Neutral Citation Number: [2024] EWHC 1415 (Ch)

Case No: BL-2021-001939
BL-2021-002082

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

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Thursday, 11th April 2024

Before:

MR. JUSTICE RAJAH

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Between:

BARCLAYS BANK PLC	**Claimant/ Applicant in the contempt proceedings**
- and -	
(1) SCOTT DYLAN **(2) DAVID SAMUEL ANTROBUS** **(3) JACK MASON**	**Defendants/ Respondents to the contempt proceedings**

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MR. ANDREW DE MESTRE KC and MR. JAMES KNOTT (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimant**

MR. IAN BRIDGE and MS. GURPRIT MATTU (instructed by **Lewis Nedas Law**) for the **First Defendant**

MR. JAMES COUNSELL KC, MR. MICHAEL UBEROI and MS. ANSON CHEUNG (instructed by **Janes Solicitors**) for the **Second and Third Defendants**

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JUDGMENT

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
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MR. JUSTICE RAJAH:

1. I have before me two applications which, in the end, have refined themselves into applications for a short adjournment by the first defendant and by the second and the third defendants. The applications are put on a myriad of bases, including that the claimant's case is unclear, it is unclear what evidence will be deployed or is admissible, that there is no time to prepare and so on. I will say something about some of those points, but I will first recap the chronology.

2. These contempt proceedings were started on 27th February 2023. From shortly thereafter, the first defendant, at least, was represented by a firm of solicitors called Glenville Walker & Partners and was so represented from 6th March 2023 until 11 January 2024. The second and the third defendants who had been instructing Brabners, at the time when the contempt proceedings were served, were effectively unrepresented by solicitors for the entirety of the contempt proceedings.

3. On 2nd June 2023 a consent order was made by Master McQuail which was signed by Glenville Walker & Partners for the first defendant and by the second and third defendants. That order made provision for the filing of evidence. It stated expressly that the defendants had no obligation to give evidence, but if they chose to give evidence, then it provided directions as to how that evidence was to be provided and set out a timetable for the filing of affidavits by the defendants.

4. On 6th September 2023, the defendants having apparently decided that they intended to give evidence and to file evidence, agreed a consent order for an extension of time for that evidence to be provided.

5. On 22nd September 2023, there was a further consent order for an extension of time. This time, the recitals state that Glenville Walker & Partners, on behalf of the first defendant, and the second and third defendants personally, confirmed that they had retained counsel, Alfred Weiss and Majeks Walker, to advise them and represent them at the committal hearing. They confirmed that their counsel would be able to so

represent them if a further extension of time was granted. Mr. Counsell told me that the second defendant says that, notwithstanding the explicit terms of that recital in a consent order which he signed, the contents of the recital are not true and he had not in fact instructed Mr. Majeks Walker.

6. On 22nd December 2023, all the defendants wrote to Barclays saying they were seeking counsels' advice. There was then some correspondence from 3rd January and 5th January in which the first, second and third defendants indicated that they were being quoted significant fees by counsel to deal with the then imminent hearing of the contempt application and indicating that they were contemplating applying for Legal Aid. The second and the third defendants were clear they were applying for Civil Legal Aid and had established that it was available for contempt matters, whereas Mr. Dylan was contemplating raising funds in another way and required a variation of the freezing order, which variation was made.

7. An application was made on 12th January 2024 to Meade J to vacate the trial, which was heard at the first pre-trial review on 17th January 2023. At that hearing, the first Defendant was not represented but did attend remotely, albeit he did not make any submissions. Mr Skeate, of counsel, appeared for the second and third Defendants. Meade J vacated the trial. One of his concerns was the time estimate, but one of the express reasons which he gave for allowing that adjournment was to allow the defendants to get professional representation.

8. On 24th January, Meade J gave further directions. At that hearing, the first defendant was represented by Mr. Angus Gloag of counsel, and the second and third defendants were represented by Mr. Ian Skeate of counsel.

9. Meade J's directions included permission for further evidence to be filed by the second and third defendants in respect of three witnesses which had been identified, Ms. Barreau, Ms Kerkhove and Ms. Chi. A deadline was given for the filing of that

affidavit evidence and that deadline was 14th February 2024. On 14th February 2024, the second and third defendants applied to extend that affidavit deadline to 12th March 2024.

10. On 5th March Lewis Nedas were instructed and came on the record on receipt of a Legal Aid representation order on behalf of the first defendant, and shortly thereafter instructed Mr. Bridge of counsel.

11. On 7th March, the second and third defendants instructed Janes Solicitors to apply for Legal Aid on their behalf and certificates were issued on 11th March 2024. Mr. Livingstone states that his instructions were that the second and third defendants had only recently become aware that they were entitled to non-means tested Legal Aid. Janes immediately instructed Michael Uberoi of counsel to act for the second and third defendant.

12. On 12th March, I extended the affidavit deadline to 15th March 2024, with consequential directions, but as at today, 11th April, nothing has been filed and no application has been made in relation to the proposed affidavits. On 25th March, I gave permission for the second and third defendants to have leading and junior counsel and for the first defendant to have two junior counsel. On that day, a deadline set by Meade J, for the issue of any further applications before the pre-trial review, expired.

13. Today is the pre-trial review. 29th April is the start of a five-day window for a six-day trial, plus two days of reading, to begin.

14. The law is set out in the second and third defendant's skeleton argument at paragraphs 5 and 6. I am not going to repeat it here.

15. A number of points have been raised as to why there should be an adjournment. One of them, which was made quite strongly for most of yesterday, was that no advice had

been given to the defendants, at least the second and third defendants, that they were entitled to Legal Aid. That is simply not correct. The N600 application notices say so in terms which are prescribed by CPR 81. The applications were served on the first to third defendants.

16. Nor is it as if the Defendants had no access to legal advice. The first defendant was represented soon after its receipt and continued to be represented for the best part of a year. The second and third defendant have had access to Direct Access counsel for all of these hearings.

17. In December 2023, the prospect of Legal Aid was raised and canvassed before Meade J as a reason for an adjournment. The second defendant said at the time that his application for Legal Aid was being urgently processed. One of the reasons for the adjournment of the first trial by Meade J, as I said, was to permit all three defendants to get legal representation. In fact, legal representation was not obtained, and solicitors were not instructed, until 5th March and 7th March, as I have explained.

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18. No evidence has been filed by the first defendant to explain why there was no attempt to instruct solicitors between 17th January and 5th March. Mr. Bridge sought to fill this lacuna by giving evidence himself, without any explanation as to why his client has not given any evidence, to say that his client did not know he was entitled to non-means tested Legal Aid, but as soon as he became aware of it he went to solicitors straightaway

19. The second and third defendants have, a few days ago, produced a witness statement by Mr. Antrobus, in which he explains that they, the defendants, were not aware that they were entitled to non-means tested Legal Aid until they were told by Mr. Skeate, counsel, on or around 24th January 2024. So far as an explanation as to why solicitors were not then instructed until 7th March, Mr. Antrobus says that he and

Mr. Mason approached 19 firms in total before finding Janes. Of them, he says ten said they could not do it on Legal Aid, three could not do it for other reasons and six did not respond at all. Apart from those two sentences in his witness statement, no further evidence is given to explain what steps were taken in the intervening period, no identification of the firms approached, no correspondence or e-mails or anything else to corroborate what Mr Antrobus says.

20. I find the lack of evidence and explanation for the delay in instructing solicitors after the adjournment in January unsatisfactory.

21. The other matter which has been raised to justify an adjournment is the assertion that the defendants have not been advised in relation to their right of silence. Once again, the N600 says, in the terms required by CPR 81, that the defendants have a right to silence, that they are not obliged to give evidence and they are not obliged to answer questions. Those applications, as I said, were served on the first and third defendants. The directions order of 2nd June 2023 is explicit, that the defendants do not have to give evidence, but if they choose to do so, provides a timetable for them to do so and they seem to have decided that they wished to avail themselves of that opportunity.

22. Again, it is not as if the Defendants have not had access to legal advice. There are indications in the correspondence and elsewhere that counsel was instructed to advise on responsive evidence by the defendants and reference has been made in the skeleton arguments to the privilege against self-incrimination in the skeleton arguments filed by the second and third defendants' counsel.

23. Mr Counsell and Mr Bridge say that the evidence which has been filed by the Defendants is evidence which perhaps should not be shown to the court until the Defendants have chosen to give evidence or deploy their affidavits and should not have been shown to Meade J. Those affidavits were not put in the bundle before me. The claimant accepts that the filing of affidavit evidence by the defendants does not

mean that the evidence is deployed for the purpose of the trial or that the defendants will give evidence. I do not see how this complaint by the Defendants justifies an adjournment.

24. I was taken to some correspondence in which Eversheds have asked questions of the defendants without advising them of their right of silence, but I was not taken to any response to such correspondence in which the defendants had actually answered those questions.

25. In summary, I do not accept that the defendants were not given advice in relation to the Legal Aid position; I do not accept that they were not given advice, as provided in the N600, in relation to their right of silence and, indeed, the court has given that information in the order of 2nd June.

26. The real point now seems to boil down to this. It will be clear from what I have said that I regard any problems faced by the defendants' legal teams now as ultimately the responsibility of the defendants. It does not seem to me that the claimants bear any significant responsibility for the defendants' failure to apply for and obtain Legal Aid at an earlier stage. It seems to me the new lawyers on the scene take a different view as to how the proceedings should have been conducted before by the defendants and their previous lawyers but, again, that is a matter which is the defendants' responsibility and no one else's.

27. There now are six counsel instructed for three defendants and solicitors who have been instructed since the 5th and 11th March, for a six-day trial with two days of reading in a five-day window due to start on 29th April. I find it very surprising that, in those circumstances, it is being said that solicitors and counsel cannot be ready for that trial, particularly where all six counsel have accepted the briefs for that trial. What has become clear is that Mr. Counsell and Mr. Bridge are saying that they are, as all other appropriately-qualified counsel would be, busy people who have other

obligations and they simply cannot be ready for a trial in three weeks' time. That is surprising, and disappointing. I cannot help feeling that there has been a lack of proper focus by the solicitors in selecting counsel who had the time to be ready for this trial, and by counsel in blithely accepting the briefs when they cannot be ready. If it is the position, as Mr Bridge tells me it is, that there are no suitably qualified counsel who would be able to devote the time to prepare and deal with this trial, then I would have expected that to have been at the forefront of this application for an adjournment and supported by evidence from the solicitors of the efforts they had made to find counsel. Instead this disappointing state of affairs has been dragged out of counsel by my questioning. I nevertheless feel bound to accept what Mr Bridge and Mr Counsell say as their ability to be ready, and the reality is that it is now too late to explore whether new counsel who could be ready in time are available.

28. In those circumstances, it seems to me that if it is possible to find a further date which suits the parties, which can be heard before the end of this term (which for the reasons which I have explained earlier in this hearing, is the final deadline for the completion of this trial), then I would be minded to consider an adjournment of the hearing in two and a half weeks' time. If it is impossible to find a suitable date or if it is not possible to find a date which, in my judgment, is fair to all of the parties, then the trial will continue in two and a half weeks' time. To the extent that the defendants' legal teams now say that they are in difficulties in being ready, I am afraid the responsibility for that, in my judgment, falls on the defendants themselves. They have only themselves to blame.

(For continuation of proceedings: please see separate transcript)

29. The claimant's costs of the application for further evidence will be costs in the application.

30. The application for an adjournment, the application for a stay, both the defendants' applications, costs of today and the costs of yesterday, and the costs thrown away by the adjournment will be paid by the defendants.

31. I will hear from Mr. Bridge and Mr. Counsell as to whether that should be jointly and severally, which is what my inclination would be. It is entirely the doing and the responsibility of the defendants and nobody else that these adjournments are required. The applications for adjournment were presented on a number of fronts, none of which I found persuasive. In the end, the only thing which cut any ice with me is two counsel standing before me, looking me in the eye and saying they cannot be ready, and that, it seems to me, is not to do with the complexity of the case, but by reason of their unavailability to devote the time which is needed to this case. That is not a basis on which, it seems to me, costs can be anything other than costs paid by the defendants.

(For continuation of proceedings: please see separate transcript)

32. I am going to summarily assess the costs in the sum of £59,850. I am not going to make any deduction in respect of the small discrepancy between the charge-out rates of £285 and £278, the Guideline Rate because I think this is a sufficiently weighty case to justify a departure from the Guideline Rates and the departure is *de minimis*.

33. I do not regard the fees for counsel as excessive, bearing in mind the wide-ranging nature of the allegations which were made in support of the adjournments and which has required everyone, including the court, to spend a considerable amount of time considering the merits of them. The time which has been required I think has to be reflected in the brief fee which has been given to counsel.

34. As between the proportion which is borne between counsel and solicitors, I do not think that is disproportionate either, because although the solicitors will have had to

do a lot of work in relation to the bundles, the heavy lifting in regard to skeleton arguments and submissions will have been borne by counsel, so I assess in that sum.

(For continuation of proceedings: please see separate transcript)

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