



Neutral Citation Number: [2023] EWHC 1782 (KB)

Case No: KA-2023-000023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/07/2023

Before :

THE HON. MR JUSTICE CHAMBERLAIN

Between :

Amir Khodaparast

**Appellant/
Defendant**

- and -

Peter Mark Arnstein

**Respondent/
Claimant**

Amir Khodaparast (the Appellant) appeared in person
The **Defendant** was not represented and did not appear

Hearing date: 4 July 2023

APPROVED JUDGMENT

Mr Justice Chamberlain:

- 1 This is a renewed application for permission to appeal against a costs order of HHJ Monty KC (“the judge”), sitting in Central London County Court, dated 6 January 2023.
- 2 The proceedings in which the order was made are described in some detail by the judge. The following summary will suffice.
- 3 Mr Arnstein and Mr Khodaparast co-founded an organisation which came to be known as Coplexia Collaborative, which was intended to provide a not-for-profit framework to facilitate collaboration between the public and private sectors. Coplexia became an LLP in 2015. It was subsequently registered with the Solicitors’ Regulation Authority as an alternative business structure authorised to carry out certain reserved legal activities.
- 4 In 2019, Mr Arnstein began proceedings against Coplexia for breach of two agreements and other related matters. Coplexia denied the claims and counterclaimed. In its amended Defence and Counterclaim, the amount counterclaimed was £2.6m. There was a later application to re-amend to claim damages in excess of £11m.
- 5 On 28 October 2021, Coplexia’s Defence and Counterclaim were struck out for failure to comply with an unless order and Mr Khodaparast was added as a defendant for the purposes of costs.
- 6 The application for a costs order against Mr Khodaparast was heard on 11-12 July 2022 by HHJ Monty KC (“the judge”), who had already dealt with some aspects of the main litigation. Mr Arnstein was represented by counsel. Mr Khodaparast represented himself. He asked for an adjournment, which was refused.

- 7 The judge explained in his judgment that pressure of work and a number of long trials meant that it had taken him longer to complete the judgment than he intended and apologised to the parties for the delay. The judgment was handed down on 6 January 2023.
- 8 Despite the delay in handing it down, the judgment was comprehensive, careful and cogently reasoned. The judge's findings are at [86] and following. He found that Mr Khodaparast had controlled Coplexia's participation in the litigation and had himself been responsible for the various applications – many of which were totally without merit – and for making hearings longer than they should have been. The judge did not accept that Mr Khodaparast was acting in the interests of the company. He was intending to benefit personally from the claims for damages and costs. The counterclaim was inflated and unsustainable. Part of the claim Coplexia had made was for a debt of £720,000 said to be owed to Mr Khodaparast himself. The costs budget sought to claim in respect of 25,000 hours of work done by Mr Khodaparast himself. The applications made had caused Mr Arnstein to incur substantial costs. The costs orders had not been paid. Mr Khodaparast had repeatedly emailed the court with lengthy submissions and requests despite the judge's clear instructions that he should not do so. The judge had no doubt that Mr Khodaparast was the controlling mind behind Coplexia and that he had made five unsuccessful applications which would not have been made if Coplexia had had independent representation. These applications, made at Mr Khodaparast's instigation, caused a civil restraint order to be made against the company. The court's time was spent dealing with baseless and time-consuming submissions that Mr Arnstein and his solicitors were liars. An example was given from a transcript of an earlier hearing.

9 The judge rejected the submission that there had been no bad faith on Mr Khodaparast’s part. The attempts to reargue the claim and the claim for costs were designed to benefit him and not the company and had the effect of wasting time and costs rearguing points which had already been decided. The Amended Counterclaim and Schedules were based on sums which were said to have been incurred but which had not been incurred. The draft Re-Amended Counterclaim made claims for £11.4 to 13m. The costs budgets made claims for liabilities which never appeared in Coplexia’s accounts. Nor did the claimed liabilities to him personally.

10 It was also relevant that Mr Khodaparast had transferred Coplexia’s business to a new company controlled by him and it therefore appeared that Coplexia was “a shell to be discarded at [his] whim”.

11 The grounds for a costs order against Mr Khodaparast were therefore made out.

12 Mr Khodaparast filed grounds of appeal running to 176 paragraphs. Permission was refused on the papers by Sir Stephen Stewart. He refused permission on the papers, saying this:

“The central question for determination of the application for permission to appeal is whether there is a real prospect of success of A2 showing that the Order of the Judge requiring A2 to pay costs (paras 3 & 4), was wrong. There is no such prospect. The judge was fully familiar with the case; he had made previous orders which must be accepted, since none were subject to appeal, save that The First Appellant attempted to appeal his Order of 29th July 2021, but permission was refused and the appeal was marked ‘totally without merit’ – see Order of Kerr J in QA-2021-000190. The judge clearly and accurately set out the legal principles governing the application – judgment paras 19-24, the submissions of the parties (pars 25-29) and his findings and conclusions (paras 81-108).”

13 I heard submissions from Mr Khodaparast at a hearing on 5 July 2023 which lasted nearly two hours. He addressed me at some length and was polite, articulate and

respectful at all times. I made a number of matters clear at the hearing and Mr Khodaparast indicated that he had taken these on board.

14 First, the appeal was against the order of HHJ Monty made on 6 January 2023, not against any previous decision of that judge or any other judge. Although it was clear to me that Mr Khodaparast did not accept many of these previous decisions, neither I, nor the judge himself, could re-open them. The appeal therefore had to proceed on the basis that they were correct.

15 Second, Mr Khodaparast invited me to grant him permission to appeal so that he could have longer to formulate his objections to the judge's judgment. As I explained, that is not how the appellate system works. A party seeking permission to appeal has to identify an arguable ground of appeal. Even in a case where the appellant is unrepresented, it is not the function of the appellate court to subject the decision of the court below to a minute analysis with the purpose of testing its correctness. It is the appellant who must identify what was wrong with the decision below.

16 Third, it is not the function of the appellate court to rehear the arguments ventilated before the court below. Only if the court below was "wrong", in the sense that it applied the wrong test or make a factual finding not open to it on the evidence or reached an evaluative judgment which was otherwise "wrong", can the appellate court intervene.

17 I explained at the end of the hearing that I wanted to re-read certain of the important papers in this case before giving judgment. Having done so, and like Sir Stephen Stewart, I cannot identify any basis on which the judge's judgment can properly be characterised as "wrong" in the sense I have described. A court refusing permission to

appeal is not obliged to set out and traverse every submission made to it, especially where the submissions are as voluminous and diffuse as they were here.

- 18 However, it is right to say that I paid particular attention to Mr Khodaparast's complaint that the hearing before the judge was unfair because of an inequality of arms between him (an unrepresented litigant) and Mr Arnstein (who was represented throughout by solicitors and barristers). It is, however, not unusual that one side in litigation is represented when the other is not. I have seen nothing in the papers or transcripts which indicates that Mr Khodaparast was unable to put his points across to the judge. My impression of him confirmed that he is perfectly able to do so. The problem is that the points were not good ones.
- 19 There was nothing in the suggestion (made after the draft judgment was circulated) that the judge should have recused himself.
- 20 Mr Khodaparast has not identified any arguable ground of appeal. Permission to appeal is therefore refused.