



Neutral Citation Number: [2018] EWHC 819 (Ch)

Case No: HC-2013-000211

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

The Royal Courts of Justice
Rolls Buildings
Fetter Lane
London EC4A 1NL
Monday, 12 March 2018

Before:

MR. JUSTICE MARCUS SMITH

Between:

**THE HIGH COMMISSIONER FOR PAKISTAN
IN THE UNITED KINGDOM**

Claimant

- and -

**(1) PRINCE MUKKARAM JAH,
HIS EXALTED HIGHNESS THE NIZAM VIII OF
HYDERABAD**

**(2) PRINCE MUFFAKHAM JAH
(3) SHANNON CONSULTING LIMITED**

Defendants/
Interpleader

(4) THE UNION OF INDIA

(5) THE PRESIDENT OF INDIA

Claimants

(6) HILLVIEW ASSETS HOLDINGS LIMITED

- and -

NATIONAL WESTMINSTER BANK PLC

Defendant/
Stakeholder

**Mr. Khawar Qureshi, Q.C. and Mr. Jonathan Brettler (instructed by Stephenson
Harwood LLP) for the Claimant**

**Mr. Eason Rajah, Q.C. and Mr. Leon Pickering (instructed by Withers LLP) for
the Eighth Nizam of Hyderabad**

**Mr. Hodge Malek, Q.C. and Mr. Jonathan McDonagh (instructed by Russell-
Cooke LLP) for Prince Muffakhm Jah**

**Mr. Timothy Otty, Q.C., Mr. Harish Salve, S.A., Ms. Clare Reffin and Mr. James
Brightwell (instructed by TLT LLP) for India**

**Mr. Adam Zellick, Q.C. (instructed by Ashursts LLP) for the National
Westminster Bank plc**

**Mr. Giles Richardson for the Administrator (not presently a party to the
proceedings)**

Hearing date: 12 March 2018_____

Approved Judgment

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MR. JUSTICE MARCUS SMITH:

Ruling regarding the Administrator

1. I have before me a question regarding the representation of the “Estate”, as defined in the order of Henderson J. (as he then was) dated 22 July 2015 and sealed on 24 July 2015 (the “Order”).
2. I will not, in the course of this short ruling, attempt to summarise the very complicated factual issues that exist in relation to a fund of money held by the National Westminster Bank plc (the “Bank”). Suffice it to say that there are multiple claimants to that fund. These claimants do not include Bank, which is interpleading as a stakeholder in these proceedings.
3. Unfortunately, the parties named in the proceedings do not constitute a complete list of the potential claimants to the fund held by the Bank: there is a potential claim by the Estate. In the Order, Henderson J. appointed Mr. Christopher Lintott to be administrator of the Estate, but for a limited purpose only, namely to investigate, collect and get in any interest in the fund and to consider whether he should take a positive position one way or the other in terms of advancing a further claim in these proceedings. The position is that Mr. Lintott’s investigations continue. He is, in particular, seeking funding to see whether an active role in the litigation can be taken and he can say no more than that at this stage.
4. I am very conscious that it is important to bear in mind three principles here. First, that in the interests of justice, anyone who has or may have a claim in the fund should be properly represented in these proceedings.
5. Secondly, that the interest or possible interest of such a person in the fund, and the process by which the existence and nature of that interest is determined, needs to be meshed with the interests of the parties to this litigation, so that matters are resolved conclusively and consistently as against all those claiming an interest.
6. This leads to the third point, which is that it is imperative that all parties are bound by the outcome of these proceedings and that these proceedings proceed expeditiously so that all the parties, including in particular the Bank, know where they stand.
7. In these circumstances, I am not inclined to give Mr. Lintott the further two months that he seeks in order to put in place funding. It seems to me that the timetable that I am envisaging for hearing this matter will not enable so relaxed a process to take place. It seems to me that by 4pm on 9 April 2018, Mr. Lintott needs to state to all of the parties, but in particular to the Bank, what his position is.
8. To be clear, that statement must involve an indication that Mr. Lintott is taking one of the following courses:
 - i) Mr. Lintott is prepared to be appointed as administrator with a view to participating in these proceedings: Option A.
 - ii) Alternatively, Mr. Lintott is prepared to participate as an administrator on the very limited basis articulated in my email of last Friday, namely that he be

appointed administrator and act as a defendant in these proceedings, but take no active part, the Estate simply being bound and with an assurance that (so long as this position is maintained) of no adverse costs order against him or the Estate: Option B.

- iii) Alternatively, that Mr. Lintott decline appointment altogether and that we explore other ways by way of which parties not presently party to the proceedings can be bound to their outcome: Option C.
9. I will then list a hearing, which can be vacated if necessary, for 16 April 2018, at which I will deal with the question of the representation of unrepresented parties in light of what the administrator has decided to do.
10. It does not seem to me that it will be necessary to have all of the parties represented, although I am not precluding that, but obviously I will need Mr. Zellick for the Bank to be present to articulate exactly how procedurally, in light of the administrator's position, I can ensure that all interested parties are bound. If other parties want to be present to assist or make submissions, then they will be welcome but I do not think their presence is actually necessary. I understand the interest of all the parties in having a proper final outcome which cannot subsequently be challenged by a non-party later on.

[The dates in this ruling were subsequently varied and the dates ordered are properly reflected in the Order made.]

Ruling regarding amendment of the pleadings

11. I have before me an application to re-amend the Particulars of Claim and Replies of the Claimant in these proceedings. That application is remarkably uncontentious in that all of the other parties are prepared to accede to those amendments being made, subject to the usual order regarding consequential amendments.
12. What is really at issue before me today is whether the amendments go far enough in order to set out the basis upon which the Claimant claimed a beneficial entitlement to the monies held by the Bank. That claim is set out in paragraph 20 of the Particulars of Claim and, as I have remarked in argument, sets out what is essentially a negative case.
13. This first contention that the Claimant advances is one that is based on a form of sovereign immunity. It is accepted that this court has jurisdiction to hear this matter, but it is contended that this court should not look behind the strict legal entitlement of the Claimant to the money held by the Bank. The resolution of this point is obviously a matter for trial, and I say no more about it. But, in the alternative to the Claimant's primary point, it is asserted that the legal owner of the chose in action constituting a debt owed by the Bank to the Claimant is the Claimant and that this reflects the beneficial interest in the monies held by the Bank also. Provided the claims to a beneficial interest by the other parties are defeated, that represents the end-point of the litigation.
14. Mr. Qureshi, Q.C., for the Claimant, has indicated that his client does advance a positive case but that that positive case is pleaded in the replies to the claims of the various claimants to the fund. He has indicated that he is very happy to plead that positive case,

effectively, by way of a cut and paste into the Particulars of Claim. It seems to me appropriate that that should be done and I so order.

15. The question is whether that positive case needs to be expanded upon, as the various other claimants to the fund contend. The difficulty that I have at this stage is that the pleading was the subject of a summary judgment application by various of the other parties. Henderson J. rejected that application and he did so on having regard to the pleadings as they stood and the evidence of the Claimant's solicitor, Mr. Fordham.
16. What he emphatically did not require was that the pleadings be amended. Ordinarily, if a claim can only resist an application to strike out or for summary judgment if it is amended, then as a price of the claim going forward the judge will order that the amendment be pleaded, so that the amended pleading is no longer liable to be struck out or be subject to a successful application for summary judgment.
17. That did not occur in this case. Henderson J. indicated no need to amend at all. It seems to me that it would be entirely wrong for me to require further amendment by the Claimant at this stage, when that was not required by Henderson J. when considering the strike out/summary judgment application.
18. It seems to me that the more appropriate course is to ensure that a positive place is pleaded, as suggested by Mr. Qureshi and that (if so advised) any other party may press for further information in the usual course. Equally, if so advised, the Claimant – and the same goes for any other party – can, after disclosure has taken place, apply to further amend their pleadings.
19. I entirely appreciate that the more specific the pleadings, the easier the exercise of disclosure will be. It might be that in a different case I would be inclined to press Mr. Qureshi further to set out his claims with greater particularity. But I am very conscious that this is very far from usual case. This is a case where most, if not all, of the parties labour under considerable difficulties because of the historicity of the events that underlie all of the parties' positions.
20. In those circumstances, it would be wasteful case management for me to require a further particularisation at this stage by the Claimant. I am therefore, simply as a matter of case management, going to take the risk that there will be more extensive disclosure, which seems to me better rather than worse, and oblige the parties to consider the amendment of pleadings post-disclosure, when it may be that a further round of amendments will take place.