Neutral Citation Number: [2022] EWHC 2668 (Ch)

Case No: CH-2022-BRS-000009

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
CHANCERY APPERALS LIST (ChD)
ON APPEAL FROM DISTRICT JUDGE WALES

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 21 October 2022

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

SAHAR SHUKER	**Claimant/ Appellant**
- and -	
INSPECS LIMITED	**Defendant/ Respondent**

- -
- -

The Appellant in person

Application dealt with on paper

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 4:00 pm on Friday 21 October 2022.

HHJ Paul Matthews :

Introduction

1. This is my decision on the need for an interpreter at a forthcoming hearing. Mr Shuker, who is an Israeli businessman, originally brought a claim against the defendant, an English company, in the Jerusalem District Court, in Israel, in relation to an alleged contract between the parties for exclusive distribution in Israel of products produced by the defendant. The claim was heard, and ultimately dismissed by the judge on 18 October 2017, on the basis that there was no such contract. Mr Shuker appealed that decision to the Supreme Court of Israel. The appeal was also dismissed, on 10 January 2021.

2. Mr Shuker issued the present claim here in England on 16 December 2021, seeking the annulment by the English court of the ruling of the Israeli Supreme Court, on the basis of the alleged conflicts of interest of the judges who sat, and damages in the sum of just under £4 million. He appeared to seek a rehearing in England of the original contractual claim first heard in Jerusalem. The defendant applied for the claim to be struck out for lack of jurisdiction. DJ Wales heard the application on 2 August 2022, when the claimant appeared in person and the defendant by counsel. The district judge acceded to the application. He struck out the claim.

3. Mr Shuker applied on 1 September 2022 for (1) permission to appeal against the order of DJ Wales, (2) a stay of the order pending the appeal, and (3) an extension of time in which to file the appeal bundle. I refused the second and third of those applications (stay and extension of time) on paper, on 20 September 2022, for reasons then given. The application for permission to appeal will be dealt with in due course by Mr Justice Zacaroli.

The application for an interpreter

4. On 26 September 2022 Mr Shuker applied for an oral rehearing of the second and third applications. I acceded to this application, and it is now fixed to take place by remote video hearing on 1 November 2022, with a time estimate of 30 minutes. By email dated 19 October 2022 Mr Shuker has also now asked for an interpreter to be provided by the court for this hearing. He points out that one of his grounds of appeal against the decision of DJ Wales is that, despite request, no interpreter was provided, and that therefore the procedure was not fair.

5. In general, in English civil procedure there is no automatic right to an interpreter. There are special provisions relating to proceedings in Wales or involving Welsh speakers (see the Welsh Language Act 1993, and CPR PDW 39.5). In addition, Article 6(2)(e) of the European Convention on Human Rights applies to the trial of criminal charges. But none of those applies here. There are also the (more general) right to a fair trial under article 6(1) of the European Convention on Human Rights, and the "overriding objective" in CPR Part 1.

Article 6 of the European Convention on Human Rights

6. So far as relevant, Article 6 deals with "the determination" of a person's "civil rights or obligations". Accordingly, it does not apply to hearings which do not determine

such things. For example, in *Re Trusts of the X Charity* [2003] 1 WLR 2751, Morritt V-C said:

> "12. As the opening words of article 6(1) make plain it only applies to "the determination of… civil rights". An application to the court by trustees for directions may well affect but does not normally determine the civil rights of anyone. Similar procedures exist for the protection of other fiduciaries such as liquidators or receivers: cf *Craig v Humberclyde Industrial Finance Group Ltd* [1999] 1 WLR 129, 135–136, paras 15–19. This, essentially administrative, jurisdiction is designed to provide guidance to the fiduciary as to the proper exercise of his powers in the problematic circumstances with which he is faced. Only rarely could it be said to determine the rights of anyone."

7. In the recent case of *Brake v Chedington Court Estate Ltd* [2021] EWHC 2700 (Ch), dealing with article 6, I said:

> "13. … Article 6 implies the principle of 'equality of arms' (which also appears in CPR rule 1.1(2)(a) as part of the overriding objective), but this does not mean equality of resources. In the civil context it really means equality of opportunity in an adversarial process, for example to adduce evidence, comment on evidence and cross-examine witnesses in appropriate cases. For a recent example, see *MacDonald v Animal Plant and Health Agency* [2021] EWHC 2325 (QB), [46]."

8. In the earlier decision of *Hak v St Christopher's Fellowship* [2016] ICR 411, EAT, Langstaff J had said:

> "41. … It must, however, be remembered that article 6 itself does not speak directly of a party having an absolute right to the services of an interpreter. *AB v Slovakia* speaks of affording a reasonable opportunity to present the case. Natural justice does not guarantee the party an absolute right to present a case in court, but (in context) a reasonable opportunity to do so."

In my judgment, Article 6 does not of itself imply the need for an interpreter, although there may be exceptional cases where this is necessary for a fair trial to take place. Even if it did, it would only apply when the hearing "determined" civil rights or obligations, and not every hearing does so. In my judgment, the forthcoming hearing will not do so.

Civil Procedure Rules 1998, Part 1

9. Another legislative source is CPR Part 1. This provides for the so-called "overriding objective" of English civil procedure. That is "enabling the court to deal with cases justly and at proportionate cost." This includes "ensuring that the parties are on an equal footing and can participate fully in proceedings", but also

> "(c) dealing with the case in ways which are proportionate –
>
> (i) to the amount of money involved;
>
> (ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and

(f) enforcing compliance with rules, practice directions and orders."

10. In *Triodos Bank NV v Dobbs* [2005] EWCA Civ 468, Mr Dobbs complained that he had been wrongly refused legal aid, and that therefore he came before the court at a serious disadvantage as a litigant in person. He further complained that there is no "equality of arms" between himself as appellant and the respondent bank represented by counsel. He applied for a stay on the English proceedings pending an application to the European Court of Human Rights.

11. Chadwick LJ, for the court, said:

> " 4. … With that appreciation of the issues, we have to consider whether justice can properly be done in the circumstances that Mr Dobbs is unrepresented. In other words we have to consider whether we have confidence in our ability to understand the issues, and with the assistance of Mr Levy for the respondent - - who we may expect to fulfil his duty to the court by taking us to such authority as there is on those issues -- to reach a just result?
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> 5. We have considered that question. We are satisfied that the issues and the material before us are such that we will be able to reach a just conclusion upon them; notwithstanding that Mr Dobbs in person may be able to give us less assistance than counsel acting on his behalf would have been able to give on questions of law. So the application that the proceedings be stayed pending the outcome of Mr Dobbs' proceedings in Strasbourg is refused."

12. A similar question can be asked here. Are the issues and the material before the court on 1 November 2022 such that it will be able to reach a just conclusion upon them, notwithstanding that Mr Shuker in person may be able to give the court less assistance than a native English speaker could? So far as I can tell at this stage, in my judgment they are. Accordingly, I consider that the overriding objective does not require an interpreter to be provided.

Discretion of the court

13. If there is no *right* to an interpreter, the question is whether the court may permit the use of one in the exercise of its discretion. In *Citibank NA v Ercole Ltd* [2001] EWCA Civ 1562, Robert Walker LJ (with whom Keene LJ agreed) said:

> "20. Proceedings in an English court must be conducted in English, if necessary through an interpreter, although for a litigant in person to address the court rather than to give evidence through an interpreter is a truly exceptional course. The only two authorities in which the matter seems to have been discussed at any length are the decision of Roxburgh J in *Re Trepca Mines Ltd* [1960] 1 WLR 24

> and the interlocutory ruling of Scarman J in *Re Fuld* [1965] 2 All ER 653. Both judgments make it clear that the judge has a wide discretion as to what is the appropriate course to take in an attempt to do justice to both sides."

(I add only that the Court was not there concerned with proceedings in Wales.)

14. Thus, in *Re Fuld* [1965] 1 WLR 1336, Scarman J said this (at 1340-41):

> "[P]arties must be given a proper opportunity of developing their case and of attacking their opponent's case, and of hearing and understanding the evidence. Once those opportunities are given it is a matter for the parties to decide whether to exercise their rights or waive them.
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> In the present case, upon the withdrawal of counsel for Karl Saueracker, and with the unofficial aid of the lady solicitor in court who was able to speak the German language, I invited Saueracker to consider his position, and to obtain the services of an interpreter. I indicated to him that I would certainly not take any part of the case which concerned him until the following day at the earliest. Saueracker was present in court this morning, and it is clear from answers that he has given from the well of the court through an interpreter that he has not equipped himself with an interpreter, and he has not done so because he considers himself unable to bear the cost of that step. Nevertheless, the court has given him that opportunity.
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> […]
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> It seems to me, therefore, that the matter is now entirely one of discretion, the rights of natural justice as I have defined them having been, in my judgment, accorded to Saueracker. There is no reason at all why he should not be in court with an interpreter who would make it possible for him to follow the evidence. There remains no reason why at a suitable moment, if he wishes to present his case by giving evidence, he should not go into the witness-box and give his evidence with the aid of an interpreter. Nevertheless, there are certain other matters about which I should say something since they have arisen and they require a statement of my views. I think in the ordinary course of litigation it is undesirable that the court should be addressed from the well of the court through an interpreter."

Exercise of discretion

15. It is thus clear that I have a discretion, and must therefore consider how to exercise it in the face of Mr Shuker's application. The present is a case where the appellant instituted proceedings before the English court after instituting and losing a case against the same (English) defendant in his own country, and presumably in his own language. In the English proceedings he has chosen not to instruct an English lawyer to represent him, but instead has represented himself (as is his right).

16. Mr Shuker is an Israeli citizen, and English is not his mother tongue. Nevertheless, he has chosen to correspond with the court in English, and the court has been able to understand him. He has also now filed a 16-page skeleton argument, in English, for the hearing on 1 November 2022, plus 9 appendices (court documents, all in English).

In addition, he participated orally, in English, in the hearing of the successful application by the defendant to strike out his claim.

17. As to the latter point, in his judgment under appeal, DJ Wales said this:

> "4. Mr Shuker's first language is Hebrew, but he has conducted these proceedings in written and spoken English and, in my judgment, has a strong command of both. Mr Shuker was under the impression that the court had arranged for an interpreter to attend this hearing to assist him because the hearing notice refers to the court requesting an interpreter, but the fact of the matter is that that request was not heeded and no interpreter attended the hearing today. Mr Shuker was content to continue without an interpreter, as indeed he had previously indicated in his written skeleton argument and, in my judgment, Mr Shuker was fully able to participate in the hearing. His understanding of what was said and written was patent from his submissions, his response to Mr Sharp's submissions and in response to my questions and observations. … ."

18. The hearing before me on 1 November is not the hearing of his appeal. It is not even the hearing of his application for permission to appeal. It is instead the oral rehearing of two applications already dismissed on paper. They concern procedural matters only. Mr Shuker's substantive rights will not be determined at this hearing. In addition, he knows exactly why the applications were dismissed on paper, and can prepare (as in fact he already has done) to argue that I should allow his applications instead of dismissing them.

19. His command of English, as demonstrated in the proceedings so far, is clearly sufficient for the limited purposes of the forthcoming hearing. In my judgment. it would be disproportionate to require an interpreter. If Mr Shuker wishes himself to engage and pay for the services of an interpreter quietly to translate what I say to him, he may do so. If this were a case where Mr Shuker was to give evidence, I would also permit him to engage and pay an interpreter to translate his evidence. In fact this will not be such a case.

20. However, I can see no justification for allowing the interpreter to interpret Mr Shuker's submissions and to address me in English. Mr Shuker can do that. I add that, if he personally feels any doubt or concern, then his remedy is to instruct an English lawyer to represent him. I do not consider that this is a case where an interpreter is needed to interpret submissions in order to ensure a fair hearing.

Conclusion

21. Accordingly, (i) I dismiss his informal application for an interpreter to be provided by the court, and (ii) I will permit him to engage an interpreter at his own expense to assist him at the hearing. However, (iii) Mr Shuker may not address me through the interpreter; he must do so himself.