

Neutral Citation Number: [2020] EWHC 66 (Ch)

Case No: E30MA106

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)**

Date: 17th January 2020

Before :

His Honour Judge Halliwell sitting as a Judge of the High Court

Between :

Pharmagona Limited

Claimant

- and -

(1) Sayed Mostafa Taheri

(2) Bahereh Mohammadi

Defendants

Mr Nicholas George (instructed by **direct access**) for the **Claimant**
The First Defendant appeared in person.

Hearing dates: 10th and 17th January 2020

APPROVED JUDGMENT

His Honour Judge Halliwell:

(1) Introduction

1. On 11th December 2019, I made an order (“the Unless Order”) requiring the Defendants to deliver to the Claimant a signed letter of authority. The Unless Order provided that, in default of compliance, the Defendants would be debarred from defending the claim and the Claimant would be at liberty to enter judgment for the amount claimed. The Claimant contends that the Defendants have failed to comply with the Unless Order and thus seeks judgment. The Defendants deny non-compliance. The First Defendant has also submitted an application for a “stay of execution and reconsideration (rehearing)...” of the Unless Order.

2. Before me, Mr Nicholas George, of counsel, appeared on behalf of the Claimant and the First Defendant appeared in person. The Second Defendant did not appear. Although she is married to the First Defendant, I have not seen written authority providing for the First Defendant to make submissions on her behalf. However, the First Defendant maintains he has authority to make submissions on their joint behalf and he has filed a witness statement from the Second Defendant inviting the Court to reject the Claimant's request for judgment whilst stating that, owing to illness and the need "to look after my 1.5 years old child at all times, [she has] not been able to attend Court in (sic) previous occasions". Regardless of whether the Second Defendant has authorised the First Defendant to make submissions on her behalf, notice of the hearing has been sent to the Second Defendant and I am content to proceed in her absence.

(2) The Defendants as unrepresented parties

3. At various stages in this litigation, the Defendants have been represented by solicitors or counsel. However, they had ceased to have the benefit of legal representation by the time that I made the Unless Order.
4. In *Barton v Wright Hassall [2018] UKSC 12*, Lord Sumption observed, at Paragraph 18, that where litigants are unrepresented "their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: *CPR rule 1.1(1)(f)*. The rules do not in any relevant respect distinguish between represented and unrepresented parties".
5. The Unless Order was in simple and straightforward terms. It required the Defendants to deliver to the Claimant an original signed Letter of Authority in a form specifically appended to the Unless Order itself. The First Defendant is an intelligent and determined litigant with a good command of the English language. He could reasonably be expected to understand the Unless Order itself and the consequences of non-compliance. Indeed, he confirmed that he had understood these matters at the hearing before me. In the Second Defendant's absence, I have not had the opportunity to observe her or evaluate

her linguistic skills but, in these proceedings, she has made a series of witness statements demonstrating a sophisticated understanding of the English language and, if she was ever in any doubt, the First Defendant could reasonably be expected to have provided her with a full explanation of the Unless Order and its consequences. Consistently with Lord Sumption's guidance, there is no reason for me to apply to the Defendants a lower standard of compliance with rules or orders of the court than other litigants.

(3) *Factual and Procedural Background*

6. The substantive proceedings are founded on allegations of fraud and dishonesty. The Claimant is a supplier and distributor of pharmaceutical products. The Defendants were employees of the Claimant. The Claimant contends that the Defendants colluded in fraudulent activities under which they purported to enter into transactions with fictitious businesses and used them as a device to misappropriate the Claimant's funds. The Defendants contend that the transactions were initiated and authorised by the Claimant's director, Dr Ghasemi Firoozibadi, in connection with the illegal export of goods to the Islamic Republic of Iran.
7. By its amended claim, the Claimant seeks £452,912.58 in respect of misappropriated funds and £1,200 as damages for the conversion of some computer equipment.
8. At an early stage, the Claimant obtained a freezing order against the Defendants prohibiting them from removing their assets in England and Wales up to a value of £500,000. There has been a series of orders and directions, including repeated orders for disclosure and inspection. On 18th December 2019, I made a freezing order in respect of the First Defendant's shares in an Iranian company, Padideco, in the light of evidence recently obtained by the Claimant.
9. The case was initially listed for trial commencing on 8th July 2019. The parties attended for trial but it was adjourned and re-listed for hearing in October 2019. Although it was adjourned to release funds for the Defendants to obtain legal representation, the Defendants were not culpable for the adjournment.
10. The Defendants then instructed counsel, Mr Joseph Giret QC, to attend on their behalf. However, at the adjourned hearing, counsel for both sets of parties

advised the Court that the case was not ready for trial albeit the First Defendant apparently interceded at the hearing to disagree with his counsel on this issue. The Judge reluctantly decided to adjourn the case again and, on 9th October 2019, he made an order providing for the trial to be re-listed for hearing from 12th February to 28th February 2020.

11. In the exercise of his case management powers, the Judge also made an order (“the 9th October 2019 Disclosure Order”) providing that “by 4pm on 5 November 2019 the Defendants must disclose, by taking all reasonable steps to obtain, in so far same are within the possession or control of the 1st and/or (sic) Defendant and provide to the Claimant” a series of bank of statements defined with reference to dates and bank account numbers. In the case of some bank statements, but not others, the Bank was identified by name. No point has been taken about the omission of the Second Defendant in the reference to “the 1st and/or Defendant”. This was plainly intended to include the Second Defendant and, in my judgment, it can be construed as such without the need for amendment under the slip rule.
12. In his submissions before me, the First Defendant submitted that the 9th October 2019 Disclosure Order was not made pursuant to a specific application. He also submitted that it was made without detailed argument. I am content to accept that these submissions are correct. However, there was a compelling logic to the order. In determining the substantive merits, it will be important for the judge to make findings about the ultimate destination of the proceeds of the alleged fraud. If and to the extent that the Defendant has any interest or connection with the bank accounts, entries on the statements are capable of throwing light on this aspect of the case. When he made the 9th October 2019 Disclosure Order, it can reasonably be inferred the Judge was mindful of these considerations and considered that there was reason to believe the Defendants might have an interest or connection with the bank accounts. In view of the fact that the relevant bank statements had not been disclosed, he thus made an order for their disclosure.
13. However, in view of the fact there was an issue as to the extent to which such statements were in the possession and control of the Defendants, the order was limited so as to require the Defendants to disclose such documents “by taking

all reasonable steps to obtain” them “in so far as [the] same are within the possession or control” of the Defendants.

14. Following the 9th October 2019 Disclosure Order, the Defendants disclosed a limited amount of documentation including screen shots of obscure documents, in Farsi, apparently showing random information such as the balance on an unidentified account and an identification number for the First Defendant, together with an account number in the name of one Jazayeri, a letter from Sepah Bank referring to accounts in the name of one Zahra Amini and a joint account apparently in the names of the First Defendant and Zahra Amini and documents relating to some form of on-line facility. In the absence of an explanation as to the steps taken by the Defendants to obtain the documentation identified in the 9th October 2019 Disclosure Order, the Claimant maintains that there is an overwhelmingly strong inference that the Defendants failed to take all reasonable steps to do so by 4pm on 5 November 2019, as required, and indeed, they failed to do so afterwards.

(4) The Unless Order

15. On 11th December 2019, I made the Unless Order at a subsequent case management hearing. At that stage, I was satisfied the Defendants had failed to comply with 9th October 2019 Disclosure Order and I was mindful the trial was listed to commence no more than two months later, a period itself truncated by the Christmas vacation.
16. The Unless Order provided, in terms, that “the First and Second Defendants having failed to comply with [the 9th October 2019 Disclosure Order], each Defendant must by 4pm on 19th December 2019 deliver an original signed letter of authority, signed by the First and Second Defendants, to the Claimant in the form set out in the Appendix hereto. In default of compliance, the Defendants and each of them be debarred (without further order) from defending the Claimant’s claim and the Claimant will be at liberty to enter judgment for the sum claimed against each Defendant”.
17. In view of the potential severity of the consequences of a peremptory order, no such order should be made lightly. This is particularly the case where the parties are thus at risk judgment will be entered against them. However, in the present

case, there were compelling reasons for such an order and, on that basis, I considered it was reasonable and proportionate for it to be made. Consistently with the Over-riding Objective, my order was for the following reasons.

17.1 The documentation was material to an important issue in the case, namely the ultimate destination of the proceeds of the alleged fraud. If, by reference to such documentation, it can be shown that the Defendants or their nominees have benefited or are more likely than anyone else to have benefited from the disputed transactions, this is capable of being probative of the Claimant's case and could be critical to the outcome of these proceedings. Disclosure of such documents could thus have an important bearing on the over-riding objective of enabling the court to deal justly with the case within the meaning of *CPR 1.1(1)*.

17.2 In the light of the evidence adduced by the Claimant, I was satisfied the Defendants had failed to comply with the 9th October 2019 Disclosure Order. In the absence of a further order, tailored to achieve compliance or otherwise ensure the relevant documentation was obtained, it was unlikely that further progress would be made in advance of the trial date. I took the view that the Unless Order provided a reasonable and proportionate way of ensuring that the documentation was obtained or at least that reasonable steps were taken to ensure they were obtained. It did no more than require the Defendants to sign a letter of authority in relation to the bank accounts identified in the 9th October 2019 Disclosure Order. If the bank statements were not in the name or otherwise under the control of the Defendants, the Letter of Authority would not authorise the relevant banks to produce or disclose the bank statements. The Unless Order was thus conceived as a pragmatic way of ensuring compliance. To that extent, the Unless Order was reasonable and could be achieved at modest and proportionate cost.

17.3 The case was listed for trial commencing on 12th February 2020. It has already been adjourned twice before. On the previous occasion, on 8th-9th October 2019, it would appear the failure of the Defendants

to disclose the relevant documents was one of the considerations which the Judge took into consideration when deciding to vacate the trial and it is likely to have influenced his decision. *CPR 1.1(2) (d)* and *(e)* provide, in terms, that dealing with a case justly and at proportionate cost includes, so far as practicable, ensuring that it is dealt with expeditiously and fairly and allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases. In these circumstances, it was imperative the trial was not vacated again owing to delay in relation to the disclosure of documents. However, by 11th December 2019, there was no longer any significant room for slippage in the procedural timetable.

17.4 There is an important public interest in ensuring that Court orders are complied with and can be seen to be complied with. This is reflected in *CPR 1.1(2) (f)*. By requiring the Defendants to sign the Letter of Authority in respect of the relevant bank accounts, the Defendants could thus be seen to be taking an important step to ensure such documents were provided to the Claimant consistently with the objects of the 9th October 2019 Disclosure Order.

(5) *Exchange of emails following the hearing on 11th December 2019*

18. By an email timed at 4:12 pm on 11th December 2019, Mr Jones emailed the Court a draft order for approval appending a draft letter of authority. The draft letter provided as follows.

“To each bank in respect of each of the accounts there specified.

We, Sayed Mostafa Taheri and Bahereh Mohammadi, each hereby authorise each bank operating or holding out each bank account set out in the Schedule hereto to produce and disclose to Pharmagona Limited (or its appointed representative in Iran) true and authenticated bank statements in respect of any account held by Sayed Mostafa Taheri and Bahereh Mohammadi or either of them, whether individually or jointly with any other person whomsoever, during the period 1 January 2016-08 October 2019 (inclusive).

Signed:

.....
Sayed Mostafa Taheri

.....
Bahareh Mohammadi

Dated: December 2019

19. There was a schedule to the draft order appending each set of bank statements identified in the 9th October 2019 Order save for a set of bank statements in respect of a bank account at Bank Shahr.
20. By an email to the Court timed at 11:35 pm, the First Defendant emailed some draft amendments. These included an amendment to the draft letter of authority providing *inter alia* that the banks’ authority was limited to “the accounts specified” in the schedule. By way of amendment, the First Defendant also incorporated a proviso that “for the avoidance of doubt, We, Sayed Mostafa Taheri and Bahareh Mohammedi, do not authorise any bank or any other person to produce or disclose any documents or data except in respect of the [scheduled] bank accounts...if and only if any of the below-named accounts are in our sole or joint names (and not joint with another person). This letter of authority does not in any way extend to any other matter whatsoever”.
21. Ultimately, I amended Mr Jones’s draft so as to provide expressly that the Defendants’ authority was limited to the bank accounts in the schedule. However, I did so without incorporating the First Defendant’s lengthy amendments. The order was sealed in its amended form.
22. By an email message dated 13th December 2019 to me, the First Defendant raised several issues with the order, some of which he had already raised before. These included a concern that “the Claimant may wish to appoint anyone or even multiple people as its...representatives and our private information be ended up in the hands of numerous people” and an objection in relation to the use of the formula “whether individually or jointly with any other person whomsoever”.
23. Litigants cannot generally expect the Courts to engage in explanatory correspondence by email. However, by return of email copied to the other parties, I pointed out that, in the Order, the Claimant’s original draft Letter had been amended to provide that the Defendants’ authority was limited to the

scheduled bank statements. I also explained the importance of complying with the Unless Order.

24. By an email to the Court timed at 11:24 pm on 15th December 2019, the First Defendant requested me to put the deadline on hold. By return of email, at 12:37 pm the following day, I advised the First Defendant that I would not put on hold the deadline for compliance and confirmed that the order must thus be complied with according to the original time scale. However, on 16th December 2019, I made an order confirming that all disclosed documents, including documents disclosed and produced to the Claimant under a letter of authority from the Defendants under the Unless Order could only be used for the purpose of these proceedings subject to the provisions of *CPR 31.22*.

(6) *Non-compliance*

25. The Unless Order required the Defendants to deliver to the Claimant, by 4pm on 19th December 2019, an original signed copy of the Letter of Authority. The Claimant maintains that the Defendants did not deliver such a document to the Claimant by the specified deadline and, indeed, that they failed to deliver such a document at any time prior to hearing before me on 10th January 2020. Before me, the First Defendant sought to deny non-compliance. He did not make submissions as to the date of delivery. However, he contended that the Defendants had posted signed copies of the Letter of Authority on two occasions, on 18th and 31st December 2019.
26. On behalf of the Claimant, witness statements from Somaiyeh Hanaee dated 29th December 2019 and 3rd January 2020 were filed. In opposition, the Defendants each filed witness statements dated 8th January 2020. They also relied on the supporting witness statements of Reza Orang and Laura Darian.
27. There was a sharp conflict of evidence between the evidence of Somaiyeh Hanaee and the Defendants, which could not be resolved on the face of their witness statements. In the absence of Reza Orang, Laura Darian and the Second Defendant, I thus invited the First Defendant and Somaiyeh Hanaee to confirm their testimony in the witness box on the basis they would each then be subject to cross examination.

28. The Unless Order did not provide for the Claimant to send a draft copy of the Letter of Authority to the Defendants for their signature. However, Ms Hanaee gave evidence she sent to the Defendants two prepaid stamped Royal Mail “signed for” envelopes. By email timed at 4:20 pm on 19th December 2019, the First Defendant advised the Court that he “sent the Letter of Authority to the Claimant yesterday afternoon using their prepaid envelop[e]”, ie on 18th December 2019. A copy of this email was apparently provided to Ms Hanaee. However, she said that, by 21st December, the Claimant had not received the Letter of Authority and, by an email timed at 8:09 am on 21st December 2019, she thus confirmed this was the case and requested proof that it had been posted. In response, the First Defendant declined to do so but, by an email timed at 21st December 2019, he asked for the tracking numbers of the Claimant’s pre-paid envelopes.
29. Ms Hanaee confirmed that, on 30th December 2019, an envelope was finally delivered to the Claimant’s office, by Royal Mail, containing an un-signed copy dated 12 December 2019 of the Letter of Authority. The envelope was post marked 20th December 2019 at 17:55 hours. It bore the “signed for” label and the “track and trace” number issued by Royal Mail, namely WM 625769572GB. In cross examination, Ms Hanaee also confirmed that the Claimant’s offices were closed for an extended period over the Christmas vacation and accepted that Royal Mail had sought to deliver the envelope on 27th December 2019 but was unable to do so owing to the absence of the Claimant’s staff that day.
30. By email timed at 12:28 pm on 31st December 2019, the First Defendant advised the Claimant that “we have just signed and posted you another copy in front of a witness and she sent it off...” The Claimant subsequently received, from the Defendant, an envelope containing three ripped up pages from a notepad. It did not contain a signed copy of the Letter of Authority.
31. In contrast, the First Defendant confirmed the evidence in his witness statement that “the Claimant, despite what it falsely asserts, has had the letter of authority twice although we have made it clear that they must not use it until the court decides our application”. Consistently with the Second Defendant’s witness statement, he confirmed a signed letter of authority was posted to the Claimant on 18th December 2019. He also confirmed that “the signed version of the letter

of authority” was posted “for the second time to the claimant on 31 Dec[ember] 2019”.

32. It is a conspicuous feature of the Second Defendant’s witness statement that, as evidence of the first letter of authority, purportedly signed and posted on 18th December 2019, she exhibited a draft un-signed letter of authority dated 24th December 2019, not the letter of authority dated 12th December 2019 which appears to have been returned to the Claimant on 30th December 2019. Before me, the First Defendant referred to this as a mistake. No doubt, that is correct. However, the obvious explanation is that, having already returned the Claimant’s draft of the letter of authority dated 12th December 2019, the Defendants overlooked the fact that the original draft bore that date when they prepared their witness statements.
33. In assessing the evidence of the First Defendant and Ms Hanaee, I have not had the opportunity to independently evaluate the evidence of the Second Defendant, Reza Orang or Laura Darian. I must thus exercise a measure of caution. Moreover, whilst the standard of proof is no higher than the balance of probability, cogent evidence is required before I conclude a witness has given evidence which is deliberately false. However, I regret to say I have reached that conclusion when assessing the evidence of the First Defendant.
34. I am satisfied that, contrary to the First Defendant’s evidence before me, he did not send the Claimant a signed copy of the Letter of Authority at any time prior to the hearing before me on 10th January 2020. On 19th or 20th December 2019, he posted an un-signed copy of the Letter of Authority and, later, he sent an envelope containing three ripped up pages from a notebook.
35. I have reached this conclusion for the following reasons.

35.1 Firstly, having had the opportunity to assess the oral testimony of Somaiyeh Hanaee and the First Defendant, I unhesitatingly preferred the testimony of Ms Hanaee. Ms Hanaee was an impressive witness. Her evidence was internally consistent and it was consistent with the contemporaneous documentary evidence. By contrast, the First Defendant was argumentative and evasive when giving his evidence and, at times, his testimony was difficult to reconcile with the contemporaneous documentation. For example, the envelope

post marked 20th December 2019 was adduced in evidence, endorsed with the “track and number” and the Claimant’s address. I am satisfied that this is one of the prepaid envelopes that Ms Hanaee sent to the Defendants following the Unless Order and it contained the un-signed Letter of Authority that was finally delivered to the Claimant on 30th December 2019. There can have been no good reason for it to have been post marked at 5:55 pm on 20th December 2019 if, as the First Defendant maintains, it was posted on 18th December 2019. The First Defendant did not suggest the other pre-paid envelope was posted at this stage so this must have been the occasion for the initial delivery of a letter of authority.

35.2 Secondly, in the exchanges of email messages that took place after the hearing on 11th December 2019, the First Defendant demonstrated a high degree of reluctance to provide the Claimant with the Letter of Authority. By his email timed at 7:32 am on 13th December 2019, he stated that “...we will not be happy to give a letter of authority open to be handed to anyone simply because the Claimant likes” and, by his email to the Court timed at 11:24 pm on 15th December 2019, he thus asked the Court to reconsider the order made. It is true that, by his email to the Court timed at 4:20 pm on 19th December 2019, he stated that he had sent the Letter of Authority using the Claimant’s pre-paid envelope the night before. However, for the reasons I have given, this is inconsistent with the date and time of the post-mark on the envelope. Moreover, the 19th December 2019 email contained a “request that the Claimant does not use the Letter of Authority until it has identified a single individual as its representative and the Court has made a decision...” on the First Defendant’s own application for a stay submitted in draft with the email itself.

35.3 Thirdly, the First Defendant does not maintain that he or his agents sent the Claimant an un-signed letter of authority. He maintains that the document that he posted on 18th December 2019 was signed. The Claimant accepts that a letter of authority was posted on or about 20th December 2019 and received on 30th December 2019. Had the First Defendant or his agents posted a signed letter of authority to the Claimant as he maintains, the Claimant would thereby have achieved what it sought to achieve at the hearing on 11th December 2019 and could have been expected to take steps to use the Letter of Authority to obtain disclosure of the relevant bank statements. However, there is no

suggestion that it has done so. In my judgment, at that stage, it is inherently unlikely that, having received a signed copy of the letter of authority, the Claimant would have sought to conceal and avoid using it so as to obtain an opportunistic advantage under the Unless Order, particularly if it remained open to the Claimant to seek judgment on the basis that the signed letter was delivered after the expiry of the relevant deadline for receipt.

35.4 Whilst it is true that the First Defendant finally elected to email a signed letter of authority to the Court, he did not do so until 9th January 2020, the day before the hearing, and he chose not to show a copy of this to the Claimant's counsel until the hearing itself. In this copy, their signatures had been entered on the form dated 24th December 2019 but the Defendants had then chosen to date it, in manuscript, on 31st December 2019. During the hearing, the First Defendant's stance appeared to change in relation to the use to which the Claimant could put the document. At the end of the hearing, his stance appeared to be that the Claimant could use, but not misuse, the document although the parameters of legitimate use were not defined.

36. It follows that the Defendants have failed to comply with the Unless Order and the Claimant is *prima facie* entitled to judgment for the amount claimed.
37. There were some developments following the hearing on 10th January 2019. Shortly after the hearing itself, Mr George requested the First Defendant to provide him with the original signed Letter of Authority and the First Defendant advised him that, during the hearing itself, he had "written" or "doodled" over it so it could no longer be used. The First Defendant maintains he used the word "written" and, on behalf of the Claimant, it is alleged he said he had "doodled" but, in my judgment, the nomenclature is immaterial. Conversely, the First Defendant contends that, at noon yesterday, one Elias Bagheri sought to deliver a signed version of the letter of authority dated 16th January 2020 to the Claimant's office but, upon inquiry, he was advised by an employee that the Claimant's director, Dr Ghasemi Firoozibadi had directed him not to accept the document. There is a dispute as to the basis on which Dr Firoozibadi did so and whether he knew the document was a letter of authority. I have taken these matters into consideration. However, ultimately, they have not affected my conclusions.

(7) The First Defendant's application for "stay of execution and reconsideration (rehearing) of the matter that is subject to..." the Unless Order "according to CPR 40.8A".

38. I shall deal first with the application for me to reconsider the Unless Order. Although the First Defendant's application was expressly based on *CPR 40.8A*, it is at least implicit in his application for "reconsideration (rehearing) of the matter" that I should also entertain his application under the Court's wider case management powers. I have thus considered whether I should make an order varying or revoking the Unless Order under my case management powers in *CPR 3.1(7)*. Having done so, I am satisfied it is inappropriate for me to do so. In *Tibbles v SIG plc [2012] 1 WLR 2591*, the Court of Appeal has provided authoritative guidance as to the grounds on which such an order can be made. As a general rule, it will only be warranted by a material change of circumstances or evidence that the original decision was based on a misstatement of facts. The order might also be revisited in the event of genuine error. However, none of these grounds apply here. There is nothing to suggest that the Unless Order was based on a misstatement of facts or otherwise in error. Nor has there been a material change of circumstances. If anything, the First Defendant's conduct since the Unless Order re-confirms the need for such an order and the conceptual basis on which it was made.
39. The Court has a general power under *CPR 3.1(2)(a)* to extend the time for compliance with a Court order. However, in the present case, the sanction in the Unless Order took effect once the deadline for delivery expired. To extend the time for compliance, I must thus grant the Defendants relief from sanction. This is an issue to which I shall return.
40. The First Defendant specifically relies on *CPR 40.8A* which provides for a party to seek a stay of execution or other relief "on the ground of matters which have occurred since the date of the judgment or order". However, in substance, he is inviting the Court to revoke or vary the Unless Order rather than to stay or suspend it. In any event, no material matters have occurred since the Unless Order to warrant relief under *CPR 40.8A*. The Defendants have failed to comply with the Unless Order and it has thus become necessary for them to seek relief from sanction. However, in my judgment, these do not qualify as material

“matters which have occurred since the date of the judgment...” so as to warrant relief under *CPR 40.8A*.

41. If the Defendants seek relief from sanction, such relief must thus be obtained under *CPR 3.9*.

(8) Relief from sanction

42. At the hearing on 10th January 2020, I referred the First Defendant to the Court’s jurisdiction to grant relief from sanction and the familiar three-stage test in *Denton v TH White [2014] 1 WLR 3296*. The First Defendant was initially reluctant to seek relief indicating that, at this stage, he was minded to await my decision on the Claimant’s request for judgment and his own application under *CPR 40.8A*. However, on re-consideration he sought relief from sanction. Mr George submitted that I should not entertain such an application since *CPR 23.3(1)* requires the same be submitted in an application notice and *CPR 3.9(2)* requires supporting evidence. However, *CPR 23.3(2)(b)* expressly provides that the court may dispense with an application notice. Moreover, the First Defendant has submitted evidence in support of his application under *CPR 40.8A* which can readily be deployed under *CPR 23.3*. It was apparent at the hearing that the First Defendant had been made aware of his right to apply for relief from sanction prior to the hearing itself and it is conceivable he has recently been in receipt of legal advice. However, he is now conducting the litigation in person. Whilst he can reasonably be expected to comply with Court orders subject to the same standards as other litigants, I am inclined to allow him a measure of latitude in connection with the procedural requirements of *CPR 23*. Moreover, having taken the point about the First Defendant’s procedural failure, Mr George demonstrated he was well able to deal with the merits of the First Defendant’s application for relief from sanction. In these circumstances, I have decided to entertain the First Defendant’s application and, in doing so, to dispense with the requirement, under *CPR 23.3(1)* for him to file an application notice.

43. The three-stage test in *Denton* requires me to:

43.1 assess the seriousness and significance of the Defendants’ failure to comply with the Unless Order;

43.2 consider why the default occurred; and

43.3 evaluate the case so as to deal justly with the application.

44. In my judgment, the Defendants' failure to comply with the Unless Order is serious and significant. The Unless Order was imposed following the Defendants' failure to comply with their obligations to take all reasonable steps to obtain the documents listed in the 9th October 2019 Disclosure Order. For reasons I have already given, these documents are material to an important issue and could potentially have a critical bearing on the outcome of these proceedings. The Unless Order was made two months prior to the date scheduled for trial. If the case is to proceed to trial, it is important that the scheduled trial date stands, not least owing to the procedural history and the estimated trial length. The Unless Order provides for the Defendants to deliver a signed letter of authority in relation to the listed bank accounts. It does not suffice to ensure disclosure. It is by no means clear that the process of obtaining the relevant documents will be a simple process or that it can be accomplished within a short time scale. If the Defendants' breaches of the Unless Order do not imperil the trial itself, they could certainly have an adverse bearing on the case which the Claimant advances at trial.
45. In cross examination, the First Defendant accepted that he understood the Unless Order and his obligations under it. Having rejected the First Defendant's account about the steps he took to comply with the Unless Order, I am driven to the conclusion that he deliberately chose not to deliver to the Claimant an original signed Letter of Authority within the time scale provided by the order. He must be also be taken to have done so mindful of the potential consequences for this litigation.
46. By virtue of *CPR 3.9(1)(a)* and *(b)*, I must take into consideration the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with Court orders. In the present case, the Unless Order was imposed owing to the Defendants' failure to comply with the 9th October 2019 Disclosure Order. The need to conduct the litigation efficiently and at proportionate cost is underlined by the procedural history and the implications for the scheduled trial date.

47. I am mindful, more generally, of the Overriding Objective including the need to deal with cases justly and the principle of proportionality. However, the Defendants' failure to comply with the Unless Order is itself of a serious nature; it could imperil the trial date itself or affect the outcome of the trial. Moreover, in seeking to persuade the Court that they have complied with the Unless Order, the Defendants have provided a false testimony to the Court. There are thus compelling policy reasons for me to decline to grant relief from sanction.
48. The First Defendant's application for relief from sanction is refused.

(9) Disposal

49. It follows that the Claimant is entitled to judgment in the sum of £454,112.58 and the First Defendant's applications for a stay of execution, reconsideration and relief from sanction are dismissed.