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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES (ChD)
INTERIM APPLICATIONS LIST
[2022] EWHC 1693 (Ch)

No. BL-2021-001684

Rolls Building
7 Rolls Building
Fetter Lane
London
EC4A 1NL

Wednesday, 27 April 2022

Before:

MR JUSTICE MILES

B E T W E E N :

SOLICITORS REGULATION AUTHORITY LIMITED

Claimant

- and -

(1) SOPHIE KHAN
(2) SOPHIE KHAN & CO.
(3) JUST FOR PUBLIC LIMITED

Defendants

MR P. AHLQUIST (instructed by Capsticks LLP) appeared on behalf of the Claimant.

MR M. JAMES (Direct Access) appeared on behalf of the Defendants.

J U D G M E N T

MR JUSTICE MILES:

- 1 I have heard this application in the interim applications court. This is an approved transcript in which I have improved some of the wording but made no changes of substance.
- 2 This is an application by the Solicitors Regulation Authority (“SRA”) to fix a new date for further compliance with an order made by me on 21 September 2021.
- 3 The background is this. The claimant is the SRA. The first defendant, Ms Khan, is a solicitor. Her practising certificate was suspended on 19 August 2021 as a result of the SRA’s intervention into her practice of the same date. The second defendant is a firm of which the first defendant is the sole principal and director. The third defendant is a company. The SRA contends that it is controlled by the first defendant and there is no real dispute about that in the evidence.
- 4 The first defendant says that the second defendant’s business was transferred to the third defendant shortly before the intervention. The first defendant is one of two directors of the third defendant. The third defendant itself is not authorised or regulated by the SRA.
- 5 The procedural background may be summarised in this way. On 19 August 2021 the SRA intervened in the practice of Ms Khan and the second defendant. The same day the SRA gave notice requiring the first and second defendants to deliver up documents concerning the clients of the firms. This notice was given pursuant to their powers under paragraph 9 of schedule 1 to the Solicitors Act 1974.
- 6 On 27 August 2021 the SRA issued a claim against the first and second defendants. The same day they also applied for an injunction against the first and second defendants requiring the delivery up of practice documents and a search order in respect of the relevant office of the defendants.
- 7 On 7 September 2021 there was a hearing before Adam Johnson J. He made orders against the first and second defendants. The first defendant then asserted that the practice and assets of the second defendant had been transferred to the third defendant.
- 8 That led to the SRA issuing the present claim against all three defendants, seeking further relief for the delivery up of the documents that had been referred to in the notice given on 19 August 2021 and search orders in respect of a number of other premises.
- 9 That application came before me on 21 September 2021, when I made an order against the defendants requiring them to deliver up the relevant documents and search orders.
- 10 The order requiring the delivery up of the documents was not complied with and on 1 October 2021 the SRA issued a contempt application against Ms Khan in respect of her failure to comply with the order of 21 September 2021.
- 11 That came before Leech J. Over a number of hearings, he decided several applications. These included an application by the first defendant to set aside the 21 September 2021 order.

- 12 Leech J concluded in a judgment given on 12 January 2022 that the first defendant was in contempt of court and he dismissed the application to set aside the order of 21 September 2021.
- 13 Leech J sentenced the first defendant to six months imprisonment in respect of the contempts of court he had found. He gave the first defendant an opportunity to purge her contempt by complying with the order of 21 September 2021; and his order provides that if a successful application to purge contempt was made by a certain date, the first defendant would only be required to serve three months imprisonment.
- 14 The first defendant did not take this opportunity to purge her contempt and she was imprisoned for the full term. In early April 2022 she was released from prison after serving half of the six month sentence for contempt of court.
- 15 On 7 March 2022 Sir Gerald Barling gave judgment dismissing a Part 8 claim issued by the first defendant and the second defendant challenging the SRA's intervention into the second defendant.
- 16 The present application was issued on 6 April 2022. The claimant seeks an order from the court fixing a new date for compliance by the defendants with paragraph 1 of the order of 21 September 2021 and a date for compliance by the defendants with paragraphs 2-5 of that order. The application also seeks directions for alternative service of the order by post and email.
- 17 The application today was presented by Mr Ahlquist on behalf of the SRA and Mr James for the defendants.
- 18 Counsel for the defendants argued, first, that the form of the application and order being sought was inappropriate and that the court should dismiss the application on this ground alone. The substance of the submission, based on the case of *Kumari v Jalal* [1997] 1 WLR 97, was this. Where there has been a breach of an order to do a certain act by a certain date in respect of which a respondent has been committed to prison for non-compliance, the breach cannot be the subject matter of a further committal order. If the contemnor continued his or her breach it was necessary to obtain a further order with a fixed time for compliance. In the present case the order sought is not a further order, but is a mere variation of an earlier order. Counsel for the defendant said that it was necessary for the SRA to apply for and obtain a fresh order, rather than seeking a variation of the existing order.
- 19 The claimant submitted that it is indeed seeking a fresh order today. This is clear from the terms of its application, which asks for an order for a new date to be fixed. It is not merely asking for a variation of an existing order. It says that it is acting entirely in accordance with the guidance set out in the *Kumari* case.
- 20 It seems to me that in substance and reality this is an application for a fresh order. It is true that the draft order sought at one point refers to a variation of the time for compliance. However, looking at the application and the draft order as a whole, it seems to me clear that in substance the SRA is seeking a new order with a new fixed time for

compliance. It would be better for the new order (if made) to set out what is required in its own terms, rather than doing so by reference to the 21 September order. But that is a matter of drafting, rather than substance.

- 21 I therefore do not think that the SRA can be said simply to be seeking a variation of an existing order. The SRA accepts that the court has to be persuaded that it is appropriate to make a new order and it has assumed the burden of persuading the court that a further order should be made.
- 22 It also seems to me that, having regard to the overriding objective, it would be wrong to require the SRA to start from scratch. The application was made some three weeks ago. The point that has been taken was only raised yesterday. To require the parties to spend more time issuing a fresh application and coming back before the court would be a waste of their own and the court's resources. Moreover, the background to the application today is the SRA's case that there has been a deliberate breach of the orders of the court and it seems to me that the SRA is fully entitled to come back before the court to seek appropriate relief.
- 23 Counsel for the defendant said that it was unsatisfactory for there to be a reformulation of the order without an opportunity to consider it, but it seems to me obvious what is being sought. It is an order in the same terms as paragraphs 1-5 of the order of 21 September 2021, but with new fixed dates for compliance.
- 24 For these reasons I reject the preliminary objection to the application.
- 25 Counsel for the defendant said, secondly, that the court ought not to make an order as a matter of discretion.
- 26 The first point that is taken is that the order made by Leech J should be read as implicitly stating that if the defendants did not comply with that part of the order as allowed the defendants to purge their contempt, that would be an end of the matter and there would be nothing further for the defendants to do. I do not accept that submission. The part of the order of Leech J dealing with purging the contempt was part of his sentencing decision. He was not to be read as making a decision that there could be no further application for a fresh order.
- 27 Counsel for the defendant then submitted that there was no proper justification for the order. He referred to the evidence of the defendants that the various client files of the second defendant were transferred to the third defendant. Some of the clients had matters which, according to the first defendant, concluded in 2021. The defendants also relied on statements from a number of former clients of the second defendant, namely Mr McCarthy, Ms Beynon, Mr Smith and Mr Plumley, to the effect that they did not wish their files to be delivered to the SRA and were happy for them to remain with the third defendant.
- 28 Counsel for the defendant also criticised the evidence found in paragraph 55 of the fourth statement of Ms Crawford, filed by the SRA in support of the application, which suggested that some clients had sought access to their files, or that legal representatives acting for them had sought access. Counsel pointed out that the evidence is

unparticularised as to the identity of the relevant clients or legal representatives and the dates of any such requests.

- 29 Counsel for the SRA argued, first, that client consent is not a precondition for the SRA's own requirement by the notice it served for the delivery up of documents relating to the practice that has been intervened in. This is a case where the first defendant has been suspected on reasonable grounds of dishonesty. That was part of the basis of the intervention. The SRA has its own independent reasons for wishing to see the documents and this is particularly so in a case where dishonesty has been alleged as the basis for intervention. The SRA is under public law duties of confidentiality in relation to the files of the clients and will, on receiving those documents, be in a position to determine what should ultimately become of the files and how the requests of clients for the files should be dealt with.
- 30 Counsel for the SRA also submitted that there was at least some evidence in the materials before the court of one client, a Mr H, who had complained to the Legal Services Ombudsman about, amongst other things, client files and that there was no evidence in response from the first defendant as to what had become of those files.
- 31 Counsel for the SRA also argued that, in the circumstances, it was not appropriate for the court simply to act on the basis of the statements of the first defendant as to what had become of the various client files.
- 32 Counsel for the SRA also pointed out that the court's power to make appropriate orders for the delivery up of documents was to be found in the statutory scheme set out in paragraph 9 of schedule 1 to the Solicitors Act and that there was a public interest in documents relating to firms that have been intervened in being provided in the first instance to the SRA.
- 33 On balance I prefer the submissions of the SRA, essentially for the reasons already summarised. It seems to me that the position as to the whereabouts of the relevant client files is not sufficiently clear on the documents. I agree with counsel's submission that the question whether the SRA should be given access to the files is independent of the question of client consent, albeit that is a factor that the court should no doubt weigh in the exercise of its discretion. The evidence does not provide anything like a complete explanation of what has become of the various client files. Moreover, I do not think that there would be any serious prejudice to the clients were the files to be provided to the SRA. No doubt if the underlying clients continue to take the view that they wish to be represented by the third defendant, the SRA will take that into account. I should also say that when I refer to the SRA in that respect, I am also to be taken to be referring to the agent who was appointed for the purposes of the intervention.
- 34 Overall it seems to me that it is appropriate to make a fresh order requiring the defendants to comply with paragraph 1 of the order made on 21 September 2021. As I have said, this will be a new and fresh order, but in the same terms as the order of 21 September 2021.
- 35 There was a specific dispute about paragraph 4 of the order of 21 September. That said, "[t]he First Defendant must use all reasonable endeavours to obtain and provide to the

Agent ... all such usernames, passwords and other information, as may be necessary to enable the Agent or members of the Agent's Team to access to the account relating to the following email address: legal@justforpublicltd.org.uk.”

- 36 That part of the order was to be read together with paragraph 1 of the order, which required the delivery up of listed items, which included emails held in that email account. Counsel for the SRA submitted that it was necessary for access to be given to the email address itself in order for the agent to be able to determine whether listed items had been properly provided and delivered up in accordance with paragraph 1 and was also necessary in order to enable the agent, or the agent's team, to read the listed items.
- 37 Counsel for the first defendant submitted that paragraph 4 was potentially too broad, in that the third defendant, whose email address is in issue under paragraph 4, had or has clients who are not anything to do with the second defendant firm which was intervened in by the SRA. There may, therefore, be communications found on that email account which do not constitute listed items within paragraph 1.
- 38 Counsel for the SRA said that an order in the terms of paragraph 4 was required in circumstances where the court could not properly rely on the mere say-so of the first defendant as to which items held in the email account were or were not listed items.
- 39 As a fall-back position, counsel for the SRA said that protections could be built-in on the lines of paragraphs 20 and 23 of the 21 September 2011 order, which provided a mechanism for any disputes to be resolved as to whether particular documents were or were not listed items.
- 40 It seems to me that an order in the terms of paragraph 4 is appropriate, essentially for the reasons given by counsel for the claimant, but that a mechanism for resolving any disputes as to whether particular emails are or are not listed items should be built into the order, along the lines of paragraphs 20 and 23. Some thought needs to be given to the precise drafting of those protections and I will leave it to counsel to seek to agree the drafting and, if they cannot do so, will resolve any disputes on that point.
- 41 That is the order I shall make. I will also hear the parties as to the date to be inserted in paragraphs 1-5 of the revised order.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.