matter. As helpfully indicated before me this morning by Counsel for the Claimant, it is accepted that the costs order in issue was a final order which was not appealed, and therefore it was, and remains, binding upon the Claimant.

23 Those costs should have been paid quite a long time ago, that is 14 June 2019, and I have to consider, first of all, the question of whether the Claimant's claim should be stayed pending payment of those costs, but also his related application, which is, in a sense, the other side of the coin: that is, whether the payment of those costs, or the order providing for the payment of those costs should itself be stayed. It will be recalled from the history that I have described that one limb of what has been called "the third amendment application" made by the Claimant concerned an application for a stay on payment of these costs. So, although that issue arises by way of two applications, it is essentially the same matter.

24 I turn then to consider the legal principles that apply in this area and, as I understood the position, ultimately, there was no legal dispute between the parties as to the approach the Court should take as I put it to the parties in my own formulation.

25 During the hearing, I drew the attention of the parties to two cases which I considered to fairly summarise the legal position. The first case was *Peak Hotels and Resorts Ltd v Tarek Investments Ltd & Ors* [2016] EWHC 690 (Ch). In that case, Asplin J cited and applied an earlier decision, *Crystal Decisions (UK) Limited & Ors v Vedatech Corporation & Anor* [2008] EWCA Civ 848.

26 I refer in particular to the principles set out in the judgment of Sir John Chadwick in *Crystal* at [17] to [18]:

> "But thirdly – and, to my mind, most importantly - the court's ability to make interlocutory costs orders following, in particular, the Access to Justice reforms in 1998, is a sanction which is available to it in order to encourage responsible litigation. The court marks what it regards as an irresponsible

application by an immediate order for the payment of costs. That is intended to bring home to a party - when considering whether to make an application - that an unsuccessful application may carry a price which will have to be paid at once. If the court is not in a position to enforce immediate interlocutory orders for the payment of costs which it was thought right to make, then the force of that sanction is seriously undermined. It is important that, in cases where the court thinks it right to make an order for immediate payment on an interlocutory application, that it does have the power - and can exercise the power - to ensure that order is met. For the reasons which Patten J explained, the only effective sanction in a case of this nature is to require payment of interlocutory costs as the price of being allowed to continue to contest the proceedings. Unless the party against whom an order for costs is made is prepared to, or can be compelled to, comply with, that order, the order might just as well not be made.

"That point attracted the judge, He said this, at paragraph [16] of his judgment:

> 'In any event I take the view that orders of the court, even in relation to interim costs, require to be complied with and that, unless there is some overwhelming consideration falling within Article 6 that compels the court to take a different view, the normal consequence of a failure to comply with such an order, is that the court, in order to protect its own procedure, should make compliance with that order a condition of the party in question being able to continue with the litigation.'

For my part, I would hold that - whether or not a statement in such general terms can be supported – the proposition can be supported in a case (such as the present) where there is no other effective way of ensuring that the interim costs order is satisfied. That, of course, is always subject to what the judge referred to as the overwhelming consideration falling within Article 6: that orders requiring payment of costs as a condition of proceeding with litigation are not made in circumstances where to enforce such an order would drive a party from access to justice. But, for the reasons that the judge explained and to which I have already referred, this was not such a case."

27 The substance of that decision is that, in general, orders of the Court, including orders in relation to interim costs, need to be complied with. In the words of Patten J, which were cited by Sir John Chadwick, unless there is some form of "overwhelming consideration falling within Article 6" that compels the Court to take a different view, the normal consequence of a failure to comply with such an order is that the Court should make compliance with that order a condition of the party in question being able to continue with the litigation. This course is necessary for the Court to be able to protect its own procedures.

28 Although Sir John Chadwick did not give unqualified approval to the statement of Patten J, it is clear that he agreed with the thrust of what had been said by Patten J, and he emphasised the fact that the general approach would be to require payment as a condition of continuing with a claim, unless the party that was being required to make payment was being driven from access to justice.

29 That, to my mind, is another way of referring to the Article 6 ECHR rights (or common law access to justice rights) of someone in the Claimant's position. When I refer to Article 6 rights further in this judgment, I use that term to include the equivalent common law right of access to a Court.

30 Accordingly, when considering whether to stay a claim until an existing costs order is paid, I would summarise the correct general approach of the court position as follows:

(i) The ultimate aim of the Court is to identify the just order from a case management perspective, bearing in mind the overriding objective.

(ii) In approaching that task, the "working" or "default rule" is that a litigant should not be able to continue with his or her claim without satisfying an existing and non-appealed final costs order, and the court should impose a condition requiring compliance.

(iii) However, if a claimant can show his or her Article 6 rights will be interfered with by such a condition (because they cannot pay, and a genuine claim will therefore be stifled) that is a material, but not conclusive, consideration pointing against such a condition.

(iv) Finally, the Court must take into account all other circumstances of the case, including the procedural behaviour of the defaulting party in deciding on the just order to make.

31. Turning then to the application of the principles, I have already set out the case management history of the claim. Even bearing in mind the fact that the Claimant was, for a large period of time, acting as a litigant in person, the history tells an unfortunate procedural tale. I will return to that issue in due course but will first consider whether there will in fact be an Article 6 interference, as argued before me on behalf of the Claimant.

32. The first issue is the means of the Claimant. As to his own personal means and the question of whether he will be driven from access to justice by any order requiring him to pay the costs as a condition of pursuing the claim, one draws assistance in this area from analogous case law in the area of security for costs. This was not a point argued by the parties but one to which I drew to their attention, and upon which I invited their submissions.

33. In the field of security for costs, it is not uncommon that a claimant company which is the subject of an application for security for costs argues that, if it is required to make such a payment as a condition of continuing a claim, its genuine and legitimate claim will be stifled. The cases in this area are well known and are cited in the **White Book 2019** at Volume 1, paragraph 25.13.13 (which refers to *Keary Developments Ltd. v Tarmac Construction Ltd.* [1995] 3 All ER 534 and *Goldtrail Travel Ltd. v Aydin* [2017] UKSC 57).

34. The broad thrust of that case law is that when the Court is considering an assertion that a claim would be stifled, it does not consider only whether the claimant can provide security out of its own resources. The inquiry is a broader one: the Court needs to undertake a wider investigation (with the burden being upon the claimant) to assess whether or not there might be outside sources or backers, such as friends, relatives, business associates or other interested persons, who might be able to provide the security (I will call this "third party assistance").

35. It seems to me that those principles must also apply in the present context. Indeed, in the present context, they apply with substantially greater force. A claimant who faces a final order

for costs (not just a potential liability if it fails at trial, as in the security for costs scenario) faces possibly an even higher standard to demonstrate a lack of third party assistance. In the security for costs context, one is looking to see whether or not the claimant will be able to satisfy a potential security for costs order but in that situation of course, no costs order has actually been made. It is simply security for costs which is to be lodged in court in respect of a contingency. A court might in that case be less demanding in terms of evidence than it would be in respect of a person who has failed to meet a final and binding costs order.

36. Whatever the differences might be, there is no doubt in my mind that the Claimant bears the burden of satisfying me, with appropriate evidence, that if an order is made requiring payment of costs as a condition of pursuing the claim, a genuine claim will be stifled.

37. If the Claimant cannot do that with evidence he cannot show an Article 6 breach and that points falls outside of the Court's list of factors to consider.

38. I emphasise the word "evidence" because, having considered a number of witness statements that have been drawn to my attention, I am not satisfied that the Claimant has satisfied me that he cannot obtain either from third parties or indeed even from within his own resources, the relatively modest amount of costs (about £30,000) which were required to be paid under the 24 May 2019 Order.

39. In particular, I am not satisfied that the Claimant has, by way of evidence, put before the Court appropriate evidence in witness statement form as to where else, apart from his own immediate accounts, he might be able to access funds and what efforts have been made in this regard.

40. In more detail, I am concerned that, although he has put before the Court two statements from HSBC bank accounts, there are another two accounts which I am told belong to his wife and in relation to which there is no evidence. His Counsel has helpfully taken instructions as to

the amounts in those accounts but there is no evidence. I am also concerned that, even though on the evidence the Claimant seemed to be receiving, at least until February 2014, £11,000 per calendar month and had received at some point in 2014 the sum of £500,000 on a property deal, there is no actual evidence before me as to what happened to those substantial sums.

41. I remind myself once again that the sum which he needs to find, £30,000, is relatively modest in comparison.

42. Counsel for the Claimant has done his best in helpful submissions this morning in taking instructions from both the Claimant and his wife in relation to his and her assets, but, as he accepts, what he has told me is essentially material put before the Court on instructions, as opposed to by way of evidence. The need to submit evidence which went beyond the rather cursory evidence of the Claimant describing in a limited fashion his own personal financial position should have been apparent to the Claimant long ago.

43. In this regard, I have considered whether I should adjourn this application in order to allow the Claimant to supplement his evidence with actual sworn evidence which goes into the detail of not only his assets, but the assets of his other family members as well as the whereabouts of the £500,000 which was received some time ago. But, given the very poor procedural history, it does not seem to me, as a matter of case management and discretion, that would be a fair or just outcome for the Defendants. Further delay cannot be justified.

44. Accordingly, the Claimant has not satisfied me that his Article 6 rights would be interfered with if I made his continuing the litigation conditional upon his paying the costs which he has been ordered to pay. That factor falls away.

45. That having been said, I must also consider what the right order is from a case management perspective and having regard to the overriding objective and all the circumstances of the case. I need to consider these circumstances because there might be some factor which justifies not

imposing a condition even though the Claimant appears *prima facie* capable of paying the costs.

46. Considering the overall circumstances which I have summarised above, and specifically the poor procedural history of repeated applications by the Claimant, it does seem to me that I should make an order imposing some form of sanction on the Claimant for not having paid the costs order and seeking to induce compliance. Those circumstances all point towards some form of condition being imposed. The history is characterised by repeated and costly (to the Defendants) applications for procedural orders which have, on occasion, been abandoned.

47. However, having considered what was said on the Claimant's behalf, I am not going to make an order that the claim be stayed forthwith, as I could do, today.

48. Rather, I am going to make an order that unless the Claimant pays the costs under the 24 May 2019 Order within twenty-eight days of today, the claim will be stayed. So, the Claimant is going to have twenty-eight days from today to pay those costs. That is generous given the already long period of default. If he has not paid them by that date, then the unless order will take automatic effect and there will be a stay on the claim.

49. Although I am giving the Claimant twenty-eight days to make that payment, he should not believe that he can continue making applications to this Court in that twenty-eight-day period. So, I am going to impose a requirement as a matter of case management that no application be made to this Court, of any form, prior to the expiry of that twenty-eight-day period. I am hoping that, by the time the twenty-eight-day period has expired, the Claimant will have made payment of the costs and the action can proceed. I can then consider the amendment application and the basis on which the claim can proceed.

50. I turn finally to consider the further application made by the First Defendant for a civil restraint order against the Claimant. The thrust of what is said by the First Defendant, who has been acting in person today, is that the Claimant has made what the First Defendant regards as being unmeritorious or so-called "totally without merit" applications in the past, and that the Court should, here and now, make a civil restraint order.

51. One needs to pause and first consider whether the Claimant has in fact made any applications which are totally without merit. The only application which the Claimant has made, and which resulted in any form of decision by the Court was the application considered, along with other matters, by Warby J on 24 May 2019 in the judgment to which I have made reference.

52. Warby J dismissed the Claimant's various applications for an injunction, for disclosure and to amend his claim, and, at one point, he described the amendments as "hopeless". I am confident, however, having considered Warby J's judgment, that he would have said the Claimant's applications were totally without merit, had he concluded that to be the case.

53. Although I am not precluded from looking back at those applications and Warby J's decision and potentially making my own decision as to whether or not they were totally without merit, I do not consider, having looked at the reasons for the dismissal of the applications, that they were in fact totally without merit. The preconditions for making a limited civil restraint order (PD 3C, para.2.1), that is two or more totally without merit applications, have therefore not been satisfied.

54. In those circumstances, I dismiss that limb of the First Defendant's application.

55. I should make it clear, if it is not already clear, that the costs to be paid under the unless order I am going to make, are the costs of 24 May 2019. I am not making any unless order as regards the costs of £6,500 which I have assessed as costs that the First Defendant is entitled

to as a result of the abandonment of the second application. I make no such unless order as regards those costs because the Claimant has not had time to pay those costs yet and they have only just been assessed by me.

56. So, for those reasons, I am going to dispose of the applications that I have dealt with today by making the orders I have just described. In order to avoid yet further disputes between the parties as to what I have decided, I will draw up the Court's order to reflect my decision.

57. In the meantime, I am not saying anything at all as to the merits of the proposed amendment application. Nothing I have said in the hearing or in this judgment should be read by either party as suggesting any conclusions in that regard.

58. I have formed no view on that issue and the Claimant will have to persuade me, or whichever other judge deals with it if it is not me, that, if and when he has paid the costs outstanding, he should be allowed to continue with the claim in amended form. That concludes my judgment.
