

Neutral Citation Number: [2016] EWHC 1295 (Ch)

Case No: HC-2015-005084

IN THE HIGH COURT OF JUSTICE

The Royal Courts of Justice
Strand London WC2A 2LL

Date: Wednesday, 24 February 2016

BEFORE:

MRS JUSTICE ASPLIN DBE

BETWEEN:

PEAK CONSTRUCTION (LONDON) LIMITED

Claimant/Respondent

- v -

(1) SAVVA (MICHAEL)

(2) SAVVA ASSOCIATES LIMITED

**(3) SAVVA AND SONS PROPERTY CONSULTANTS
LIMITED**

Defendant/Appellant

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(Official Shorthand Writers to the Court)

MR MATHEW WATSON (instructed by Grosvenor Law) appeared on behalf of the Claimant

MR ARFAN KHAN (instructed by Taylor Rose TTKWGr) appeared on behalf of the
Defendant

JUDGMENT (As Approved)

MRS JUSTICE ASPLIN:

1. There are three applications which are still live before the court on the first which I have heard submissions from Mr Watson and Mr Khan. The first is the claimant's unless order application. There are two live issues. The first is what date should be fixed for further compliance with the orders of Snowden J which were set out in his order of 15 December 2015 and particularly at paragraph 18 in relation to the disclosure of bank statements. It is in relation to that that the applicants say there was no response within the time limit given in Snowden J's order and then compliance, such as it was, was patchy and incomplete. Therefore, at least for the purposes of this hearing, Mr Khan, on behalf of the respondent, concedes the application subject to the two live points which are the time limit for compliance with the unless order and whether there should be penal notice attached to it.
2. In relation to the time limit, in his skeleton, Mr Khan asked for 21 days from today and he now does not ask for that but, in fact, he seeks a time to comply which would be over until Monday 7 March. That is approximately 12 days from today. He says that is appropriate and that his solicitors have professional commitments and he is concerned that there should be proper compliance and that his clients should not be shut out of proceeding with various defences in this matter.
3. Mr Watson says the professional commitments which are referred to in the letter to which my attention was drawn referred to a five day trial which was ending today and referred to ability to attend today. In fact, there are solicitors and counsel on behalf of the respondent here today. He has also drawn my attention to the chronology in this matter. He says that the obligations in relation to the search inspection and an affidavit in relation to the bank statements set out at paragraph 18 of Snowden J's order were very straightforward and that there was no response whatsoever, which was pointed out in correspondence on 21 January of this year. There was limited compliance, he says, thereafter and the response on 21 January in correspondence was that the bank accounts had not been available because the accounts had been frozen as a result of the freezing order.
4. A response on 25 January to that letter stated that it was not accepted that that could be a possible reason but, in any event, consent was given and so there ought to be no impediment thereafter to obtaining the bank statements involved in this matter. Mr Watson also points out that there is no evidence that the banks had, in fact, refused to provide bank statements, at all. He says that, nevertheless, one is in a position that full and proper compliance with Snowden J's order has not been completed or given. It seems to me that in that regard, and taking those background matters into account, it is appropriate that the time for compliance in relation to the disclosure, which was required in paragraph 18 of Snowden J's order, should be extended but that it should only be extended until Friday 4 March and that is sufficient time in the scheme of things, given the amount of time which has already elapsed, for compliance in this regard.
5. The second outstanding issue is whether there should be a penal notice and it is said by Mr Khan that that would be disproportionate and unfair. It seems to me that that proceeds from an assumption that, in fact, the order will not be complied with. A penal notice, it seems to me, is normal and such a notice appeared on Snowden J's order and that the disclosure was part and parcel of the freezing order which was also contained within that order. There is nothing surprising or unusual about a penal notice being

attached in relation to this part, also being the working out of that order. It is not in any way, in my judgment, disproportionate, given; firstly, that it is open to the respondent to comply with the order and; secondly, any issue in relation to enforcement if there were non-compliance would be dealt with at a separate hearing and all the merits of those issues would be considered on that occasion. Therefore, it seems to me, in relation to this first application, compliance should take place by Friday 4 March a 4.00 pm and there ought to be a penal notice in this regard.

6. The second application by the respondent defendant is for an extension of time to file the defence in this matter. In fact, the deadline for filing the defence was 26 February which, of course, is at the end of this week. That is because the date for filing and serving the Particulars of Claim was 29 January 2016 and that was something which was made clear and set out in the order of Snowden J of 15 December of last year. It is said on behalf of the defendant that this is a very difficult and technical defence in relation to illegality and Mr Khan wants sufficient time to put it together properly in order not to prejudice the position of his client and that he has had, as I understand it, and/or his solicitors have had professional commitments up until yesterday and that that is the reason why they are looking for 14 days. So, in fact, Mr Khan says the appropriate date for the service of a defence in this matter would be 9 March.
7. Mr Watson, on the other hand, says that plenty of time has already elapsed and been given. He says that in the light of the conduct in relation the compliance with the disclosure of bank statements and the general attitude towards the order of this court, which he says was displayed by the respondent, the court should be particularly concerned about extending any period of time for the defence. He also says that given that it would have been well-known from 15 December, when the order was made by Snowden J, when a defence would be necessary to be filed, it would have been and ought to have been possible to make arrangements to comply despite other professional commitments. I have to say I am not in any way moved by the reference to professional commitments. It seems to me if one has professional commitments which prevents one from fulfilling the requirements of another client, the answer is that someone else should take up the case on their behalf. However, it seems to me, overall in this matter, and all of this is prefaced and premised on the basis that an acknowledgement of service will be filed, that a short extension of time for the service of a defence is proportionate and the right approach in this matter. However, I consider that it ought to be just that, a short period. Therefore, it seems to me appropriate that the defence in this matter should be filed and served by 4.00 pm on Friday 4 March.
8. That leaves me with one further application, as I understand it, which is the default judgment and I think Mr Watson said that that is not pursued today, given all of the other circumstances, and that he seeks an adjournment. It seems to me, in that regard, given all the other matters, it is appropriate that the application for a default judgment should be adjourned. It also seems to me that, given the nature of this matter, it is likely there will be further evidence to be filed if that application remains live. To impose an impossibly tight timetable, despite the fact this matter has a history of non-compliance and delay, will only be counterproductive and, in fact, will waste time both for the parties and the court and I do not think that is a sensible way forward. It seems to me that this matter should come back before the court on Monday 14 March. If there is any further evidence from the applicant, it ought to be filed by Wednesday the 9th at 12.00 noon and any evidence in response should be filed by Friday the 11th, also at 12.00 noon which then, hopefully, will mean that the matter, if it does come on, will be in a position to be dealt with on Monday 14th.

9. I am asked to deal with the costs of today and the first issue which arises in that regard, is whether the costs should be on the indemnity basis. Mr Watson says that is certainly the case and he says that arises from the non-compliance with the orders made by Snowden J, to which he has already referred. He points to the fact that that was pointed out in correspondence and there was no substantive response to that correspondence. He says instead of complying with the paragraphs of Snowden J's order, the respondent spent his time putting together a witness statement which was then served on the applicants under a without prejudice, save as to costs letter of 26 January 2016. In that statement letter, the respondent said that he was duty bound to disclose the witness statement to Paradigm Housing Association and to the relevant London Borough, which I assume to be the employers of the applicant:

"Within five working days, should your client not release the freezing injunction against him and take the sensible view to agree to mediation..."

Mr Watson says, therefore, that the purpose of the witness statement was clear and that it was a threat and that takes this matter out of the norm, especially as it would seem that time had been taken up producing it rather than complying with Snowden J's order. Mr Khan says this is the rough and tumble of litigation and there had been no deliberate non-compliance with the order of Snowden J and his clients may still apply for a discharge of the freezing injunction on the basis of non-disclosure. He says the witness statement to which I have referred should be considered in the context of a set aside application which was being contemplated. He suggests that these costs be reserved. In response, however, Mr Watson said that there had not been substantial compliance at all with paragraphs 18 to 20 of Snowden J's order.

10. Before turning to the basis of an award of costs, I should make clear that these costs of today relate to the sanction application and the adjournment and extension of time application and not to the default judgment application which has been adjourned and in relation to which the costs should be reserved and dealt with on the subsequent occasion. It seems to me that test in relation to indemnity costs is whether this matter has taken itself out of the norm and that I have a general discretion in this regard. It seems to me that the letter of 26 January and its content relating to a witness statement which it is suggested will be disclosed to various other parties or possible parties is clear in its terms and is seeking the release of the freezing injunction and a sensible view in relation to mediation. However, I am concerned here with the costs of these applications and it is not clear to me, necessarily, that time spent on that witness statement affected, these applications and the disclosure in this matter in the way that Mr Watson suggests. Certainly, the letter of 26 January is unusual but it seems to me that the fact that there was no compliance with paragraphs 18 to 20 of the order is not, in itself, necessarily directly linked to that letter and the witness statement. In those circumstances, it does not seem to me that, despite the fact there was not compliance within the time set out for paragraphs 18 to 20 of Snowden J's order that that, in itself, takes this matter out of the norm and I consider that costs should be awarded on the standard basis.
11. I have been presented with a schedule of costs for the two applications which were live today, although it is not entirely clear to me that the time is only spent in relation to those two rather than the third application, as well. What Mr Watson has just said in relation to having to prepare for a full hearing and then the change of case by the

respondent suggests that, perhaps, this schedule also includes costs in relation to the application which has been adjourned. I note that the total was £28,488 and various points were taken by Mr Khan in relation to the time in relation to attendances and also the time spent in preparing witness statements. One is 8.7 hours just for a level grade B fee earner with an additional 3.4 hours for a C grade earner, 3.1 hours with D grade earner and 1.4 hours with an A grade earner. That seems to me to be very top heavy in relation to the production of a witness statement in this matter. There are other elements which seem to me to be heavy on time and, in that regard, taking all of these matters in the round, it seems to me that it would be appropriate if these costs were summarily assessed at £24,000.