IN THE HIGH COURT OF JUSTICE, BUISNINESS AND PROPERTY COURTS IN MANCHETER BUSINESS LIST(CHD) CASE

No. D30MA987

- **[2024] EWHC 1154 (Ch)**

Courtroom No. 39

1 Bridge Street West
Manchester
M60 9DJ

Friday, 5th April 2024

Before:
HIS HONOUR JUDGE BIRD SITTING AS A JUDGE OF THE HIGH COURT

B E T W E E N:

THE SWIFTHOLD FOUNDATION

and

FAST INTERNATIONAL TRADING GROUP (PREVIOUSLY FAST TRADING GROUP)
& SHEIK FAHAD AHMED BIN MOHAMMED AL-THANI

MR SMYTH appeared on behalf of the Claimant
NO APPEARANCE by or on behalf of the First Defendant
NO APPEARANCE by or on behalf of the Second Defendant

JUDGMENT
(For Approval)

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HHJ BIRD:

1. On 10 May 2018, following a hearing before Eyre J as he now is, the claimant obtained a substantial judgment against the two defendants in the principal sum of US$4 billion. My attention this morning has been drawn, in particular, to paragraph three of the judgment. Eyre J there describes steps taken by the second defendant, Sheikh Fahad Ahmed Bin Mohammed Al-Thani to evade or at least fail to confirm or act upon service of proceedings upon him in Qatar.
2. It is plain from the totality of the evidence which I have considered that the second defendant became aware of the judgment. Not least because enforcement proceedings in respect of that judgment commenced in Qatar. The second defendant took part in those proceedings and instructed local counsel. At first instance, the claimant was granted permission to enforce the judgment in Qatar. In the Qatari Court of Appeal, that decision was overturned. That left the claimant in a difficult position. Further, I am told that a nominal sum of a little short of £56,000 was tendered in partial settlement of the judgment although, for reasons which appear to arise out of local law and practice, those sums were not accepted in the sense that the cheques were not cashed and it is now no longer possible to cash those cheques. The position, therefore, is that the full judgment together with very substantial interest remains entirely unsatisfied.
3. On 19 December 2017, I made an order in respect of the proceedings that they, together with other documents may be served out of the jurisdiction. I ordered that the proceedings and other documents may be served upon the second defendant in one of two ways: firstly, by sending hard copy documents by airmail, pre-paid post to the trading address of the first defendant. Secondly, by sending hard copies by airmail, pre-paid post to the PO box address of the first defendant. In each case, I provided that service would be good seven days after posting. That order was made after consideration of evidence prepared by Mr Ghada Darwish dealing with the law of the state of Qatar which gave comfort that service in those ways would not interfere with local practice or law.
4. On 27 October 2023, the claimant issued an application under CPR 71 seeking an order from the Court compelling the second defendant to attend at court to provide evidence as to his means. The order was issued in its final form on 2 February 2024. The order is in standard form. It contains a penal notice warning those to whom it is addressed of the consequences

of non-compliance and it was served with a list of documents which the claimant wanted the second defendant to produce at the hearing.

5. On the same day but by separate order, I allowed or permitted the order to be served by alternative means and dispensed as I was permitted to do by CPR 71.3 with what would otherwise be the requirement of personal service in such matters. I gave directions that service should be effected by the means set out in the 2017 order, that is by post at either the trading premises or the PO box of the first defendant. Provided the documents were addressed to the second defendant, that would be good service seven days after posting.

6. This is the hearing of the oral examination. The matter has been listed in open court. There has been no attendance by the second defendant in person or through any representative. The matter has been listed in the full names of the parties. It is an open and public hearing. Had the second defendant appeared, there may have been an application to hear the examination in private so that confidentiality was maintained. However, that has not arisen. I am invited in accordance with CPR71 to make an order committing the second defendant to prison or imposing some other sanction for contempt but again, as required by CPR 71, suspending that order on condition that the second defendant attends in the future to provide the information sought.

7. During the course of his helpful submissions, Mr Smyth who appears on behalf of the claimant has drawn my attention to the case of *Broomleigh Housing Association Limited v Okonkwo* [2010] EWCA Civ 1113. He drew my attention to the fact that before I can make such an order, I need to be persuaded of three broad matters: first, that the order requiring attendance was served. Secondly, that the non-compliance was intentional. Thirdly, that it is appropriate to make an order. Given that these are, in effect, committal proceedings, I remind myself that I should be satisfied with the relevant matters to the criminal standard; satisfied that is, so that I am sure.

8. I turn then, first of all, to the service. I am satisfied from the evidence that I have and the submissions that I have heard that service of the CPR 71 order was effected in accordance with my orders both as to substituted service of the CPR 71 order made on 2 February 2024 and in accordance with the 2017 order. I am satisfied that service was effected by posting on 29 February 2024 so that service was deemed to take place on 7 March 2024. Mr Smyth rightly drew to my attention that although my 2024 order simply refers back to the 2017 order

so that anybody reading that order would not immediately see what the method of service I had authorised was that the 2017 order was within the substantial bundle of documents served on the second defendant. It was, therefore, plain had the second defendant considered the documents that the service was good.

9. The evidence before me is that the package sent to the trading address of the business was returned by agents. The evidence before me is that the document sent to the PO box appears to have been returned. However, I am satisfied in each case that the return is simply a mechanism used directly or more likely on behalf of the second defendant simply to avoid the document.

10. The evidence before me is that there were further attempts to serve although it is accepted that those attempts are not properly to be construed as service because they were not authorised by the order. On 13 March, the documents were sent to the second defendant's brother at the Ministry of Foreign Affairs in Doha. Those documents were returned because the recipient failed to complete a customs declaration. On the same date, the documents were posted to the second defendant's legal representative in the enforcement proceedings of which I have made mention. Those documents were delivered, it appears, on 17 March and have not been returned. The documents were also sent by email on 15 March to the legal representative via a ShareFile link.

11. Enquiries have been made as to further steps. Local advice is that it is not possible or at least not practically feasible to advertise in a local newspaper and despite efforts having been made to trace such an account, no social media account has been found. The issue of extraterritoriality obviously applies. I am satisfied for the purpose of this hearing that CPR 71 has extraterritorial effect and there is no difficulty with my proceeding even though service is made out of the jurisdiction. In that regard, I rely on the authorities cited by Mr Smyth in his skeleton argument, namely *Farrer & Co LLP v Meyer* [2022] EWHC 362 and *Kazakhstan Kagazy PLC and Others v Baglan Abdullayevich Zhunus and Others* [2019] EWHC 2287. I also rely on the comments made by Coulson LJ at paragraph 60 of *Westrop v Harrath* [2023] EWCA Civ 1566 in which whilst not definitively deciding the point, Coulson LJ with whom Moylan LJ and Lewison LJ agreed concluded that the matter has sensibly been dealt with in the case of *Deutsche Bank AG v Sebastian Holdings Inc* [2018] EWCA Civ 2011.

12. Whilst the Court of Appeal in the *Deutsche Bank* case did not need to decide the issue, reference was made to the comments of Gross LJ at paragraph 88 that he could see

considerable force in the conclusions reached by Teare J at first instance. The force of Teare J's conclusion was endorsed by Coulson LJ.

13. I then turn to the question of formalities. These formalities are dealt with in CPR 71. I have already concluded that there is good service. I am satisfied that CPR 71.3 has been complied with in that service was effected more than 14 days before today. I have referred already to the order that I made which dispenses with personal service and so the absence of personal service is not a bar to making an order. Coulson LJ in the *Westrop* case refers to CPR 71.3 at paragraph 27. He notes that alternative methods of service can be provided for. He makes that point at paragraph 28 and goes on to say:

> "…if that discretion is to be exercised, it must be at the time that the order requiring attendance is made; it cannot be retro-fitted after the event. No order requiring alternative service was either sought or made here…This Court cannot now rewrite the orders made below".

14. The order in the present case was made at the same time as the order for attendance. It was not made in the same order but I do not understand there is anything in paragraph 28 or elsewhere in the judgment in *Westrop* that would suggest that the approach taken by this Court was improper.

15. I am also satisfied that no request for reasonable travelling expenses has been made. That point is confirmed in the affidavit evidence I have seen. I am satisfied that at the time the affidavit was presented to the Court in accordance with CPR 71.5, the time for requesting those expenses had expired. CPR 71.5 deals with the requirements of an affidavit of service. There are two potential issues in respect of compliance with CPR 71.5. Firstly, 71.5(1)(a) provides that the judgment creditor must file an affidavit or affidavits by the person who served the order unless it was served by the Court, giving details of how and when it was served. That rule is clearly, as Mr Smyth pointed out, directed towards an affidavit of service from the person who has effected personal service; in other words, the default form of service provided for at 71.3. The option not to provide an affidavit where service is effected by the Court refers to service by the bailiffs of the court in which case, an alternative form of proof is submitted.

16. It is accepted that the affidavit that I have in this matter was not provided by the person who served the order, rather the affidavit was provided by someone who instructed a member of the administrative staff at the firm of solicitors instructed by the claimant to post the documents. Whilst that may be a strict failure to comply with 71.5, I am satisfied that pursuant

to CPR 3.10, it is appropriate for me to overlook the non-compliance. Alternatively, in my judgment, the affidavit having been prepared by the person who instructed that the document be served does comply with subparagraph 1(a).

17. It would be, perhaps, unwieldy and unhelpful if in a large and busy firm of solicitors where service is effected by post if the person who actually inserted the letter into the letterbox had to be identified. I take further comfort from the fact that there is no doubt that there has, here, been service. I am not simply relying upon the affidavit, or at least the content of the body of the affidavit because to that affidavit are exhibited documents which establish that documents were posted and that documents were delivered.

18. The other minor failure of CPR 71.5 is that although the affidavit does state how much of the debt remains unpaid, it does so in error by deducting the £59,000 to which I have referred. That error has been corrected today and I accept the assurance given by Mr Smyth that an updating affidavit will be filed. The affidavit that I have, therefore, is inaccurate. However, again, in my judgment, that inaccuracy is minor. The sum of £59,000 is, in everyday language a large amount of money. However, when compared to the judgment debt of US$4 billion which has increased, as I understand it to somewhere in the region of US$6 billion with interest, it is a drop in the ocean. It would be wrong, in my judgment, and wholly contrary to the overriding objective for me to conclude that the affidavit was faulty simply by reason of the failure. For those reasons, therefore, I am satisfied to the appropriate standard that CPR 71.5 and its requirements have been met. I am also satisfied that the obligation to pay travel expenses if requested has been met, no such request having been made.

19. CPR71 on its face requires if there is non-attendance that there be a certificate produced by the person before whom the debtor fails to attend for the matter then to be referred to the judge. Again, looking at the rule in context, that is because generally speaking, attendance is before a court officer. To read the rule so that it imposed an obligation on me to certify non-attendance and then refer the matter to a judge would waste the Court's time and, therefore, be contrary to CPR 1 and the overriding objective. It is plain, in my judgment, that the requirement for a certificate or certification of non-attendance can properly be met by my requiring the order that I make in this matter to contain a recital to that effect. I have already made a finding to that effect. There is, therefore, no need for a certificate. Against that background, I further note that Coulson LJ in *Westrop* described CPR 71 as setting out "a simple and robust system to ensure compliance by those avoiding payment of judgment sums".

The approach that I have taken to the certificate and to the breaches of 71.5, in my judgment, are in line with that description of the rule.

20. Against that background I record that to the criminal standard, I am satisfied of the following matters so that I am sure: firstly, that the Part 71 order was served in accordance with my order on the second defendant. Secondly, that that order contained a penal notice giving clear warning of the consequence of non-compliance. Thirdly, that the second defendant has not attended today and so there is a breach of the order. I am further satisfied for the reasons given that there has been appropriate compliance with CPR 71 and I am satisfied further, given that I am satisfied the order has been served appropriately and that there is no suggestion that it has not come to his attention and that there is no explanation at all as to why the order has not been complied with, that the breach in failing to attend was a deliberate breach and, therefore, the second defendant is in contempt of court.

21. I conclude on the evidence before me without any contrary evidence from the second defendant that his failure to comply is simply part of a scheme engineered by him or on his behalf to do all he can to ignore the judgment of which he is well aware. I turn then to consider the consequences of those findings. In considering whether or not to impose a penalty and, if so, what, I should bear in mind the personal culpability of the second defendant and the harm caused by the breach. In terms of my order, I make it plain that there is good service on the second defendant, that the period of time over which the second defendant has avoided or taken no steps as Eyre J said to confirm service and the period of time over which he has ignored the judgment, in my judgment, show a high degree of culpability on his part.

22. As to the harm caused by those breaches, there is very considerable harm to the claimant who faces obstacle after obstacle in the enforcement of a properly obtained, very substantial judgment the thrust of which was the figures are eyewatering. It was clearly designed to provide appropriate damages and compensation to it for breach of a commercial arrangement. I have, therefore, concluded, taking into account also the general harm caused to the proper enforcement and observance of the rule of law which is that judgments should be properly dealt with and certainly, court orders not ignored that the custody threshold in this case has been passed. The only real option would be to impose a fine on the second defendant. I am told that the second defendant is a member of the ruling family of Qatar. It may be in those circumstances, absent any other indication that a fine would not be an appropriate punishment.

23. I am satisfied, therefore, that the seriousness of the breach, taking into account the matters

that I have set out is such that only a custodial sentence is merited. I remind myself that the maximum period that I can impose in respect of any single breach or in totality is a period of two years. I am satisfied here, bearing in mind the culpability of the second defendant and the harm caused and bearing in mind that the aim of such an order is to encourage compliance with court orders that the term of imprisonment need not be long in order to make the point. In my judgment, the appropriate term of imprisonment would be the term of two calendar months.

24. By CPR 71.8(3), I am required, having made such an order to suspend it. The terms of the suspension are that that period of imprisonment will be suspended on condition that the second defendant appears before the Court on a date to be fixed to answer the points which he ought to have been here today to answer. I will leave it up to the claimants to arrange a date. I would suggest that they may choose to communicate with the second defendant's previously-instructed lawyer perhaps to give some options as to dates if possible but I do not make that requirement of the order. The matter will be listed before me if possible and the matter will not be listed sooner than four weeks from today.

25. I propose to order that this suspended committal order be served by the means set out in the 2017 order but also by email and by post to the former legal representative of the second defendant in the manner that the Part 71 order was served on him as described in the affidavit. A copy of this judgment should also be made available to the second defendant. I will require that a copy be provided at public expense not because the second defendant would struggle to pay for a copy but because I do not consider that it would be appropriate to require the claimant to pay for the transcript and the point of providing the transcript is so that the second defendant properly and fully understands the basis for my decision. That transcript, in the usual way, is likely to take some considerable time to arrive so I will direct that once it does arrive a copy of it will be sent to the claimant and served in the ways that I have described on the second defendant but in the meantime, that they should serve when they serve my order, a note of my judgment which need not be a verbatim note, it may be a bullet point note and I do not need to approve that before it is sent.

26. However, for those reasons, I make an order in those terms.

End of Judgment.

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Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof