



**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD 203 OF 2020 (NSJ)**

**BETWEEN**

**ABDULHAMEED DHIA JAFAR**

**Plaintiff**

**AND**

**(1) ABRAAJ HOLDINGS (IN OFFICIAL LIQUIDATION)**

**(2) GHF GENERAL PARTNER LIMITED,**

**(3) THE GHF GROUP LIMITED**

**(4) ABRAAJ GENERAL PARTNER VIII LIMITED**

**Defendants**

**JUDGMENT ON THE FOURTH DEFENDANT'S APPLICATION REGARDING  
THE NAQVI SETTLEMENT NEGOTIATION DOCUMENTS**

1. I refer to the Fourth Defendant's application (the *Application*) concerning discovery of the documents (the *Documents*) relating to the Naqvi Settlement Negotiations, as set out at [3] of its summons dated 8 September (the *Summons*).
2. The Application was heard yesterday at the PTR and I indicated at the conclusion of the parties' submissions that I would consider my decision overnight and notify the parties of that decision today. This I now do.
3. I have concluded that the Application should be granted and that the Plaintiff should be ordered to give discovery of the Documents (identified in [3.1] of the Summons) on or before 13 October 2023 (not 9 October as the Fourth Defendant requested).

4. I accept the Fourth Defendant's submission that the Plaintiff's claim of without prejudice privilege is bad in law since there was no relevant dispute between the Plaintiff and Mr Naqvi at the time that the Documents were created (the contractual justification for the application of the without prejudice privilege is not applicable in this case where the Fourth Defendant was never a party to the relevant negotiations).
5. The evidence shows that there was no dispute as to Mr Naqvi's liability to the Plaintiff in respect of the dishonoured cheques. Nor was there a dispute as to the Plaintiff's entitlement to initiate criminal proceedings by reason of that default. The only issue, which was discussed at length in the WhatsApp messages (to which I was referred by Lord Falconer), was whether Mr Naqvi would be prepared, or was able to offer, to provide to the Plaintiff adequate assets to persuade him not to exercise his undoubted right to lodge a criminal complaint. The authorities relied on by the Fourth Defendant make it clear that in these circumstances there is no dispute for the purposes of engaging the without prejudice privilege.
6. The without prejudice principle does not apply to negotiations about payment of an admitted liability, the amount of which is also not disputed and presently due and payable. In that case the debtor is not offering any concession and the rule does not apply. As Lord Mance said in the House of Lords in *Bradford & Bingley plc v Rashid* [2006] 1 WLR 2066 at [83]:

*“83. Here, the defendant, Mr Rashid, was not offering any concession. On the contrary, he was seeking one in respect of an undisputed debt. Neither an offer of payment nor actual payment of a smaller sum in purported discharge of a larger admitted indebtedness has the effect in law of discharging that indebtedness: cf Foakes v Beer (1884) 9 App Cas 605 ; D & C Builders Ltd v Rees [1966] 2 QB 617 (authorities which we were not in any way asked to reconsider). But, even if Mr Rashid had been offering a lesser sum on a basis which could, if accepted, have precluded the claimant bank from pursuing the admitted larger debt (as might have been the case under Scots law, which has no doctrine of consideration, or which might have been the case under English law, if Mr Rashid had been offering a composition to all his creditors), there would have still have been no relevant dispute about his indebtedness, and the “without prejudice” rule would still have had no application.”*

7. As David Richards J (as he then was) said in *Avonwick Holdings Limited v Webinvest Limited* [2014] EWHC 3322 (a decision upheld by the Court of Appeal in *Avonwick Holdings Limited v Webinvest Limited* [2014] EWCA Civ 1436 at [6]):

*“19. For a document to be inadmissible on the grounds that it is “without prejudice”, it must form part of a genuine attempt to resolve a dispute. There needs to be both a genuine dispute to be resolved and a genuine attempt to resolve it. If there is no dispute about a liability, but only a negotiation as to how and when it should be discharged, the negotiations, and documents produced in the course of them, are not covered by the “without prejudice” exception to the admissibility of relevant evidence. That was the situation in Bradford & Bingley plc v Rashid [2006] 1 WLR 2066, [2006] UKHL 37. Lord Mance said at [81]:*

*“The existence of a dispute and of an attempt to compromise it are at the heart of the rule whereby evidence may be excluded (or disclosure of material precluded) as “without prejudice”. ... the rule does not of course depend upon disputants already being engaged in litigation. But there must as a matter of law be a real dispute capable of settlement in the sense of compromise (rather than in the sense of simple payment or satisfaction).”*

20. *In that case, the relevant correspondence was not marked “without prejudice” and it was common ground that there was no dispute as to the existence or amount of the defendant's liability. The documents which the defendant sought to have excluded on the grounds that they were impliedly “without prejudice” contained attempts to agree terms as to the repayment of the liability, in other words a restructuring of the defendant's debt. The House of Lords rejected the submission that the without prejudice exclusion could apply in such circumstances, Lord Brown saying at [72]:*

*“If the without prejudice rule is to apply not merely to attempts to resolve a dispute about the existence or extent of a liability but also to discussions as to how an admitted liability is to be paid, that would seem to me a very substantial enlargement of its scope.”*

8. In *Avonwick* a creditor had made a loan to a debtor. The debtor defaulted on the loan and proposed a rescheduling. The creditor did not agree to the rescheduling and proposed terms including the provision of security. The creditor then demanded payment. The creditor argued that correspondence leading up to the unsuccessful rescheduling (which was marked "without prejudice and subject to contract") was admissible. Mr Justice David Richards found that the correspondence was not covered by the without prejudice privilege because there was at the relevant time no dispute about the debtor's liability under the loan, even though a dispute arose subsequently.
9. It appears that Mr Naqvi was not even seeking to settle and discharge completely the debt which he clearly owed. Rather he was seeking to avoid steps being taken by the Plaintiff which the Plaintiff was entitled to take under applicable law in consequence of Mr Naqvi's default. While the filing of a criminal complaint is not precisely analogous

to action by a creditor to enforce the debt owed to him, in this case the Plaintiff was using the threat of and the prosecution of the complaint as a means of seeking and obtaining at least some recovery of the debt owed to him. He was exercising a right that arose upon Mr Naqvi's default in order to seek recovery of what he was owed. This is a case, to use Mr Justice David Richards' terminology, of a negotiation as to how and when an admitted debt should be discharged. There was no question or dispute as to the existence and extent of the Plaintiff's rights or his remedies and rights flowing therefrom.

10. During the hearing I put it to Lord Falconer that it seemed to me that the proposition of law for which he was arguing was this: a dispute as to what should be provided by a debtor to avoid enforcement of an admitted liability is sufficient to engage the without prejudice principle. Lord Falconer accepted that this fairly represented his case. In my view, as Mr Ayres KC submitted in his reply submissions, this proposition of law is inconsistent with the authority I have discussed since there is no dispute regarding the existence or extent of the creditor's rights and remedies. Any debate and negotiations as to how much a debtor who is subject to an admitted liability that is due and payable as to how much he will pay and when he will do so is outside the scope of and not protected by the without prejudice principle.
11. [3.1] of the Summons seeks an order that the Plaintiff produce "*all documents withheld from production on the grounds of an assertion of without prejudice privilege and which concern evidence or relate to the instigation or withdrawal of the criminal complaint against Mr Naqvi before the Sharjah court including all such documents concerning, evidencing or relating to the negotiation, drafting and finalising of the bridge agreement between Mr Jafar and Mr Naqvi dated 11 July 2018 and the settlement deed between Mr Jafar and Mr Naqvi dated 28 August 2018.*" I shall make an order in those terms.
12. The Fourth Defendant also sought an order, as I understand it (although this was not included in the Summons) that the Plaintiff's Cayman Island attorneys be required to confirm that they have reviewed and verified any claim to without prejudice privilege in respect of the Documents which relate to the period before the Plaintiff made his criminal complaint (mid-June 2018) and after Mr Naqvi's criminal complaint had been established by the judgment dated 26 August 2018. In my view, such an order is unnecessary and unjustified and should not be made.

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**The Hon. Mr Justice Segal**  
**Judge of the Grand Court, Cayman Islands**  
**5 October 2023**