



Neutral Citation Number: [2022] EWHC 2697 (Comm)

Case No: CL-2022-000048

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT (KBD)**

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

Date: Friday, 21<sup>st</sup> October 2022

Before:

**MR. JUSTICE BUTCHER**  
Remotely via Microsoft Teams

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Between:

(1) COMMERCIAL BANK OF DUBAI PSC  
(2) HORTIN HOLDINGS LIMITED  
(3) WESTDENE INVESTMENT LIMITED  
(4) LODGE HILL LIMITED  
(5) VS 1897 (CAYMAN) LIMITED

**Claimants/  
Respondents**

- and -

MR. ABDALLA JUMA MAJID AL SARI  
MR. MAJID ABDALLA JUMA AL SARI  
MR. MOHAMED ABDALLA JUMA AL SARI  
FAL OIL CO LLC  
INVESTMENT GROUP PRIVATE LIMITED  
IGPL GENERAL TRADING LLC

**Defendants**

- and -

(7) GLOBE INVESTMENT HOLDINGS LIMITED  
(8) MENA INVESTMENT HOLDINGS LIMITED  
(9) MAS CAPITAL HOLDINGS LIMITED

**Defendants/  
Applicants**

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MR. ANTHONY PETO KC and MR. ANDREW TROTTER (instructed by Jones Day  
LLP) for the Claimants/Respondents

MR. NATHAN PILLOW KC and MR. JAMES SHEEHAN (instructed by Quinn Emanuel  
Urquhart & Sullivan UK LLP) for the 7<sup>th</sup> to 9<sup>th</sup> Defendants/Applicants

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**Approved Judgment**

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

1. This has been the hearing of an application by the Seventh to Ninth Defendants for an extension of time and for relief from sanctions to enable them to challenge the court's jurisdiction to determine claims brought against them by the Claimants. Relief from sanction is required because the Seventh to Ninth Defendants filed their acknowledgements of service late. The acknowledgements of service were filed on 19th April 2022. The Seventh to Ninth Defendants have subsequently, on 24th May 2022, filed and served an application to challenge the court's jurisdiction.
2. By way of very brief background, this is a claim brought by the Claimants against a number of Defendants. In relation to the First to Fifth Defendants, it is brought for enforcement of a judgment in a sum of approximately £78 million obtained by the Claimants in Sharjah in relation to credit facilities provided by the First Claimant. The Claimants also bring claims in tort, under section 423 of the Insolvency Act 1986, and for breach of fiduciary duty and dishonest assistance.
3. The Seventh Defendant and the Ninth Defendant are UAE companies. They are owned by the Eighth Defendant, a BVI company. Only some of the Claimants' claims are brought against the Seventh to Ninth Defendants. The claims against them concern, in particular, a judgment given by the Sharjah Court of Appeal in April 2021 in favour of the Seventh Defendant and against the Second to Fourth Claimants.
4. What the Claimants say, in essence, is that the judgment in favour of the Seventh Defendant was procured by fraud on the basis of agreements which the Claimants seek to contend are shams; the purpose of which was to interfere with the Claimants' attempts to enforce its own judgment against the First to Fifth Defendants. The Claimants' claims against the Seventh to Ninth Defendants are claims in tort and under 423 of the Insolvency Act 1986. The Claimants also seek to enjoin the Seventh Defendant from enforcing the judgment in its favour.
5. The Claimants contend, as against the Seventh to Ninth Defendants, that they are, in fact, under the control of the First to Third Defendants, who may be called the Al Saris. The Claimants contend that the judgment in favour of the Seventh Defendant was not legitimately obtained, but was instead part of an attempt by the Seventh to Ninth Defendants to assist the Al Saris in resisting enforcement of the Claimants' own judgment against them.
6. The procedural history, in so far as relevant, can be summarised as follows. The claims were issued on 21st February 2022. On 18th February 2022, the Claimants had obtained relief from Cockerill J, ex parte, including a worldwide freezing order, permission to serve out and permission to serve by alternative means.
7. The Claimants took steps to effect service of the worldwide freezing order and the claim form on 23rd-24th February 2022, and on 11th March 2022 a return date hearing took place before Calver J, at which the worldwide freezing order was continued. The claims against the Seventh to Ninth Defendants were deemed to have been served on 7th March 2022. At the return date hearing, the Seventh to Ninth Defendants were represented by counsel, Mr. Khan, who it appears had been instructed shortly beforehand. On that hearing, he unsuccessfully sought an adjournment.

8. Because of the deemed date of service, the Seventh and Ninth Defendants were required to serve their acknowledgements of service by 29th March 2022, and the Eighth Defendant, being a BVI company, was required to file its acknowledgement of service by 7th April 2022. Had those acknowledgements of service been filed on time, the deadlines for challenging the jurisdiction would have been 26th April 2022 and 5th May 2022 respectively.
9. After the Seventh to Ninth Defendants' current solicitors, Quinn Emmanuel, had come on the record on 19th April 2022, acknowledgements of service were filed on the same day. Also on the same day, Quinn Emmanuel wrote to the Claimants' solicitors, Jones Day, to request an agreement to an extension of time until 24th May 2022 for the Seventh to Ninth Defendants to challenge the jurisdiction. That agreement was not forthcoming. The present application was issued and served on 27th April 2022.
10. On 20th May 2022, the Seventh to Ninth Defendants gave some asset disclosure under the worldwide freezing order and on 24th May 2022, as I have already said, they filed and served their application under CPR Part 11, challenging the jurisdiction of the court.
11. The need for the Seventh to Ninth Defendants to apply for relief from sanctions arises out of the fact that, because the acknowledgements of service were filed late, they were not filed in accordance with Part 10 and thus cannot support an application by the Seventh to Ninth Defendants to challenge the court's jurisdiction under CPR Part 11, absent such relief. So much, as I understand it, is common ground.
12. The principles which the court will apply in relation to an application for relief from sanctions were also not significantly at issue before me. They are well-known. They were set out in *Denton v TH White Limited* [2014] EWCA Civ 906, [2014] 1 WLR 3926. There is a three-stage approach. The first stage involves an assessment of whether the breach was serious or significant, which requires a focus on the particular breach that gave rise to the sanction. The second stage is to consider the reasons for the default. The third stage involves a consideration of all the circumstances of the case. The factors set out in CPR 3.9(1) include the need for litigation to be conducted efficiently and at proportionate cost; and the need for the enforcement of compliance with rules, Practice Directions and orders. Other factors which have been considered in the cases include whether the sanction is proportionate to the breach, the promptness of the application for relief and any prior record of non-compliance.
13. A particular feature of the current application is that the Claimants do not oppose relief from sanction in principle, though they say that is a matter for the court. The Claimants emphasise instead that if relief is granted, it should be subject to certain conditions. None the less, the starting point, as the Claimants correctly say, is that it is a matter for the court as to whether there should be relief, and I turn, therefore, to the question of whether there should be relief by assessing those three stages of the *Denton* approach.
14. The first issue to consider is the seriousness of the default. As to that, the Seventh to Ninth Defendants were late in filing their acknowledgements for service by 12 and 21 days. That is certainly not a trivial breach. It is not as if it were a case in which the deadline was missed by a few hours or a day or two days. I therefore regard it as constituting a serious, non-trivial and significant breach; but, on the other hand, I do not regard it as high in the spectrum of seriousness because of its limited effect on the proceedings. The Claimants did not apply for, nor did they enter judgment in default.

Furthermore, it does not appear to me that the breach has disrupted the progress of the litigation in any significant way.

15. The following matters are of some significance in that regard. The First, Second and Fourth to Sixth Defendants, who have been called on this application the 'CRS Defendants' because they are all represented by Charles Russell Speechlys, also challenge the court's jurisdiction in respect of many of the claims against them and they have issued an in-time application under CPR Part 11. That application has been listed to be heard, together with the Seventh to Ninth Defendants' application, if relief is granted by me on this occasion, for two days, commencing on 13th June 2023.
16. The Claimants have issued an application for summary judgment against the First to Fifth Defendants on their enforcement claim. There are further applications for the costs of the injunction hearings before Cockerill J and Calver J. Those applications have been listed together for one day on 4th October 2023. The Claimants have also issued an application seeking the imposition of sanctions for alleged contempts of court against each of the Defendants, and that application has been listed to be heard over one and a half days, commencing on 5th December 2023. As I understand it, there had been a dispute between the parties as to the appropriate listing of these various applications, which was resolved by Cockerill J to the effect that the applications should be heard in the order which I have just set out. That was in accordance with the submissions of the CRS Defendants and the Seventh to Ninth Defendants who had contended that the applications made by the Claimants should not be listed until after the determination of the jurisdiction challenge. It will be apparent that the timings of those matters have not been affected in any significant fashion by the late filing of the Seventh to Ninth Defendants' acknowledgements of service.
17. Moreover, it seems to me that Mr. Pillow KC was right to say that a delay of 12 and 21 days respectively must be seen in the context of proceedings in which pleadings will not close until some time in late-2023, at the earliest, for reasons which are independent of the timing of the Seventh to Ninth Defendants' acknowledgements of service.
18. For those reasons, I consider that the delay has caused no real disruption of the action or prejudice to the Claimants. This does seem to me to indicate that the breach, while being significant or serious, is not at the upper end of the spectrum of seriousness or significance.
19. I therefore turn to the second stage of the *Denton* approach, and that is the question of considering the reasons for the default. In this regard, the Seventh to Ninth Defendants are, as I say, UAE and BVI companies. They say that they act through a UAE legal representative, Mr. Saif, who is said to have a delegated authority from a UAE-based director of each of the Seventh to Ninth Defendants, Mr. Almheiri. They say that they do not conduct any business in England and that they have never been involved in English proceedings. It appears that prior to instructing Quinn Emmanuel, they were represented by Abdo Rafiq & Partners, a UAE law firm with a London office.
20. The evidence which has been put in on behalf of the Seventh to Ninth Defendants is to the effect that it was because of their lack of familiarity with the processes and procedures of the English court that they did not initially realise that its orders were binding on them and for that reason they did not engage earlier and that their acknowledgements of service were not filed until 19th April 2022. It is said on their

behalf that they now appreciate that they were mistaken in their initial understanding and that they have apologised for this; and it is also said that Mr. Almheiri has added his own personal apology in the context of what the Seventh to Ninth Defendants say was their related failure to comply on time with the disclosure requirements under the worldwide freezing order.

21. That explanation is not, in my view, something which can be said to constitute a good reason for non-compliance, as that concept is ordinarily understood. What the Claimants say about it, however, is that it is positively a bad reason in that it is a misleading account. The Claimants say that the Seventh to Ninth Defendants are controlled by the Al Saris and that they, the Al Saris, are very familiar with English litigation. The Claimants further say that the Seventh to Ninth Defendants must have been advised prior to Quinn Emmanuel being instructed that they were bound to comply with the orders of the English court, including in relation to the filing of acknowledgements of service.
22. In so far as it was the Claimants' contention, as part of that case, that the Seventh to Ninth Defendants did not serve acknowledgements of service on time in order to seek to show they were separate and independent of the Al Saris, I regarded that as inherently implausible. If the Seventh to Ninth Defendants had filed their acknowledgements of service on time, they would simply have been complying with the CPR. That would not have given rise to an inference that they were controlled by the Al Saris. It is difficult to infer that the Seventh to Ninth Defendants took a deliberate decision to file their acknowledgements of service late to avoid such an inference, given that doing so left them open to being precluded from challenging the jurisdiction and also to the entry of a default judgment and an inability to defend the Claimants' claim.
23. More generally, and while I accept fully that there is a good arguable case as to the control by the Al Saris of the Seventh to Ninth Defendants, I do not consider that I can resolve or take a view for the purposes of the present hearing, on the evidence before me, as to the degree of any such control. Nor do I think I can take a view that what is said in the Seventh to Ninth Defendants' evidence is incorrect as to the reasons why the acknowledgements of service were not filed on time. If it subsequently emerges that what I have been told is untruthful, then I would consider that there may well be sanctions as a result, but I do not consider, for the purposes of this application, that I can take a view in relation to that.
24. I accordingly proceed on the basis that the reason which has been put forward is not an objectively good reason, but that a reason has been given which, if true, does provide some excuse for what occurred.
25. I therefore turn to the third of the pages in the *Denton* approach, which is a consideration of all the circumstances of the case. The first consideration appears to me to be that the delay in the filing of the acknowledgements of service has not caused the Claimants prejudice; nor has it had any significant impact on the progress of the proceedings. The question, as I have already said, relates to the impact of the breach for which the sanction is imposed and, as I have already said, given the timing of the various matters in this litigation, it does not appear to me that the late filing of acknowledgement of service has had any impact on them.

26. The second consideration is the need to enforce compliance with the rules and directions of the court. I accept, of course, that it is important that there should be compliance. That is a factor which arises in every application for relief from sanctions. It does not appear to me, however, that, particularly in light of the first point which I have mentioned, the need to enforce compliance requires the refusal of an extension in this case. The rules, as has been said, are a handmaid of justice, not its mistress.
27. Thirdly, I consider that the refusal of an extension would not be a proportionate response to the default. What is in issue here, critically, is whether the Seventh to Ninth Defendants should be able to challenge the jurisdiction of the court. The basis for the Seventh to Ninth Defendants' jurisdiction challenge has been summarised in Mr. Khatoun's second witness statement. The Seventh to Ninth Defendants seek to contend that there is no serious issue to be tried because the Claimants' claims against them are governed by UAE law, while the Claimants have pleaded claims only in English law; and, secondly, the Seventh to Ninth Defendants say that, in any event, the Claimants cannot show that England is clearly and distinctly the appropriate forum given that, as the Seventh to Ninth Defendants say, the dispute most naturally falls for determination in the UAE.
28. Of course, I cannot go into the merits of that application, but it does seem to me that the material in Khatoun 2 shows that the Seventh to Ninth Defendants have at least have a prima facie basis for challenging the court's jurisdiction.
29. On the other hand, there seems to me a lack of any real corresponding benefit to the Claimants in the Defendants not being able to advance their challenge to the jurisdiction. The CRS Defendants' jurisdiction challenge will proceed, in any event, in June 2023, and the case as a whole will not progress until its determination. It is the Claimants' claims against the CRS Defendants which seem to be the principal claims, which is a point illustrated by what I understand from the Seventh to Ninth Defendants' skeleton argument to be a disparity in the respective values of the claims between £78 million claimed against the CRS Defendants and £400,000 claimed against the Seventh to Ninth Defendants.
30. Fourthly, it is relevant to consider the promptitude or otherwise with which relief was sought. In this case, the Seventh to Ninth Defendants sought relief promptly upon the filing of their acknowledgements of service on 19th April 2021, and sought consent of the Claimants for an extension of time on that date and issued their application on 27th April 2022.
31. Fifthly, while the Claimants have complained of other aspects of non-compliance with orders of the court, in particular of non-compliance by the Seventh to Ninth Defendants with the worldwide freezing order, I do not consider that such non-compliance constitutes a matter which over-weighs the balance of the points which I have already considered in favour of a grant of relief.
32. As to the delay in compliance with the worldwide freezing order, the reasons which the Seventh to Ninth Defendants say explains that are, in effect, the same as they rely on for non-service or non-filing of the acknowledgements of service in time. As I have said, I do not consider that I can say, on the present application, that such reasons are false.

33. It also seems to me that the complaints made by the Claimants about the timing of the Seventh to Ninth Defendants' asset disclosure are, logically, different from the issue of the service of the acknowledgements of service. It does not seem to me that it would be proportionate for a delay in providing asset disclosure to mean that the Seventh to Ninth Defendants are debarred from challenging the court's jurisdiction on the substantive claim.
34. For those reasons, it seems to me that the circumstances of the case and, in particular, the fact that no prejudice has been caused to the Claimants and no disruption caused to the proceedings, and also the fact that it would be, in my view, disproportionate for the Seventh to Ninth Defendants to be deprived of their ability to challenge the jurisdiction by reason of the breach, indicate that an extension of time ought to be allowed.
35. The Claimants' focus, as I have already said, was not to say that there should not be relief from sanction, but to say that it should be subject to conditions. Those conditions can be summarised as, first of all, that there should be full disclosure of the Seventh to Ninth Defendants' ultimate beneficial owners and controllers; secondly, there should be compliance by the Seventh to Ninth Defendants with the obligations that they are under pursuant to the worldwide freezing order and the continuation order of Calver J; and thirdly, the Seventh to Ninth Defendants should pay various costs which have been incurred by the Claimants.
36. As to those proposed conditions, in relation to disclosure of documents going to the Seventh to Ninth Defendants' ultimate beneficial owners and controllers, as Mr. Pillow KC has said, the Seventh to Ninth Defendants have already answered questions in relation to this, but the Claimants' request has been modified to a disclosure of documents.
37. I do not consider that is an appropriate condition to be attached to an extension of time. I have to determine the application for an extension of time on the basis of the material which has been presented to me on this hearing. I do not consider that I should order what would, in effect, be disclosure relevant to this application as a condition of the grant of an extension of time. If I am prepared to grant an extension of time without this material, then I consider that it would be inappropriate to then add a condition of such disclosure to the order.
38. In so far as this material relates not to the merits of the present application, but is really being sought for the purposes of going to the underlying merits, then that would not be appropriately ordered in circumstances where, subject to the outcome of today's application, the jurisdiction is being challenged by the Seventh to Ninth Defendants.
39. As to the second condition, the Seventh to Ninth Defendants accept that they have not complied in full with paragraph (6) of the worldwide freezing order. That has been explained today as being that the non-compliance was with the part of the continuation order which ordered the Seventh to Ninth Defendants to instruct third parties to deliver up 'assets documents', as defined, directly to the Claimants' solicitors. That bites on bank statements held by the Ninth Defendant's banks. It is said that the Ninth Defendant has a concern that giving such instructions may be unlawful under UAE law, but that Mr. Almheiri had instructed the banks to provide copies of the bank statements to him and the Ninth Defendant disclosed them to the Claimants on 30th June 2022. Accordingly, the Seventh to Ninth Defendants say that although they have not complied

with all the terms of paragraph (6) of the continuation order, nevertheless the Claimants have the documents which they would have received under that paragraph, had it been complied with directly.

40. While it might be said that I should make an order requiring a full compliance with paragraph (6), I have ultimately been persuaded by Mr. Pillow KC that that would not be appropriate on this application, because the reasons for the non-compliance are raised in the contempt proceedings and that were I to require compliance as a condition of this extension, that would trench upon that application
41. Even more importantly than that point, it appears to me that the question of whether there should be compliance with paragraph (6) of the worldwide freezing order is not appropriately linked to the question of whether there should be an extension of time for service of the acknowledgments of service to permit the challenge to the jurisdiction. Matters as to whether there should be a sanction for non-compliance with paragraph (6) and also, perhaps, questions as to whether there should be an application to vary paragraph (6) of the continuation order are appropriately raised in relation to the worldwide freezing order itself and the application for committal proceedings brought in respect of it, not in relation to the application for an extension of time in relation to acknowledgements of service in order to allow a challenge to the jurisdiction. Therefore, I have been persuaded that it is not appropriate to make the second condition either.
42. As to the third condition, again, I am not going to make that a condition in relation to the extension of time, but of course the question of the costs of the application is one with which I will have to deal now.
43. Accordingly, on the basis of those reasons, I will grant the extension of time. I do not propose to add any of the conditions, but I will now deal with the question of costs.

*(For further proceedings: please see separate transcript)*

44. I consider that, clearly, the Seventh to Ninth Defendants had to come to court to get the extension of time. It is also the case that much of the material which needed to be investigated needed to be investigated for the purposes of considering the seriousness of the breach and as to whether the explanation given was a good reason. I consider, therefore, that the Claimants should have at least some of their costs. I do take the point from Mr. Pillow KC that the attachment of the conditions which the Claimants sought has added to the costs and it has not escaped me that those conditions were changed during the course of the application. It seems to me, therefore, that the appropriate order in this case is that the Claimants should have half their costs.

*(For further proceedings: please see separate transcript)*

45. I am going to summarily assess these costs at £45,000. Rates to some extent exceed the guideline rates for solicitors and the counsels' fees are somewhat large for this application. So £45,000.

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