CFI 020/2014 GFH Capital Limited v David Lawrence Haigh

Claim No: CFI-020-2014

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE
BEFORE JUSTICE SIR DAVID STEEL
BETWEEN

GFH CAPITAL LIMITED

Claimant

and

DAVID LAWRENCE HAIGH

Defendant

ORDER OF JUSTICE SIR DAVID STEEL

UPON hearing Counsel for the Claimant and Counsel for the Defendant at a Progress Monitoring Hearing on 12 May 2015
AND UPON handing down the ruling attached as reasons to this Order on 12 May 2015
AND UPON reading the relevant material in the case file
IT IS HEREBY ORDERED THAT:
1. The amount of GBP 40,000 be released to the Defendant for the purpose of preparing for and dealing with the Claimant's immediate judgment application dated 17 March 2015.
2. The amount of AED 35,000 be released to Nasser Malalla towards representation of the Defendant in the criminal proceedings over the next month.
REASONS:
1. The action in which this procedural hearing has taken place was initiated by a Claim Form in May 2014. The nature of that claim is that the Claimant contends that their former employee, Mr Haigh, defrauded them of something in the region of USD 5 million by procuring the preparation of false invoices against which payments by the Claimant were made, not to the third parties which appeared to be the potential beneficiaries of the invoices but into various bank accounts of Mr Haigh.
2. It is in fact common ground in these proceedings that the relevant invoices were bogus and that the monies paid against them did indeed go into Mr Haigh's bank accounts. That is now admitted. What appears to be the Defence advanced by Mr Haigh is that these arrangements were simply a convenient device for paying his salary and bonuses and otherwise accounting for expenses that he had incurred on the company's behalf.
3. Not perhaps surprisingly, the Claimant made an application for a Freezing Order against the assets of Mr Haigh up to USD 5 million. That Freezing Order was duly made by the Deputy Chief Justice Sir John Chadwick on 3 June 2014. By necessary inference the Deputy Chief Justice concluded that the Claimants had a good arguable case on the merits and equally a good arguable case on the potential risk of disposal of the assets in the absence of a Freezing Order.
4. There was a return hearing about two weeks later, on 17 June 2014. No challenge to the order was made nor since. Mr Haigh was and remains in custody. The DCJ was told that Mr Haigh had been granted bail by the prosecutor but only on condition that he lodge a bail bond of AED 23 million, in the region of USD 5 or 5.5 million. At that stage, the Freezing Order was varied to enable Mr Haigh to apply to fund a bail bond by using

the frozen funds. In fact, no such application has ever been made. Perhaps that's not surprising, since Mr Haigh's disclosed assets, a topic to which I will return, are very substantially less than AED 23 million.

5. In September 2014 there was the first of a series of applications to vary the Freezing Order, both in respect of personal expenses which Mr Haigh said he required and in relation to legal expenses. At the September hearing, the Claimant conceded that despite the fact that they were asserting a proprietary interest in almost all Mr Haigh's assets other than a flat in Dubai and a car, they were minded to allow the Defendant's solicitors, Messrs Stephenson Harwood, to use a sum of GBP 200,000 by way of legal expenses. That GBP 200,000, as I understand it, was part of a sum of something like GBP 900,000 in a solicitors account in England. The source of those funds was the return of a loan made by Mr Haigh or a company associated with him to Leeds United, which Leeds United had repaid. It was the Claimant's case that those funds were the proceeds of his fraud and that therefore they were entitled to assert a proprietary interest in the monies, but despite that assertion they agreed to allow Mr Haigh to have this contribution towards his legal expenses. This variation was agreed by the parties.

6. It was the expectation of the Claimants and the Court that that money would be used to forward the Defence of the fraud claim. Only very recently has any indication been given as to how the money was in fact deployed. In Mr Chandrasekera's Eighth Witness Statement at paragraph 3.2 he sets out the recipients of the money and the sums expended. Included was payment of part of the fees of Mr Haigh's local Counsel in the criminal proceedings as well as contribution towards translation costs in those same proceedings. Monies were also transferred to handwriting experts, PricewaterhouseCoopers and various other third parties. The only monies retained by Stephenson Harwood and London Counsel totalled GBP 100,000.

7. In October 2014 Mr Haigh issued what we call the share claim in this jurisdiction. This was the first of a plethora of proceedings, both civil and criminal, commenced by Mr Haigh both here and in London. Notably at about this time the originals of the false invoices were furnished for examination by experts acting for Mr Haigh. In the result, on 15 October 2014, a handwriting expert who had presumably been retained with the benefit of the monies that had been made available in September reported to Mr Haigh and those advising him that various of those documents were signed with pen and ink by Mr Haigh himself. I will come back to that point in just a moment.

8. In December 2014, Mr Haigh made a further application to vary the Freezing Order. Again, the application was partly directed to his living expenses but for present purposes more directed to his legal expenses. The sum sought was GBP600,000. The application was said to be extremely urgent, so much so that it was necessary for a hearing to be heard on Christmas Eve. The application was supported by a report from PwC and a large number of other documents. But when the Court, presided over by H.E. Justice Omar Al Muhairi, held that the application was not urgent, it was simply withdrawn.

9. A couple of days earlier, Mr Haigh had filed a Defence, which is the present Defence in these proceedings, and that Defence asserts that he played no part at all in the creation of the false documents and accused unnamed persons within GFH Capital for having done so. Unhappily, it exhibited an expert report. Unhappily firstly in the sense that there was no business for it to exhibit an expert report, but even more unhappily that those drafting it chose to append to it an earlier draft preliminary report to that which was provided in October. It contained no reference to the fact that some of the signatures were original. All it did was to confirm that there were some documents on which a photocopied signature had been transposed.

10. On 12 February 2015, Mr Haigh issued a further application to vary the Freezing Order. Again, it focussed on legal expenses. The sum originally sought was an astonishing GBP 2.7 million. This demand was reduced at the hearing to GBP 550,000. Even that sum (and this is common ground) amounted almost to the entirety of the assets which Mr Haigh has disclosed. That application was refused for reasons set out in a Judgment of mine handed down on 24 March 2015. The Judgment dealt with the fact that concern was being expressed as

to whether in the absence of payment of some part of the legal fees, there was a risk that Mr Haigh would be left without legal representation. But the Court formed the view that Mr Haigh appeared to have no difficulty in persuading lawyers to act for him on a pro bono and/or credit basis because even by that stage a liability running to well over GBP 1.5 million had already been incurred. Furthermore there was no evidence before the Court of any threat by any of the legal representative that any failure to make a contribution would lead to withdrawal of representation. In any event, as it struck the Court, the contribution to the incurred liability was going to be so modest that it was unlikely that that of itself would encourage anybody to continue representation when it was estimated that the further costs that would be involved in the litigation for which no claim was being advanced would be almost the same sum yet again.

11. On 8 April 2015, Mr Haigh lodged an application for permission to appeal that decision. He put forward the explanation that he was not going to prosecute it at that stage as he did not have funds, even to pay the Court fee and he sought, as I understand it, permission from the Chief Justice for that fee to be waived. But matters were overtaken when yet another application was made to vary the Freezing Order about 10 days later.

12. I will refer to the outcome of that in a moment. But in the meantime, on 17 March 2015, the Claimant had issued an application for immediate judgment and they filed with it a substantial document setting out their exposition as to why they said the content of the Defence could not possibly afford a valid Defence. The Defendant's response to that application was due to be filed in early April but there was then an application for an extension of time, again on the basis that, given that a further application for variation was on the cards, they would not or could not proceed with preparing such a document absent a release of funds from the Freezing Order. In fact, Mr Haigh was ordered nonetheless to provide his response to that application on 23 April, but did not do so.

13. The fourth variation application was by and large simply a repetition of the third. The court refused that application for the reasons set out in a Ruling of mine dated 3 May 2015. In short the Court refused once again to release monies in respect of incurred legal expenses but indicated that it might be possible, and no more than that, that some monies might be released in respect of future expenses given the change of circumstance relied upon by Mr Haigh, namely a unanimous and concurrent indication from all the legal and other representatives that they would do no more work for him.

14. As a result of that indication and the anxiety of the court to impose some discipline on the expenditure of legal costs in the range of proceedings that had been instituted, this Progress Monitoring Hearing was set in motion. In the run up to it, Mr Haigh's solicitors took out an application to come off the record on the basis that they were no longer acting for Mr Haigh but sought to invite the Court to foreshadow that application with yet a further application to vary the Freezing Order which, as it is put by Mr Haigh, if refused, would lead to Messrs Stephenson Harwood coming off the record. It is that threat which is used by Mr Haigh to urge the Court to release funds totalling £550,000 as part payment of future costs in this action.

15. I should add this. Concurrent with these civil proceedings there are criminal proceedings on foot in which Mr Haigh is or at least was separately represented by local Counsel Messrs Nasser Malalla. They too had been insisting on full payment of all their outstanding fees via the applications filed by Messrs Stephenson Harwood. When my Ruling of 3 May 2015 emerged, Messrs Nasser Malalla in due course wrote to the Court on 10 May 2015 putting forward the proposal that a contribution should be made to cover the costs yet to be incurred over the next month or so in the total sum of AED 100,000.

16. Mr Chandrasekera, who has presented the Defendant's case skilfully although not himself an advocate, but in his capacity as a Partner at Stephenson Harwood here in Dubai, urges me to take steps to release monies for three purposes for the further prosecution of the Defence to the fraud claim. He seeks monies to pay for an amendment to the existing Defence, he seeks monies to prepare an answer to the Claimant's

immediate judgment claim and he seeks monies to fund a challenge to the Freezing Orders both here and in England. He is asking, in effect, for something in the region of GBP 150,000 for each of those activities. Quite where those figures come from remains, if I may say so, wholly obscure. Again it cannot help but be observed that the monies that are to be expended on these various pre-trial matters if the application were to succeed would consume almost all of the assets which Mr Haigh has disclosed. Bearing in mind that there are a whole range of other proceedings which Mr Haigh has instituted in addition to the share claim, the commercial realism of the conduct of these proceedings when viewed from the perspective of the Defendant remain wholly obscure.

17. I start by dealing with the application to expend GBP 250,000 or more on seeking to set aside the Freezing Orders. It must be borne in mind that we are now a year after they were granted. There is no challenge to the fact that the Claimants have a good arguable case, and despite Mr Chandrasekera's assertion to the contrary in his Eighth Witness Statement, there is no challenge to the proposition that the Claimants have a good arguable case that they have a proprietary interest in almost all the assets that Mr Haigh has revealed. But in any event, as I understand it, it is not suggested by the Defendant that there is any basis relating to the merits, the risks of dissipation or the proprietary nature of the claim which would be put forward by way of challenge to the orders. What Mr Chandrasekera is asking for is monies to fund a challenge to the Freezing Orders on the basis that there was at the time they were obtained from the Deputy Chief Justice a material non-disclosure. The nature, as I understand it, of the material non-disclosure was the fact that Mr Haigh complains that he was induced to come here on false pretences in order to talk about a job and when he arrived, at the instigation of the Claimant, he was arrested and imprisoned. The difficulty, it seems to me, from the Defendant's point of view is that this is a factor which has been of course in existence both at the time of the original application, at the time when the interparties hearing took place and at the time when the application for a revision of the Order was made in September. Yet there was not a whisper of a suggestion that there had been material non-disclosure. Perhaps that's not surprising since even the initial hearing was ex parte on notice, so if there was anything in this point no doubt the Judge would have had his attention drawn to it by the Defendant's own legal representatives.

18. In any event, when I heard the application in September 2014, I was under no illusion that Mr Haigh had this complaint about the way in which he had been persuaded to come to Dubai. If that is right there had already been disclosure of this point. It seems to me an application to set aside the Orders many months later after a range of interparties hearings borders on the hopeless. Thus I would not be minded to furnish a single penny towards funding any such application.

19. Now, what about the other two applications. Once again, as I've indicated, what is suggested is that GBP 150,000 should be released in order to pay for the costs of amending the Defence and another GBP 150,000 to prepare material in defence of the immediate judgment application. It is fair to say that these figures were only extracted from Mr Chandrasekera like a tooth during the course of the hearing. There is not a mention of it in any part of his Eighth Witness Statement. Rather startling, what is in his Witness Statement is an indication of what he has been told by another firm, namely Messrs Olswang, as to what they would want in order to, for instance, draft an amended defence and seek permission to amend. The figures are eye watering. Solicitors: GBP 165,000, Counsel: GBP 94,000, disbursements: GBP 8,000 – total: GBP 268,825. Even allowing for the fact that Messrs Olswang would be coming to the case afresh, these figures border on the absurd. They are put forward, it seems to me, in terrorem. Messrs Olswang are not quite so greedy when it comes to considering the cost of filing evidence to the immediate judgment claim and indeed attending the hearing. But they still ask for GBP 204,000, made up of GBP 90,000 each for Counsel and solicitors.

20. Now, taking the application for monies to draft an amended Defence. It remains, and still remains, wholly obscure what it is that is needed to furnish an amended Defence. It is true that the Claimant complains that in

some respects the existing Defence is in adequately particularised. It may well be that the Defendant recognises that fact, but that does not involve a wholesale amendment. What it requires is particularisation which no doubt could be achieved by simply the voluntary provision of particulars. The suggestion that that would involve the expenditure of no less than GBP 150,000 is again in my view ridiculous. No draft is before the Court. No indication of any substantive amendment has been identified either before or during the hearing.

21. I should add perhaps in parenthesis that I pay no attention to the complaint that Mr Haigh has been shut out of a need to take expert advice on the terms of his Defence. He has in fact engaged a wide range of expert help. But he is the person best placed to identify how money came to be paid into his account and how it was used; he does not need an accountant to tell him. It is common ground that the money went into his account; it is common ground at the very least that all the invoices were forged with some version of his signature, either real or copied, so handwriting experts are not going to take people very far. There is no need (or indeed entitlement) to serve experts reports with the defence. They may be needed to support the defence but not to create it.

22. This leads on to the other item, namely the filing of evidence in response to the immediate judgment application and the attendance at that hearing. It seems to me if all that was to be provided, and that is all I am told will be provided, is further particulars of an existing Defence, the more helpful way forward is for the Defendant, in preparing his response to the immediate judgment claim, to add to it any further particulars where he thinks further particulars are needed. The cost of so doing would effectively be absorbed in the general cost of filing evidence in response to the immediate judgment claim and of course thereafter attending on it.

23. So the question now remains as to whether it is proper for the Court to dig in to the frozen fund to provide at least some monies towards the task of filing evidence and dealing with the immediate judgment claim. The Claimant says, if I may say so with considerable justification, that the manner in which the Defendant has conducted these proceedings leaves a clear impression that he does not want to engage with the claim; he simply wants to manipulate the system to avoid engaging with the claim, and that much of what he has been doing up to now and continues to do is to divert attention and resources from the immediate task. Accordingly the Claimant says that the interests of justice do not lead to the conclusion that their money, or at least arguably their money, should fund any further the Defendant in embarking upon this strategy. Furthermore it is pointed out that the Defendant has a considerable period of time to consider the detailed analysis of the Defence which has been spelt out in the application for immediate judgment filed some months ago to enable them to deal with the points that are there made without much difficulty. They have already had time extended to 23 April 2015; another half month has gone by. The Claimant contends that if in reality they have exhibited no desire to engage with the matter then there is no reason why they should be given a further opportunity. The Claimant says a person who is willing to waste money as Mr Haigh has in his legal activities should not attract any sympathy if he finds himself unrepresented in the civil proceedings and therefore having to deal with the claim as advanced personally.

24. The contrary view, which is pressed by Mr Chandrasekera, is that in a civil commercial action of this kind it is obviously in the interest of the Court and the Judge to have assistance in identifying the points which the Defendant wants to or could make in his favour and that an individual in person is not something that should be taken on lightly particularly if he is in custody. It is clear that if money is not made available, Messrs Stephenson Harwood duly pursue the threat to come off the record. Inevitably his Counsel will refuse to act, so on.

25. In the result, I have got to make a decision as to what, if any monies, should be made available to Messrs Stephenson Harwood in order to embark upon the task of filing evidence in response and dealing with the

immediate judgment application. I am not remotely troubled if the sum that might be made available to them is insufficient for them to decide to remain on the record. They have put themselves, it seems to me, in an almost impossible position, of having picked up from one of their clients a debt which is many times the size of their client's funds, and they have done it in a what can only be described as absurdly generous fashion across a whole range of claims. As was drawn to my attention, since the third application to obtain funds to pay part of the legal fees made in March, the only work product from the Defendant's solicitors has been two volumes of correspondence together with two witness statements. Apparently no progress has been made on preparing an amendment of the Defence or particulars of it, or preparing for the immediate judgment application. So if there is a problem, Mr Haigh and his solicitors have only themselves to blame.

26. I should add that I approach Mr Haigh's submissions with a rather long spoon. Many of the reasons for this are set out in my judgment earlier this year about the credibility of Mr Haigh. The emergence since of the final report of the handwriting expert which was not appended to the Defence is another cause for considerable concern.

27. That said, it seems to me that this Court ought to furnish a contribution to the costs of Mr Haigh in preparing for and dealing with the immediate judgment application, which seems to me to be a fundamental and crucial part of this litigation. I have absolutely no intention of providing a sum of GBP 150,000 or more. What I will allow is for the funds of GBP 40,000 to be taken from the Guise account, despite the fact that the Claimants have a good arguable case that it is their money. That should not be taken as an indication that any further funds will be made available for any other purpose, whether before or after the immediate judgment application. It seems to me the reality is that the till is effectively exhausted.

28. There is one exception to that and that I must turn to. As I indicated, Mr Nasser Malalla who appears for the Defendant in the criminal proceedings has written to the Court asking for a sum of money to cover his representation over the next month. The figure he puts forward is AED 108,000 (USD 18,000 or thereabout). That is for one month only, and compares perhaps rather unfavourably with his arrangement, as I understand it, that he will receive AED 500,000 for all representation through to the completion of the trial. It is also based on an analysis of his likely work load which surprises me. Firstly, it is suggested that he would be involved in no less than 12 hours of work by reason of weekly meetings with Mr Haigh to take instructions and give advice. That stands very badly with the evidence of Mr Chandrasekera that Mr Haigh is only available for five to 15 minutes once or twice a week. Secondly, the claim that there is a need to provide a reply memorandum to the experts report, again, sits slightly uncomfortably with the fact that as I am told the expert has reported some time ago, there has been a further hearing in front of the public prosecutor and the public prosecutor is likely simply to invite the expert to produce a supplementary report. Yet the professed difficulty that the expert is having is in identifying to his own satisfaction that monies that were extracted from the Claimant company were in fact paid into accounts of the Defendant. The documentary difficulty that the expert has is that he has not been furnished with the original statements of the English bank accounts. This seems to be a most unsatisfactory waste of time given the fact that in these proceedings, those documents have been obtained by court order at the instigation of the Claimants and Mr Haigh concedes that the monies in the accounts shown in the photocopy of those statements are accounts of his. So embarking on a further expert report and a further supplementary response cannot be said to be money well spent. And then thirdly, there is said to be a need to draft and submit a bail application. This seems a forlorn exercise. An application for bail was made a very long time ago and was successful although of course it required the posting of AED 23 million which Mr Haigh has not got. It might be said that the Court might be persuaded to reduce that figure, but the difficulty is that the very same people who are anxious to reduce the demand for bail are also seeking to exhaust such funds. Mr Haigh has not taken up the liberty to use the frozen funds for bail purposes. Perhaps that is not surprising. Mr Haigh claims that his only liquid assets are in the Guise account, but in the

same breath he wants to consume all of that in legal expenses. It would follow that he is not in a position to post bail anyway, even if the bail was reduced. So what purpose there is in making yet another bail application, and I think there have already been quite a few, is very obscure to me.

29. In the result, I have come to the conclusion that I am only minded to advance out of the frozen monies for the next month of Mr Malalla's work the sum of AED 35,000. If he comes back for further monies for another month he must not expect to receive that much or indeed any sum without a much more coherent explanation of what he has done and is going to do and why.

30. Now, I hope that that inordinately long exposition has covered the points that have been raised before me. It now remains, as I see it, for Messrs Stephenson Harwood to decide whether the sum that has been released is adequate or whether they wish to cease to act for Mr Haigh and come off the record. There is no basis upon which the Claimant can resist that application nor, for that matter, do I see any basis for the Court refusing to accede to that application, so it would go through by default.

Issued by:

Natasha Bakirci

Assistant Registrar

Date of issue: 14 May 2015

At: 4pm