IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS LIST (Ch D)
[2021] EWHC 2721 (Ch)

No. BL-2021-001519

Rolls Building
Fetter Lane
London
EC4A 1NL

Tuesday, 7 September 2021

Before:

MR JUSTICE ADAM JOHNSON

B E T W E E N :

SOLICITORS REGULATION AUTHORITY LIMITED — Claimant

- and -

(1) SOOPHIA KHAN
(2) SOPHIE KHAN & CO LIMITED — Defendants

MR R. ALLEN (instructed by Capsticks LLP) appeared on behalf of the Claimant.

THE FIRST DEFENDANT appeared in Person.

THE FIRST DEFENDANT appeared on behalf of the Second Defendant.

J U D G M E N T

(Transcript prepared without the aid of documentation)

MR JUSTICE ADAM JOHNSON:

1 On 19 August 2021 the SRA resolved to intervene in the practices of the First Defendant, Ms Soophia Khan, and of the Second Defendant, Sophie Khan & Co Limited. That is the limited company through which Ms Khan conducts business. Since the practices of the First and Second Defendants are in effect the same, I will refer to them together as "*the practice*." Ms Khan's practising certificate was automatically suspended.

2 The SRA then made an effort to engage with Ms Khan with a view to the appointed intervention officer and the SRA's appointed agent gaining access to the practice's documents. Ms Khan refused to attend a meeting at the offices of the practice and indicated that she intended to continue practising.

3 In light of these events the SRA now seeks orders in the exercise of its statutory powers permitting it (1) to search for and seize relevant documents relating to the practice; and (2) redirect communications addressed to the Defendants.

4 The SRA's application is made by means of a Part 8 claim form. The claim form was issued on 27 August 2021 under claim number BL-2021-001519. This approach was adopted in light of the guidance given by the court in *Law Society v Sibley* [2017] EWHC 1453 (Ch). The SRA does not seek an interim injunction but instead seeks final orders. If orders are made then the SRA will have to serve a notice of it having taken possession of the practice's documents. There is then a statutory notice period for the Defendants to seek an order for return of the documents.

5 There are other proceedings before the court. One is Action BL-2018-002534, which involved proceedings before Master Clark, in which the Master made an order on 15 March 2021. Ms Khan made an application on 13 August 2021 to set aside that order but has now indicated that she does not intend to proceed with that application.

6 A further action is Action BL-2021-001526. This is an action by the present Defendants to challenge the SRA's intervention decision.

7 Both Action 2534 and Action 1526 came before Meade J in the interim applications list on 2 September and he made an order giving directions for their disposal. The directions in relation to Action 2534 are now irrelevant but those in connection with Action 1526 are still live and effective. These are effectively directions for an expedited trial with a time estimate of two days on the first available date after 25 October 2021.

8 Ms Khan, who appears before me today, has written a letter to the court dated 6 September seeking an adjournment of the disposal of the Part 8 claim in Action 1519, i.e the application by the SRA listed to be heard today for final orders for the production of documents and for the redirection of communications. I have heard submissions from Ms Khan this morning and from Mr Allen, appearing on behalf of the SRA, in relation to the adjournment application and it is appropriate for me to resolve it as the first order of business of the day.

9 The adjournment is sought on the basis that the SRA has not served its application in Action 1519. Ms Khan also, in her letter and in her submissions, has referred to the directions made by Meade J in Action 1526, i.e the claim to challenge the SRA's intervention decision. She submits that the present application before me should be adjourned generally.

10 I have determined that an adjournment is not justified. Taking the two points in turn, the first is the assertion that the SRA has not served its application. As to this I have a witness statement of Ms Claire Louise Crawford, an associate solicitor at Capsticks, who represent the SRA. She gives evidence that Capsticks arranged for the unsealed Part 8 claim form and related documents to be served on 27 August by three methods, namely email, special delivery post and by means of personal service. Emails were sent to two email addresses. Ms Crawford's evidence is that the attachments sent to one of the email addresses were accessed on 27 August 2021.

11 As to the copies sent by special delivery post, these were sent to two addresses, one in Leicester and one in London. Delivery was attempted to the Leicester address but there was no one in. Delivery was made to the London address on 28 August 2021 and signed for. Attempts at personal service were also made at the same two addresses, one in Leicester and one in London. Both attempts on 27 August were met with no reply.

12 Capsticks were then required to refile the claim form for sealing. It seems this was because initially it had been accompanied by an application notice but it was not appropriate to have that done while the claim form was still to be allocated with an action number. This was done on 27 August while the efforts were being undertaken to serve the unsealed documents which I have described already. A sealed claim form was issued on 31 August and a sealed application notice was provided on the same day, listing the present matter for hearing today, 7 September 2021.

13 Copies of the sealed documents and other supporting documents were then sent by email to the same two email addresses mentioned above on 31 August. Attempts were also made to effect personal service of copies of the sealed claim form, sealed application notice and skeleton argument at both the Leicester address and the London address. The process servers were unable to effect personal service but the evidence is that copies of the documents were put through the letterboxes at both addresses on 1 September 2021.

14 The present hearing is taking place on Tuesday, 7 September. It seems to me that the claim form application and supporting documents were effectively served by, at the latest, 1 September. That is three clear days before the present hearing. It seems a reasonable conclusion that Ms Khan has likely known about them since 27 August when copies of the unsealed documents were originally accessed by email. That is well over a week ago. In any event, even on the basis of three days' notice or even, indeed, on the basis of no notice at all, the matter is an urgent one and very obviously so. It seems to me that in the circumstances appropriate notice has been given and that the SRA's application should not be adjourned on that basis.

15 I turn then to the fact that the intervention decision is challenged. Meade J has given directions for the disposal of that challenge but it will not be resolved until late October this year. Does this give a valid basis for an adjournment? In my view it does not. Until the intervention is set aside it remains effective; it cannot be ignored. Compliance is not optional. It is an extreme measure but one taken by the SRA in discharge of its regulatory functions and obligations in order to regulate the profession and to protect the public.

16 The fact is that Ms Khan cannot at present practise. Her practising certificate has been suspended. During the course of the hearing today she has sought to give me the assurance that there is no problem because, as she puts it, she is able to "*wear other hats*" and by means of her wearing her other hats her clients can effectively be dealt with. That indication gives me little assurance that the clients will in fact effectively be dealt with and,

indeed, raises a concern about the possibility of such clients being serviced by means of Ms Khan undertaking regulated activities without, as matters stand today, the appropriate regulatory approvals being in place. The fact is that the practice's clients will have ongoing matters and they are entitled to ongoing support and advice from an appropriately qualified practising solicitor. Ms Khan is not in a position to provide such support, abd neither is the SRA's agent if he is unable to access the practice's documents. That is why the present orders are sought.

17 It seems to me, therefore, that the present application needs to be dealt with now. The fact that an application is made to challenge the intervention makes no difference to that conclusion. The question for today is: what should happen pending the determination of that application? It seems to me that in the circumstances, the court has to proceed to determine that question. The fact that an application has been made to challenge the intervention merely frames the question but does not answer it.

18 The adjournment application is therefore refused and I will now proceed to deal with the substance of the SRA's application.

L A T E R

19 The court has powers under sch.1, para.9 of the Solicitors Act 1974 as follows. Under para.9(4) the power to order the production and delivery up of documents; under para.9(6) the power authorise a person to enter premises to search for and take possession of documents; and under para.10 the power to make an order redirecting communications to a solicitor so they are instead delivered to the SRA or an agent of the SRA.

20 I am satisfied on the basis of the affidavit of Ms Crawford dated 27 August 2021 that, despite being notified of the intervention into the practice and despite her practising certificate having been suspended, Ms Khan has refused to cooperate with the SRA and to organise the delivery up of the practice documents demanded by the SRA in an orderly manner.

21 One sees from the evidence that an attempt was made to organise attendance at the practice premises consensually on or about 19 August but Ms Khan refused to agree to such attendance. I will read a short extract from an attendance note recording a conversation with Ms Khan conducted by the SRA official, Heather Anderson, who is the appointed intervention officer. The attendance note is dated 19 August 2021 and Ms Anderson records, amongst other things, the following:

> "I informed SK that I would be attending to effect the intervention tomorrow, notwithstanding her indication that she was applying to have the intervention withdrawn, as this does not stop the intervention going ahead. I asked if she would be at the office in order to meet with me and the intervention agent so that we could ensure that clients were protected and represented going forward, even if this was just in the interim whilst her application was heard, although of course the SRA would be defending such an application. SK refused to attend the office. She stated that she was not in the office tomorrow. I asked if she could be in the office and she said no. I also asked if someone else could be provided with the keys to let us in but she again refused to do this, stating that she was the only key holder. She said that none of her family could attend. I asked if anyone else could attend as it was important for clients' files to be acted on and she said no

again."

22 As I understand it from the evidence, a further attempt was made to attend on 23 August but Ms Khan was again not available. Yet a further attempt was made on 27 August but neither did that proceed, the SRA having heard nothing further from Ms Khan. A lack of cooperation is obviously apparent from the narrative I have just described.

23 It is also relevant that other, earlier efforts to obtain documents from Ms Khan's practice have come to nothing. I understand from the evidence that two s.44B notices presently remain outstanding and, more significantly, I see that Sophie Khan & Co Limited has failed to comply with an order for delivery up made by Master Clark following the Master's judgment of 5 January 2021. This unfortunate track record of non-compliance, taken together with the evidence I have of the lack of cooperation in light of the SRA's intervention, justifies, to my mind, the conclusion that the search exercise is appropriate and indeed necessary in order to protect the interests of the practice's clients.

24 It seems to me the order for the redirection of communications is appropriate on the same basis, given the justifiable concern that any order dependent on cooperation may be ignored. It is necessary to make an order which takes matters out of Ms Khan's hands.

25 I should say that I am fully conscious of the fact that the orders sought are draconian in nature, but in my judgment they are justified in the interests of the affected clients. This principle has been recognised in a number of authorities that Mr Allen has referred me to. I will mention two of them. First, in *Law Society v Offonry* [2002] EWHC 458 (Ch), Ferris J made an uncontested order for the delivery up of documents which the solicitor then sought to have stayed at a subsequent urgent hearing due to an intended challenge to the intervention. That application was refused. Ferris J said the following at para.5 of his judgment:

> "I have to consider whether to stay the order for delivery up of the files. In this connection Mr Dutton on behalf of the Law Society points out that under s.15(1)(a) of the Act, an automatic result of the intervention is that the solicitor's practising certificate is suspended. Accordingly, unless something happens to change that position, the mere leaving of the documents and files with the solicitor will achieve nothing or perhaps even make the position worse because the solicitor will not be able to practise and thus will not be able to give such assistance to clients as they may require."

26 A similar analysis was adopted by HHJ Keyser QC in *Law Society v Ete* [2019] EWHC 864 (Ch) at para.12 when he said:

> "The primary objective of both intervention and orders under paras.9 and 10 is the protection of practice clients in circumstances where the clients themselves are potentially prejudiced not only by wrongful actions of the practice but by the very fact of intervention, which creates a lacuna that is necessary to fill as quickly as possible by giving the clients proper information and the opportunity to seek assistance and representation elsewhere."

27 It seems to me that that same logic is obviously applicable here. The intervention has already taken place. Ms Khan's practising certificate is therefore suspended and so she may not properly represent clients or hold herself out as authorised to conduct reserved legal activities. It seems to me there is a material risk of clients' interests being harmed if the

lacuna is not filled. An order is justified on the basis that it will appropriately fill the lacuna and enable the interests of clients to be properly serviced.

28 I should mention two points which Ms Khan has made in the course of her submissions. The first is a short point about the SRA not having standing to bring the present application. For present purposes it is sufficient, I think, for me to record the following, taken from para.5 of the affidavit that Ms Crawford:

> "The SRA is a wholly owned subsidiary of the Law Society of England and Wales ('the Law Society'). On 1 June 2021 the Law Society entered into an agreement with the SRA to transfer the 'regulatory business', including all assets, right and liabilities connected with the delivery of the regulatory functions to the SRA. The SRA therefore has the benefit of all of the regulatory powers conferred upon the Law Society by, *inter alia*, the Solicitors Act 1974 ('the 1974 Act'), the Administration of Justice Act 1985 and the Legal Services Act 2007, as well as the various codes and rules made under those Acts. The SRA has exercised the regulatory functions of the Law Society since the SRA's inception in 2007 but prior to June 2021 it did so as a body of the Law Society rather than a separate legal entity. The SRA has a number of powers under the 1974 Act, including a power to intervene into a solicitor's practice."

That, I think, for present purposes at any rate, is sufficient to deal with the first objection made by Ms Khan.

29 The second point is this: she says that the interests of her former clients are in fact adequately serviced because those clients have in effect been transferred to another organisation called Just for Public Limited. Other evidence seems to be consistent with that basic point. For example, in the witness statement of Ms Crawford dated 6 September she refers to a tweet from Sophie Khan & Co on Twitter which reads as follows:

> "I'm glad to announce that Sophie Khan & Co. Solicitors and Higher Court Advocates has been taken over by Just for Public Ltd. Client work continues as normal."

30 I have also been referred to an article in a local newspaper, I think in circulation in the Leicester area. At any rate, I have a copy of an article available online. The paper, I believe, is called *Business Live*. In any event, the article says as follows:

> "Ms Khan said she had been able to transfer her business over to another company she runs as a charity called Just for Public Ltd, which supports human rights - something she said she had been planning to do at a later date.
>
> She said she has two admin staff."

31 I have considered the points made by Ms Khan in relation to Just for Public Limited, but I am unable to accept the proposition that they give me sufficient comfort to justify revising my view that an order in the form sought by the SRA is justified. That is essentially for three reasons. The first reason is that the precise arrangements relating to Just for Public are entirely opaque and difficult to understand. I have no evidence about its operations or its

structure and organisation. It seems to me that were a point of this type to have any real weight it would need to be supported by properly detailed evidence, giving an appropriately detailed account of the structure and operations of the organisation in question, so that the court could take an informed view whether the alleged transfer was an appropriate response to the intervention, if that could ever indeed be the case. In any event, my first point is that the arrangements in existence, such as they may be, are simply too opaque to warrant relying on them.

32 The second point is this: Ms Khan makes the submission that Just for Public Limited as an organisation is entitled to conduct reserved legal activities and she says that the clients of her former firm are content for their instructions to be serviced by Just for Public Limited. Whether that is the position or not, i.e whether Just for Public Limited is entitled to conduct reserved activities, is not a question I feel qualified to address definitively in the course of this hearing. It is a new point which has been developed effectively in oral submissions by Ms Khan this morning. But in any event, even if it is, the evidence suggests that Ms Khan is still involved in the business of Just for Public Limited. The article from *Business Live* which I have referred to suggests that she is the person within Just for Public Limited who is conducting activities on behalf of clients via that organisation and, if that is so, it is obviously concerning in light of the suspension of her practising certificate. Thus, the point raises more concerns than it alleviates.

33 The third reason is this: the SRA communicated its decision on intervention shortly after it was made on 19 August 2021. Within the decision, as Mr Allen has pointed out, the SRA gave notice to Ms Khan and to her firm requiring the production or delivery up of practice documents, as it was entitled to do under sch.1, para.9(1) of the Solicitors Act 1974. That being so, it seems to me that from that point in time, as Mr Allen had submitted, it was not really open to Ms Khan herself to make determinations about how the practice documents of her former practice should be dealt with and not open to her to make communications with her former clients in that regard. Those were all matters which from that point on came to be matters within the control and scope of authority of the SRA.

34 For all those reasons, therefore, it seems to me that the submissions made by Ms Khan in relation to Just for Public Limited are not an adequate response to the substance of the application made by the SRA, and therefore I propose to make an order in substance in the form of the draft supplied by Mr Allen, but I will hear submissions from him on the detail of the order in further submissions now.

L A T E R

35 I am asked summarily to assess the costs of the hearing that took place before Meade J on 2 September. I have been provided with a costs schedule for the total sum of roughly £6,000 in respect of that hearing and matters associated with it.

36 The difficulty arises because the hearing was concerned with two sets of proceedings. One is Ms Khan's recent application to set aside the intervention decision made by the SRA on 19 August 2021. The other was an application in older proceedings made by Ms Khan to set aside an order made by Master Clark on 15 March 2021.

37 As to the proceedings, that is to say the application to set aside the intervention decision, Meade J gave directions for the disposal of that application and ordered the costs of that part of the 2 September hearing relating to it to be treated as costs in the case. Mr Allen for the SRA however seeks the costs of the other application dealt with on 2 September, i.e. the

application made in connection with the proposed set aside of Master Clark's order. Mr Allen makes that application for costs on the basis of a letter sent after the hearing before Meade J, by which Ms Khan agreed to withdraw the application made in relation to Master Clark's order.

38 Mr Allen submitted that, of the overall amount covered by the costs schedule, which total some £6,000 or thereabouts, I should assume that one half, or roughly £3,000, related to the withdrawn application and assess costs on the basis of that figure and identify a relevant proportion of it. Ms Khan makes the submission that very little, if any, costs of the hearing on 2 September were referable specifically to the withdrawn application and that therefore I should make no order for costs.

39 I have concluded that I should make an order for summary assessment. I accept, as Mr Allen also has accepted, that the approach is not and cannot be a scientific one but I cannot accept the submission that no costs were incurred in relation to the 2 September hearing relating to the withdrawn application. It seems to me logical to suppose they must have been.

40 I have to be cautious because there is no breakdown as between the two sets of proceedings contained in the costs schedule. Exercising an appropriate degree of caution, therefore, it seems to me that I should summarily assess the costs payable in relation to the withdrawn application in the sum of £1,500 and I will so order.

L A T E R

41 I will deal with the costs application made in connection with the proceedings before me, which are effectively a Part 8 claim seeking an order for delivery up of documents and/or a search and seizure order and/or an order for the redirection of communications.

42 I have heard brief submissions from both parties. There seems to be no resistance in principle to the idea that an order should be made in the SRA's favour given that it has succeeded on its application. I should say I see no real basis on which that basic approach could be properly resisted and so it seems to me appropriate that an order should be made for the payment of costs by the Defendants. I am content to do so on a summary assessment basis.

43 I have been provided with a costs schedule which totals some £41,000-odd. Objections are made principally on the basis of the number of fee earners involved (there are three fee earners from Capsticks named in the costs schedule), and also on the basis of the overall amount and proportionality of the figure claimed, which Ms Khan has submitted would be more appropriate for a multi-day trial rather than an application of this type.

44 Dealing first of all with the question of the fee earners, as Mr Allen has pointed out, although three are named the bulk of the work has been conducted by Ms Crawford and Ms Aldwinckle, who are associate solicitors at the Capsticks firm. The hourly rates charged in relation to each of them are, it seems to me, relatively modest: only £135 per hour. So I see no real basis for a principled reduction of the overall amount based on the number or level of seniority or charge out rates of the fee earners concerned.

45 There is something, I think, in the point that Ms Khan makes about the overall proportionality of the figure, but I do not go as far as to agree with her that it is the sort of figure which overall would only be appropriate for a multi-day trial. As will be apparent to all who have been involved in this hearing, it is a complex matter involving some important

issues and it has taken up a very large part of the court day. Although it was scheduled originally for only two hours, it does not seem to me, looking at it in the round, that a disproportionate or unreasonable amount of time has been spent overall and a great deal of time has been spent dealing with submissions and interventions made by Ms Khan herself.

46 In any event, the only effective way of approaching such matters, it seems to me, is on a relatively rough and ready basis, making the best judgment one can about what an overall proportionate figure should be in light of the issues as they have emerged before the court and the time and energy spent in resolving them.

47 As I have mentioned, the overall amount claimed in the costs schedule is roughly £41,000. I propose to reduce that to a total figure of £35,000 by way of summary assessment. That seems to me overall to be a reasonable and proportionate figure in light of the issues as I understood them during the course of the hearing, the submissions I have heard, the volume of documents I have been exposed to and the complexity of the issues emerging therefrom.

CERTIFICATE

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This transcript has been approved by the Judge.