Neutral Citation Number: [2024] EWHC 524 (KB)

Case No. KB-2023-BHM-000082

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil & Family Justice Centre
Bull Street, Birmingham B4 6DR

Date: 8 March 2024

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- -

Between :

RICHARD ACHILLE

Claimant

- and -

(1) PHILIP CALCUTT
(2) JANE CARRINGTON

Defendants

- -

Richard Achille appeared **in person**
There being **no appearance** for the **Defendants**

Hearing date: 29 February 2024

- -

Approved judgment (No. 2)

(Permission to appeal)

This judgment was handed down remotely on 8 March 2024
by circulation to the parties and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. By these proceedings, Richard Achille seeks to commit to prison the then chairman, Philip Calcutt, and the then secretary, Jane Carrington, of the Moseley Tennis Club for alleged contempt of court arising out of their handling of issues that led to his suspension and ultimately expulsion from the club in 2014. Specifically, Mr Achille alleges that they were each in contempt of court in that they "doctored" emails received by the club raising concerns as to Mr Achille's conduct at a junior tournament on 23 April 2014 and that they falsely asserted that the Lawn Tennis Association had advised that Mr Achille's conduct should be reported to the police.

2. By my judgment handed down on 19 February 2024 and reported at [2024] EWHC 348 (KB), I refused Mr Achille's application for permission to bring these contempt proceedings and dismissed his claim. Further, I certified that both the proceedings and the application for permission to bring the claim pursuant to r.81.3(5) of the Civil Procedure Rules 1998 were totally without merit. Mr Achille now seeks permission to appeal.

PERMISSION TO APPEAL

3. Mr Achille clarified in his helpful oral submissions that he does not seek permission to appeal in respect of the dismissal of the contempt claim against Ms Carrington or in respect of allegations 6 and 9 against Mr Calcutt. Accordingly, his application for permission to appeal is limited to challenging the dismissal of the contempt claim against Mr Calcutt upon allegations 2 and 3.

4. Mr Achille seeks to argue three grounds of appeal:

   4.1 First, he argues that I fell into procedural error in failing to consider his "amended" affidavit evidence.

   4.2 Secondly, he argues that I was wrong to find that he had failed to establish a strong prima facie case against Mr Calcutt on allegations 2 and 3.

   4.3 Thirdly, he argues that I should have concluded that the public interest would be served by allowing these proceedings to be brought.

THE PROCEDURAL GROUND

5. Mr Achille argues in his written submissions that, having given permission to amend the contempt claim, the court erred in not considering the amendment to his affidavit evidence in accordance with the principles set out in Denton v. TH White Ltd [2014] ESCA Civ 906, [2014] 1 W.L.R. 3926: Submissions, paras 8-11.

6. For the reasons set out at [4]-[7] of my judgment, Mr Achille was wholly successful in his application to amend his contempt claim. There was no formal application before me to "amend" his earlier affidavit evidence although Mr Achille referred, at paragraph 39 of his skeleton argument dated 27 November 2023, to the alleged need for leave to make amendments to his affidavit and for evidence to be submitted to the court.

7. At paragraph 40 of the same skeleton argument, Mr Achille argued:

> "C had two meetings in the previous year 2013 with the defendants. At these meetings, discussions ventured on defamation, as C was a trainer, and networking could happen at the club. Richard Hughes was perturbed about the thought of training happening at the club. They asked that it be limited to just networking, a natural part of a club setting. D had already been aware of C talking about defamation effects by other members in 2013."

8. Mr Achille relied on this passage at the hearing on 29 November in seeking to establish the requisite intention to interfere with the administration of justice (as to which see my judgment at [23.1]). There was then brief discussion as to whether this was in evidence during which Mr Achille correctly pointed out that, somewhat unconventionally, the skeleton argument had been verified by a statement of truth of the same date that referred to it as a witness statement.

9. Mr Achille now argues that the court should have considered whether to give relief from sanctions pursuant to r.3.9 and the Denton principles. He cites the decision of the Court of Appeal in Park v. Hadi [2022] EWCA Civ 581, [2022] 4 W.L.R. 61 and submits that the court should have considered his application for relief from sanctions even in the absence of a written application.

10. While a party might formally amend a statement of case, one does not ordinarily talk of amending the evidence. Rather any error or ambiguity is simply corrected or clarified by making a further affidavit or witness statement. Equally, any new point arising out of some other development (here service of the defence in claim KB-2023-BHM-000211) may be responded to by further evidence. Should such further evidence be served late, permission might be required to rely upon it. The Denton principles can sometimes be engaged where a party seeks to rely on late evidence served in breach of the court's directions.

11. Of course, written evidence in support of a contempt application must be given by affidavit: r.81.4(1). Nevertheless, whether referred to or not in my first judgment, I confirm that I took into account all of the evidence put before the court in November including the arguments and evidence in Mr Achille's skeleton argument. I did so without regard to the fact that, had permission been granted, there would have been a need to regularise the evidence before the court.

12. In any event, I do not consider that it is properly arguable that the matters referred to at paragraph 40 of the skeleton argument undermine the findings in my earlier judgment.

STRONG PRIMA FACIE CASE

13. Two separate evidential matters are relied upon in support of this ground. First, Mr Achille now seeks to go further in respect of events in 2013 and provides yet further

evidence at paragraphs 12-15 of his written submissions. He argues that in 2013 unidentified club members rallied around a white man, who I will refer to as EF, who had had sex with a black woman, who I will refer to as GH, when she was drunk and possibly too intoxicated to give her consent. Mr Achille says that he became involved in supporting the woman and that he brought up the subject of defamation in a meeting in 2013 which Mr Calcutt attended.

14. Mr Achille argues this ground in a document that is again confirmed with a statement of truth. There was some material before me about EF in November. He was, for example, referred to in Mr Achille's 2014 Particulars of Claim in claim number A90BM260 against the club. In so far as Mr Achille now asks the court to take into account the additional information in his February submissions that is, however, fresh evidence and is not therefore admissible upon this appeal unless Mr Achille can first satisfy the appeal court that it should give permission to allow him to adduce fresh evidence that was not before me pursuant to r.52.21(2). It is not for the lower court to determine whether the appeal court should exceptionally entertain fresh evidence in this case and accordingly it is not appropriate to grant permission on the basis of the fresh evidence. In any event, I observe that Mr Achille has not sought to explain why the fresh evidence, which with reasonable diligence would plainly have been available to him at the time of the hearings last November, was not deployed before me then. Equally he has not satisfied me that it is properly arguable that such fresh evidence would have affected my assessment of the strength of Mr Achille's case.

15. Secondly, Mr Achille argues that I was wrong to infer that the Word document containing extracts from the emails was created for the committee. Specifically, he refers me to paragraphs 16(3) and 34(5) of the Defence filed in claim KB-2023-BHM-000211:

    15.1 At paragraph 16(3), these defendants and others pleaded:

    > "[Mr Calcutt] subsequently forwarded copies of the First Email and the Second Email to the Committee on 25.4.14."

    15.2 At paragraph 34(5), they then pleaded:

    > "[Mr Calcutt's] intention was to provide [Mr Achille] with the essence of the complaints that had been made about his behaviour at the Tournament whilst seeking to avoid [his] being offended by the terms in which those complaints were raised, given [Mr Calcutt's] knowledge as to how [Mr Achille] had reacted to complaints being made about his behaviour at [the club] in the past. [Mr Calcutt] was also concerned to protect the identity of [CD] who had made complaints about [Mr Achille] and the identity of Tim Linton who had passed on the complaint he had received from [Mr Haddleton] to the Committee."

16. Further, Mr Achille argues that my certification that his contempt claim was totally without merit was only made possible by the "fabrication of Mr Calcutt's intentions of summarising for the committee."

17. The evidence now relied on is not of course contained in an affidavit as required by the rules. Nevertheless, I accept that, in view of the passages in the 2023 Defence, it is properly arguable that I was wrong:

    17.1 to draw the inference at [50] that Mr Calcutt made the amendments when summarising the position for the committee and with the purpose of focusing on the real issues raised; and

    17.2 to draw the further inference, at [52.3], that the Word document was prepared for the committee.

18. Further, on the basis of the defendants' own pleaded case in the 2023 action, it is properly arguable that I ought to have accepted that the amendments were made when collating the two emails for provision to Mr Achille.

19. Nevertheless, despite my invitation, Mr Achille has not adequately addressed my finding at [52.4] that, even if I was wrong to draw such inferences in the defendants' favour (as I now accept is properly arguable), he has wholly failed to establish a strong prima facie case that Mr Calcutt amended the emails and provided them to him with the intention of bringing about a state of affairs which, objectively construed, amounted to an interference with the administration of justice. Even if Mr Achille were able to surmount that hurdle, he would also have to succeed in challenging my findings that the public interest would not be served by allowing these committal proceedings to be brought; that the proceedings are disproportionate; and that they are not brought in accordance with the overriding objective.

THE PUBLIC INTEREST

20. Mr Achille argues that refusing permission unduly interferes with his right to protect his reputation and his human rights. The difficulty with that submission is that defamation proceedings are the proper vehicle to protect a claimant's reputation. The protection of reputation is not the focus of committal proceedings.

21. Despite my invitation, Mr Achille has not engaged with my reasoning at [55] and I am not satisfied that it is arguable that I was wrong to conclude that these committal proceedings are not in the public interest. Further, even if I am wrong on the question of public interest, Mr Achille would also have to succeed in challenging my findings that he has failed to establish a strong prima facie case; that the proceedings are disproportionate; and that they are not brought in accordance with the overriding objective.

OUTCOME

22. Accordingly, I refuse permission to appeal.

TIME FOR APPEALING

23. The parties have jointly asked me to adjourn the questions of costs and whether the court should make a civil restraint order so that they can conclude their current without-prejudice discussions. Those matters are listed for hearing on 14 June 2024. Mr Achille accepts that he could lodge an appeal now but argues that it is appropriate to extend time until 21 or 28 days after the final resolution of those issues such that any further appeal points that might arise from my eventual order on costs or the making of a civil restraint order can be taken together with his challenge to my February judgment in a single appeal.

24. I disagree. Parliament has reflected the desirability of achieving finality by providing that appeals must be brought within 21 days of the order of the lower court save where the lower court makes a contrary order pursuant to r.52.12 or the appeal court extends time pursuant to r.52.15. While it may be in the interests of justice to extend time where a litigant genuinely requires a longer period to formulate his or her appeal, it is not in my judgment appropriate for the lower court to order a substantial extension simply in anticipation that there might be further appeals from decisions upon issues which are not to be argued until almost 4 months after the court's order. There are therefore no proper grounds for granting a substantial time for appealing extending into July 2024.

25. I do, however, accept Mr Achille's fallback submission that the court should direct that the time for appealing should run to 22 March 2024, being the date 14 days after the handing down of this judgment.