



Citation Number: [2020] EWHC 2638 (Ch)

Case No: IL-2020-000060

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

SHORTER TRIALS SCHEME

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Monday, 28th September 2020

Before:

DEPUTY MASTER HANSEN

Remotely via Skype

Between:

NATIONAL TOURISM COUNCIL OF QATAR

Claimant

- and -

TEYMUR MEHDIYEV

Defendant

MR. BENET BRANDRETH QC (instructed by **Bird & Bird LLP**) for the **Claimant**
MR. JAMES MALAM (instructed by **IMD Solicitors LLP**) for the **Defendant**

APPROVED JUDGMENT

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DEPUTY MASTER HANSEN:

1. This is my ruling on the application. This is the hearing of the defendant's application notice dated 28th July 2020 to set aside a default judgment that I entered on 20th July. The underlying claim is a passing off action in which it is alleged that the defendant has wrongfully and unlawfully passed off his services using the "VISIT QATAR" sign as being connected to, or endorsed by the claimant (which is a Government Council of Qatar) whose purpose is to plan, regulate and promote sustainable travel and business travel in Qatar.
2. It is now common ground that the defendant has shown a real prospect of successfully defending the claim but it is also common ground that the judgment in default is a regular one and that I, therefore, have a discretion as to whether to set aside and, if so, on what terms. In reality, the dispute before me today has been as to the terms upon which judgment should be set aside.
3. The defendant says it should be set aside unconditionally and in fact seeks an order that the claimant pay his costs of the application. The claimant says, no, it should be on strict terms requiring: first, the payment of various sums by way of past costs; secondly, security for costs as regards the future conduct of these proceedings; and, thirdly, the provision of appropriate identity documentation by the defendant *inter alia* to allow the claimant to enforce and/or or to facilitate enforcement in Azerbaijan (of which the defendant is a national) of any judgment that the claimant may obtain in due course.
4. I shall deal then with each of the proposed conditions, dealing first with costs. As to costs, it seems to me that the set aside should be on terms that the defendant pays the costs of the default judgment and the costs of this application, but not the costs of the service out application. Given that the judgment was regular and was caused by the defendant's complete failure to respond to the English proceedings, there is no basis upon which the defendant can sensibly resist paying the costs associated with obtaining that default judgment. Indeed, Mr. Malam, who appears for the defendant today, realistically, it seems to me, accepted that point in argument although it had not previously been accepted by or on behalf of the defendant.
5. It follows from what I have just said that the defendant should also pay the claimant's costs of this application given his previous position that the claimant should pay his costs. In addition, it seems to me that this is the right order in any event because the judgment was a regular one and because I have, for the reasons that follow, rejected in clear terms the suggestion that the set aside should be unconditional, but have in fact imposed stringent conditions, albeit not exactly in the terms proposed by the claimant. I decline to include the costs of the service out application as it seems to me that those are costs of the action and should be in the case in the normal way notwithstanding the defendant's lack of engagement particularly at the pre-action stage.
6. Turning then to the second condition and the proposed security for costs, I have concluded that the defendant should be ordered to pay security but not in the sum claimed. I consider that the figure for each phase should be 70% of the sum claimed payable according to the claimant's proposed timetable, so that the total amount of security is £175,000 not £250,000. Whilst I am satisfied that it is appropriate in all the circumstances to order security and that by doing so I will not be stifling the

defendant's defence, it seems to me, particularly having regard to the fact that this claim is proceeding under the Shorter Trials Scheme, that the appropriate figure is £175,000.

7. Mr. Malam, in resisting security, submitted that I should be astute not to stifle any defence and that an order for security in these circumstances, i.e. under CPR 3.1(5), was an exceptional order only to be made when it can be shown that a party is not acting in good faith; good faith being understood to consist of a will to litigate a genuine defence as economically and expeditiously as reasonably possible in accordance with the overriding objective: see White Book at 3.1.16 and the cases there referred to.
8. I am satisfied that there is no question of stifling here. The defendant has had every opportunity to put in evidence about his means, but has chosen to say no more than this: "I am an ordinary individual of modest means". That, plainly, will not do and provides no evidential foundation for a stifling argument.
9. In terms of good faith as defined, I am bound to say that the defendant has thus far demonstrated a want of good faith. He chose, I find, to ignore – for no good reason – the English proceedings until they became troublesome to him following the default judgment I entered on 20th July. His reasons for not responding to the English proceedings, namely, a fear that by doing so he would jeopardise ongoing settlement discussions in other jurisdictions, is wholly unconvincing.
10. The terms of the default judgment that I entered on 20th July were as follows, quoting merely from the material parts:

“1. Default judgment be entered against the defendant in the terms set out in paragraphs 2 to 5 below.

2. The defendant shall not in the United Kingdom, whether acting by himself, or by others acting on his behalf on his instructions, or with his encouragement, or otherwise howsoever, pass off his business and/or services as being the claimant's business and/or services and/or as being connected with, associated with and/or endorsed by the claimant by the use of the signs VISIT QATAR or VISITQATAR or any colourably similar sign or otherwise howsoever.

3. Within 14 days of service of this order the defendant must,

(a) deliver up to the claimant's solicitor all articles and documents whether physical or digital, the sale or use of which could contravene the foregoing injunction that are in the possession, custody or control of the defendant; and

(b) in the case of copies of any such articles or documents that are digital, additionally delete such copies and confirm on oath that such deletion has been accomplished;

4. There be an enquiry as to damages suffered by the claimant, alternatively at the claimant's option, an account of profits ...
5. For the purpose of enabling the claimant to make the election set out in paragraph 4 by 4.30 p.m. 14 days from the date of service of this order, the defendant do produce an affidavit sworn by the defendant setting out for the period 29th January 2016 to the date of this order:
 - (a) the revenues received from the website at the domain visitqatar.com from all sources;
 - (b) such information as the defendant has in his possession, custody and control showing the location of internet visitors to the website at the domain name visitqatar.com;
 - (c) costs attributable to the registration and operation of the website at the domain name visitqatar.com;
6. Within 21 days of service of this order the defendant must pay to the claimant the claimant's costs of this action summarily assessed in the sum of £41,980."
11. Having allowed the matter to go by default in the circumstances as I have already explained, I am satisfied that the defendant then ignored or failed properly to comply with the terms of my order. In particular, I am satisfied from the evidence – including, I should say, that of his own solicitor – that he has not effectively geo-blocked his website and it remains accessible to the claimant's solicitors and others. I am also satisfied, as is apparent, that he did not abide by the terms of the original costs order that I made. No stay was ever obtained; it was simply not complied with.
12. Mr. Malam made the additional point that in considering whether to order security under CPR 3.1(5) I should consider CPR 25.13. I agree, but only by analogy. It is not the case, for example, that a claimant cannot obtain security under CPR 3.1(5). Applying CPR 25.13 by analogy, it seems to me that there are solid grounds for believing that the defendant did not previously provide his proper address and even now his new address contained an unfortunate typo. This might not amount to much in isolation but the previous address given also contained an unfortunate typographical error. Mr. Malam makes the point by reference to other documents available on the internet and produced in evidence that there is no consistency in the spelling of the defendant's alleged previous address, Basti Bagirova 2/2.
13. But I decline to place any great reliance on those documents. Much more significant, in my view, is the claimant's evidence that two process servers have been unable to locate that address. I have no confidence that the previous address given was the defendant's true address and even now entertain doubts about his most recent address given the discrepancy to which I have referred in relation to its spelling.
14. Finally, I have regard to the evidence about the attempts to sell the domain name. The defendant has previously denied this in other proceedings outside the jurisdiction but now accepts that attempts have been made to sell the domain name but by persons

who, whilst acknowledged in his defence as his “representatives”, are said not to have been authorised to attempt to sell the domain name.

15. Again, the defendant has not, in my judgment, been acting with good faith in relation to these proceedings and so, for all those reasons, it seems to me appropriate to order security in the lesser amount that I have identified because I do regard this as an unusual and exceptional case.
16. Finally, my order will also include provision for the defendant to provide suitable ID documentation, including his patronymic and address. The defendant accepts that these documents should be provided but attempts to impose terms that would render the provision of this information worthless to the claimant, particularly in terms of enforcement.
17. Given everything that I have already said, it seems to me that there must be certainty about the defendant, his full name and address as this litigation unfolds and I intend to make provision for the inclusion of this information in the final order in the terms sought, but subject also to the undertakings offered by the claimant’s solicitors, as a condition of setting aside.
18. That concludes my judgment.

(For continuation of proceedings: please see separate transcript)

This judgment has been approved by Deputy Master Hansen.