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IN THE HIGH COURT OF JUSTICE
BIRMINGHAM DISTRICT REGISTRY
CHANCERY DIVISION
[2017] EWHC 2183 (Ch)



No. B30BM419

Priory Courts, 33 Bull Street

Birmingham, B4 6DS

Thursday, 29th June 2017

Before:

HIS HONOUR JUDGE PURLE QC

B E T W E E N :

(1) TARSEM SINGH & ORS
(2) MANJIT SINGH BOPARAI

Claimants

- and -

(1) THE CHARITY COMMISSION & ORS
(2) SUKHBINDER SINGH SANDHU
(3) SURJIT SINGH MATTU
(4) AJIT SINGH BRAINCH
(5) HER MAJESTY'S ATTORNEY GENERAL

Defendants

MR B. SINGH SAHOTA (instructed by Sahota Solicitors) appeared on behalf of the Claimants.

MR A. KHANGURE QC (instructed by Aspect Law Ltd) appeared on behalf of the Second, Third and Fourth Defendants.

J U D G M E N T

JUDGE PURLE:

- 1 On 23rd October 2015 these proceedings were commenced, the claimant being named as “Guru Nanak Gurdwara, Wolverhampton, by its representative Tarsem Singh”. The defendants were the Charity Commission and three individuals who were three out of five or six holding trustees, the precise number is an issue that does not matter for present purposes, of the body in question, Guru Nanak Gurdwara (the “Temple”).
- 2 The Temple is a religious institution devoted to the Sikh religion. As such, it is the subject of a charitable trust but has no separate corporate personality of its own. Accordingly, the proceedings as originally brought were inappositely described.
- 3 On the same day, an application was made before me for interim relief, which I did not grant on that occasion but held over for the matter to be heard on full evidence. I ordered that the claimant’s solicitors were to amend the claim form and particulars of claim:

- (a) to delete the reference to [the Temple], to delete the references to Tarsem Singh’s and Manjit Singh Boparai’s purported offices, and to identify Tarsem Singh and Manjit Singh Boparai as the first and second claimants respectively;
- (b) To add the Attorney General to these proceedings as the fifth defendant.

The proceedings had erroneously joined the Charity Commission as the first defendant and, as I have mentioned, the second, third and fourth defendants as some of the holding trustees. It is well known that the Attorney General is a necessary party to charity proceedings, as everyone conceded that these were, and in effect represents the public interest and therefore the interests of the charity. As things stand, the Attorney General has not to date taken any active part in these proceedings, although that could at least in theory change.

- 4 Accordingly, the proceedings as reconstituted as a result of my order take effect as ordinary non-representative proceedings between two individuals and the named defendants. The charity is of course in a sense represented effectively by the Attorney General who is the guardian of the public interest.
- 5 The particulars of claim asserted, even in their amended form, that the representatives of the claimant, by which was meant the Temple, were the individuals who became the first two claimants. It was claimed that they and twenty-three others were registered as charity trustees with the Charity Commission. There had in fact been what was and still is a disputed election in May 2015 of the management committee, resulting in the purported appointment of those twenty-five individuals. However, only two of them are parties before the court, though I have little doubt that they are all entirely behind the first and second claimants.
- 6 As the consent of the Charity Commission was required for these proceedings, the proceedings came to be stayed after an order was put in place, referred to in argument as ‘The Banking Order’, as a result of a hearing before Mr Justice Newey which regulated the use of the bank account which was a Barclays Bank account.
- 7 Subsequently, the claimants decided to discontinue and served notice of discontinuance. This turned out to be ineffective. Because of the banking order, the permission of the court was required. The matter came after many hearings to be heard by His Honour Judge

Barker QC, who refused permission to discontinue. However, in an order of some complexity, he gave the defendants the option to bring a counterclaim whereupon the claim of the original claimants was dismissed. That option was taken up, and a counterclaim was served on 18th January 2017 followed by a defence to counterclaim on 18th April 2017.

- 8 The original claim has gone, but the issue that it raised, namely as to the appropriateness and lawfulness of the appointment of the management committee following the May 2015 election, remains to be determined, the period of office, having been, or purportedly been, extended to November of this year, so as to enable the affairs of the charity to be regulated in light of whatever judgment will be handed down or delivered following a trial, which is due to start on 4th September this year.
- 9 That trial was originally set down for ten days, but as a result of the striking out of the defence to counterclaim which has occurred in circumstances which I shall relate, and as a result also of the fact that the original claimants and defendants to counterclaim have been debarred from defending, the trial estimate has been reduced to three days, and a pre-trial review previously fixed for 1st August of this year has been vacated.
- 10 Despite that vacation, the date of 1st August is still available should the claim be reinstated, which is what I am asked to do by the defendants to the counterclaim, that is to say the original claimants. The ten-day slot in His Honour Judge Barker's diary has, in the light of the knowledge that this application has been made, not been filled by any other matter at the moment so that both the trial date and the initially proposed pre-trial review are dates which are available.
- 11 The application before me, and upon which I am ruling now, is an application for relief against the sanctions which I shall come to describe. There is also a second application, which I am not ruling upon, for the addition of new parties to take the place of those who have been debarred, the hope being that they who are allied to the existing original claimants and defendants to counterclaim can continue the fight, despite the fact that the original claimants have been struck out and debarred from defending.
- 12 On 10th March of this year, following a series of hearings, Judge Barker made the following orders so far as material. By para.1, there was an order for costs to be paid on the standard basis to be assessed in detail if not agreed. That was an order in relation to the costs of the claimant's application of 15th January 2016. There was also an order for an interim payment in para.10 as follows:

“The claimants do pay to the second to fourth defendants the sum of £75,000 on account of costs. £40,000 is to be paid by 31st March 2017 and the balance £35,000 by 21st April 2017.”

That I think relates to a further costs order of the proceedings referred to in para.8, down to and including the handing down of the judgment of 22nd December 2016, and the consideration of that judgment, which costs were to be assessed in detail if not agreed.

- 13 It was by para.9 that the claimant's claim was dismissed without further order, when the second to fourth defendant's application for permission to bring the counterclaim had been finally disposed of by the Charity Commission, and in the event that the second to fourth defendants applied to the court for leave to bring the counterclaim, which in due course happened.

- 14 Although that order was made on 10th March 2017, it had been preceded by a detailed judgment handed down on 22nd December 2016, from which it was obvious that the original claimants had lost and that a costs order would almost inevitably be made against them. However, it was only on 10th March that the costs were quantified so far as concerned the payments on account.
- 15 The attitude at that stage of the claimants was that the interim payment should be £40,000, but that they should have a little longer to pay. The interim payment included a sum of £40,000 to be paid by 31st March 2017, though in fact a further seven days for the payment of that sum had been sought. That reflects the fact, at least in the eyes of the claimant's representative looking at the matter realistically, that the order for costs was going to be made in a substantial sum of at least £40,000, the sum mentioned in the skeleton argument.
- 16 Those sums were not paid. Instead, a futile attempt was made to appeal, which whilst no doubt put together with great skill and as much persuasion as could be mustered, and avoiding as I must the wisdom of hindsight, did not get past the permission stage. That can hardly have come as a surprise to the claimants, who have had sound legal advice from a number of quarters throughout, but at this stage from their present solicitors who are very experienced in this field.
- 17 They could not have entertained any serious expectation that the stay which they sought would be granted, or indeed that permission would be granted. They no doubt had a hope, which was an earnest hope, and they allowed themselves, as they have themselves put it in their evidence, to 'bury their heads in the sand'. Another way of looking at it is they wholly ignored and did nothing to comply with the order of 10th March 2017, which was the end result of their endeavours.
- 18 The matter came before the court again on 20th April 2017, when directions were given for trial. On that date, the payment due on 31st March still remained outstanding. The balance was due the very next day. On that occasion, the following order was made in para.14:

“Unless the claimants do pay the sum of £75,000 by 4 p.m. on 10th May, the claimants are debarred from defending the counterclaim and the defence to the counterclaim will be struck out without further order.”

In the next paragraph, the order provided as follows:

“If the claimants want to vary or seek more time to make the payment of £75,000 referred to at para.14 above, the following directions shall apply.

- (a) Any such applications shall be filed and served by 4 p.m. on 28th April 2017.
- (b) The defendant shall file and serve any evidence in answer to the application by 12 noon on 5th May 2017.
- (c) Skeleton arguments in respect of the application shall be filed and served by 4 p.m. on 9th May 2017.
- (d) A hearing of any such application should be listed to be heard before His Honour Judge Barker at 2 p.m. on 10th May 2017.”

That hearing duly took place, because an application was made to vary the order, though pursued in a somewhat different form. The claimants still appear to have done nothing actually to raise the monies, and their own evidence indicates a lack of willingness on the part of those supporting them to pay any money over to the other side, even though it had

been ordered so to be paid. They endeavoured to persuade the court that the monies should be paid into court. That did not succeed. Again, no serious endeavours on the claimant's own evidence were made to comply with the order of 10th March, or the unless order, which extended time to 10th May.

- 19 In the meantime all their hopes were pinned on seeking to persuade the court to make a different order. That did not succeed and the matter came before His Honour Judge Barker, who dismissed their application to vary the order and gave them another day in order to comply. The reason he gave them another day was because by the time the argument finished, there were only nineteen minutes left until 4 p.m. and His Honour Judge Barker, considering that banking arrangements would need to be made which might prevent payment by 4 p.m. on that day, merely extended the matter another day. He did not do so upon the basis of evidence demonstrating what the claimants means were, or what efforts they had made to obtain monies from third parties because there was no such evidence.
- 20 The claimants have today still not put in evidence of their own means, but have stated that their proceedings are a collective set of proceedings on behalf of those members of the community whom they represent and, therefore, that the obligation to pay should be regarded as a collective obligation. That was not the position under the court order made on 10th March. It was the claimant's obligation to pay, and if they have rights over against others, that was independent of their own obligation to pay under the order of 10th March.
- 21 Needless to say, the unless order was not complied with, whereupon the claimants did stir themselves into action and facing the fact that the claim had been struck out, managed to raise all of the sums due, and other sums due under other court orders and interest, and pay the amount they had been ordered to pay in cleared funds by 26th May 2017. By then of course, the claim had been struck out and they had been debarred from defending the counterclaim.
- 22 In the meantime, on 16th May, Judge Barker held a costs and case management conference and approved budgets on the basis now that the defence to counterclaim was struck out and that the claimants were debarred from defending the counterclaim. This is on the footing of a three-day trial which is a generous trial estimate given the debarring order but, as declarations are sought, His Honour Judge Barker has indicated that he will require to be satisfied on evidence as to the appropriateness of the orders that are sought.
- 23 The orders that are sought are set out in the defence and counterclaim and are, firstly, a declaration that the five Singhs in the current management committee of the Temple were not selected in accordance with the constitution. The important part of that is the 'current management committee'. One of the difficulties is that the current management committee are not all parties - only two of them are. I have no doubt that they are in practical terms represented by the two claimants, but they are not a party to that declaration. Nor are the five Singhs, but I doubt whether they need to be, as the appropriateness of the selection of the five Singhs is merely a step towards considering the validity of the appointments to the current management committee, and it is that which matters. As such, I do not think that it necessarily matters that the five Singhs are not parties.
- 24 There is then an order that the five Singhs and the current management committee are forthwith removed from office, to which similar observations apply. I doubt whether the five Singhs need to be removed, but that is sought. The current management committee may need to be removed, but, as it happens, only two of them are before the court. As mentioned, the five Singhs are not before the court either.

- 25 There is a consequential order which presupposes that the current management committee were not selected in accordance with the constitution; that the trustees, by which is meant the holding trustees, do take over the administration of the Temple and do name five qualified Singhs as the election board within four weeks. That, at the moment, has the problematical question that the trustees are not all before the court - only three of them are - though no doubt they could sue in a representative capacity as they are the claimants to the counterclaim; likewise, the two claimants (defendants to counterclaim) could be sued in a representative capacity but at the moment are not in fact so sued technically.
- 26 There is then a further order directing what the new election board is to do, which may or may not take the form of an order because at the time any order is made it will not be known who the new election board is, assuming that the counterclaim succeeds.
- 27 It is said on behalf of the original claimants that relief from sanctions ought to be granted; the £75,000 and other costs have now been paid so that the default has been remedied; and the justice of the case requires reconstitution of the proceedings, especially as such a large community is affected by the outcome. That is correct, but on the evidence from the claimant's own side, it is that community which was reluctant to fund the payment of £75,000 in accordance with the original court order.
- 28 This is not a case where I think it would be right or appropriate for me to regard the default as having been due solely to the default of the two claimants, but it is the fault of themselves and those whom they have in fact represented, though not in terms as representative claimants. The blame is as much the blame of the community supporting them, who were reluctant to part with further monies having already apparently, according to the evidence, incurred £200,000 worth of legal costs of their own by December 2016.
- 29 The application has to be considered in the light of the of the tests which have been established by the Court of Appeal in *Mitchell v Denton*, and which were also more recently considered by the Court of Appeal again in *Oak Cash and Carry Ltd v British Gas Trading* [2016] EWCA Civ 153. It is clear from that case that I have to consider not simply the delay following on from the breach of the unless order, but I have to consider the delay under the original order which takes us back to 10th March 2017.
- 30 Considering that delay, it is clear and is not disputed that the delay is serious. I am also quite satisfied that no good reason for the delay has been shown. The kindest way it is put in the claimants' own evidence, is that the community buried their collective heads in the sand. Another way of characterising it is that they deliberately took no steps to comply with the original order to pay £40,000, though that figure was one which their own advocate espoused at the hearing at which it was ordered, whether within the time limited, or indeed the time that their solicitor advocate sought. It was not paid until they had been struck out.
- 31 I must not be over-impressed either, though I have to obviously give some credit for it, by the fact that those costs and other costs have now been paid, because they remained due following the striking-out. This is not a case of a party belatedly complying with an order which it is no longer bound to comply with because of the striking-out. The £75,000 was a debt which was due and Judge Barker earmarked it as the price for continuing to defend these proceedings, and still the obligation was ignored.
- 32 This is not, it is pointed out by Mr Khangure, the first occasion upon which orders of the court have been ignored. There is reason to believe, though it is impossible to make any

final ruling on the matter in the absence of oral evidence and cross-examination, that steps have been taken in the past to evade the restrictions in what has been described as the banking order, by making payments out of an account not mentioned in the banking order and not revealed to the court, or indeed the other side at the time and by making payments in a series of amounts, which it was hoped would evade the banking order.

- 33 Some of those sums have been recouped in the sense that they have been put back into the Barclays Bank account, or it may be another bank account. There is certainly reason to believe that this is not the first occasion upon which the claimants have adopted an inappropriate attitude towards their obligations under court orders, observations which His Honour Judge Barker QC has dealt with more fully in at least two of his judgments preceding my reinvolvement in the matter for this application.
- 34 The only question that remains therefore is whether all the circumstances of the case indicate that it would be appropriate for the case now to be reinstated, and for relief against sanctions to be granted. In that connection, particular regard has to be paid to the need to conduct litigation efficiently and at proportionate cost, and the importance of enforcing court orders, which I have very much in mind. In my judgment, this is an appropriate case for relief from sanctions to be granted. I say so for the following reasons. The money the claimants have paid belatedly was paid on 26th May. Whilst that was more than two months after the order of 10th March, it was relatively soon after the claimants lost their application to vary the unless order. In addition, the disruption to the court system is minimal. Fortunately for the claimants, the trial date is still available as is the date for the pre-trial review.
- 35 The dates for existing directions will need minor but not major adjustment. There will have to be a further costs and case management hearing. It seems to me that that disruption, which is something which I must take into account, is not such as to justify the continued debarring of a claim which may otherwise be good. I say ‘may’ because I am not considering the merits on this application. It appeared to be common ground before me that in the absence of either side being able to say, which either side does not claim to be able to say, that the other side’s case is so weak that it is susceptible to an application for summary judgment, the merits of the claims are irrelevant. That is undoubtedly the correct approach as appears from the case of *Al Saud* [2014] UKSC 64, paras. 29 and 30.
- 36 In addition, the defaults though serious, are not so serious as to justify the continued disapprobation of the court, given the possibility of reconstituting the claim without too much fuss. However, I do consider that the costs thrown away by the costs and case management conference which occurred between the striking-out and the application for a relief from sanctions, ought to be borne by the original claimants; that that order ought therefore to be varied as a condition of my grant of relief against sanctions, and that those costs should be assessed. I assume no-one is ready to deal with that today, but they can be assessed summarily on the next occasion. There will have to be a further costs and case management conference to be listed in the near future.
- 37 I have also taken into account, though I have not put excessive weight on the fact, that this is a claim which affects others apart from the parties immediately before the court. It may be said that the Attorney General is there to protect those others when considering the public interest, but to date the Attorney General has taken no active part, as is quite normal, as it has assumed that the parties will argue the merits out amongst themselves. That only makes sense if the parties are there to argue the case on the merits.

- 38 In addition, I am troubled, though not over-troubled, by the form of the existing proceedings which it seems to me will have to be reconsidered to ensure that all those who have to be bound by the result, especially in relation to orders against individual committee members or purported committee members, are actually bound. The result of a trial in which one side is debarred may be less acceptable to those who are not strictly bound by it, and result in further dispute.
- 39 In the circumstances, and by no great margin, I consider, standing back and looking at the overall justice of both side's cases, that this is an appropriate case for relief against sanctions. I so order on the terms that I have indicated. I have said nothing about the costs of this application which remain to be considered.
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This transcript has been approved by the Judge