



Artemis Trustees Limited and anr v M Sandle and anr
Royal Court
17th October 2017

JUDGMENT
9/2018

Application for further time

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Civil No. 1923

IN THE MATTER OF THE C TRUST

BETWEEN:

(1) ARTEMIS TRUSTEES LIMITED

(2) ARTEMIS CORPORATE SERVICES LIMITED

Applicants

And

(1) MARTIN JOHN SANDLE

(2) RODNEY GRAY DENTON (DECEASED)

Respondents

Before: Lieutenant Bailiff Master Peter Haworth

JUDGMENT handed down: 17th October 2017

Introduction

1. By an Act of Court dated the 10th August 2017 (the Act of Court), I made the following Orders:-
 - (1) The First Respondents' Application for an adjournment was dismissed;
 - (2) To finally determine the issues of the Provisional Assessment in paragraphs 87 to 118 of the Judgment of the 2nd June 2017 (the 1st Judgment) based upon the written representations of the parties already filed with the Court;
 - (3) To determine the two outstanding issues relating to item 72 of the Scott Schedule, namely invoices 04280 and 05264, on a provisional basis and to allow the parties 21 days from receipt of the judgment to make any further submissions thereon;

(4) The Application dated the 12th day of July 2017 for the Applicants' costs to be paid on the indemnity basis and the amount thereof to be determined by written submissions with the following directions to apply:

- a. The Applicants have permission to file and serve further submissions as to the joint liability of the Respondents for the costs of the Fee Claim and their summary bill of costs in respect of the orders made at paragraph 9 of the 19 November 2015 Order by 4.00 pm on the 24th day of August, 2017;
- b. The Respondents have permission to file and serve written submissions in relation to paragraphs 2 and 4 of the 12th day of July Application and in response to the Applicants' summary bill of costs in relation to the 19th day of November, 2015 Order by 4.00 pm on 14th day of September, 2017; and
- c. The Applicants have permission to file any submissions in reply to the submissions filed by the Respondents in accordance with paragraph 4.b. above, if so advised, by 4.00 pm on 28th day of September, 2017;

(5) The Parties have liberty to apply; and

(6) Costs in the Fee Claim.

2. On the 11th August 2017, I handed down judgment (Judgment 2) which in summary dealt with paragraphs 1-3 of the Act of Court. Judgment 2 gave reasons why I dismissed the First Respondents' application for an adjournment. Furthermore, I finally determined the provisional conclusions reached by me at paragraphs 88 – 117 of Judgment 1. The Applicants accepted my provisional determination and were content that I made those conclusions final. The First Respondent, for the reasons set out in emails of the 10th July and 10th August 2017, together with the detailed response document attached thereto, did not. Accordingly at paragraphs 17 – 19 of Judgment 2, I reached a final determination upon the issues referred in paragraph 2 of the Act of Court. Accordingly, absent any appeal, those conclusions are final.
3. In Judgment 2, at paragraphs 20-22, I dealt with two outstanding issues, arising from the hearing in May/June 2017, namely invoices 04280 and 05264 in item 72 of the Scott Schedule. My decision was on a provisional basis and I allowed the parties twenty-one days from receipt of Judgment 2 to make any further submissions, before I finalized my Order.
4. At paragraph 4 of the Act of Court, I dealt with the Application by the Applicants, dated the 12th July 2017, for their costs of the Fee Claim and consequential Orders thereon. In particular, at paragraph 4b of the Act of Court, I made the following direction:

“4. b The Respondents have permission to file and serve written submissions in relation to paragraphs 2 and 4 of the 12th day of July Application and in response to the Applicants' summary bill of costs in relation to the 19th day of November, 2015 Order by 4.00 pm on 14th day of September, 2017; ”

5. In response to that direction, the Advocate for the Second Respondent, by email dated the 22nd September 2017, stated the following:

“We have not received instructions to file any further submissions on costs. As you may recall, we wrote to the Court on 10th August 2017 setting out the Estate's submissions on costs. I attach a further copy of our letter for your reference and should be grateful (if not already done so) if this could be drawn to LB Haworth's attention regarding the assessment of costs in this matter.”

6. The position of the First Respondent is more complicated. Following the Act of Court and Judgment 2, there was considerable email traffic between the First Respondent, the Court and the Applicants' Advocates. I do not intend to rehearse or repeat the content of all the emails that passed between the parties and the Court during this time. Suffice it to say, that the First Respondent seeks either an adjournment of the proceedings and/or further time in which to submit written submissions in accordance with paragraph 4b of the Act of Court. In his email to the Court of the 29th September 2017, the First Respondent stated:

"I attach a new letter from the Priory which Dr Wear has prepared, and, in the first instance, apply for an adjournment of the proceedings till the end of October 2017. I have an appointment with Dr Wear scheduled for the 20th October 2017 the result of which will indicate whether any further adjournment is required.

The time for me to resubmit my submissions is similarly dependent upon the anticipated medical opinion as to my fitness to do so: may this wait until I am adjudged fit?"

7. The reference to "resubmit my submissions" is a reference to the fact that on the 14th September 2017, the First Respondent sent an email to the Court with two pdf documents which was, the First Respondent's written submissions in accordance with paragraph 4b of the Act of Court. A copy of those submissions appears to have been sent by the First Respondent to the Applicants' Advocate. That email was timed at 15:45 on the 14th September 2017. At 15:50 on the same date, the First Respondent emailed the Court as follows:

"I have worked to the best of my ability and with help produced what you see in my previous email. I would have liked more time to work on it when I was in better health. I would like to think that you will take into account the outcome of my meeting with the medical consultant this coming Monday. I have tried to get better of my own volition but this under the circumstances, has not been possible."

8. A further email was sent by the 1st Respondent at 16:42 that day in which he states:

"If you could stop our email from being delivered that would be great. We will be in touch after Monday."

9. On the basis of the representations contained in the earlier email of the 14th September 2017 by the First Respondent, the Applicants intimated that they intended to make no further submissions in accordance with paragraph 4c of the Act of Court.

10. In support of his Application for an adjournment and/or further time to prepare submissions, the First Respondent has submitted a medical report by Dr Wear, dated the 20th September 2017. Dr Wear is a Consultant Psychiatrist and his Report is addressed to Dr Bracegirdle, the First Respondent's General Practitioner. The relevant part of the Report is contained under the heading of 'Assessment and Suggested Management' and states:

"In summary Mr Sandle is a 71 year old man who has been engaged in a protracted dispute with financial pressures being at the centre of it. This dispute is, at the present time, not going well but reading between the lines it is clear there are grounds for objecting to the process as it is going forwards. Unfortunately Mr Sandle appears to have lost his way with reduced concentration, weight loss, irritability and reduced energy.

There seem to be a number of diagnostic possibilities but the most likely is that he has developed clinical depression in the context of work related stress. Mr Sandle is

*something of a reluctant patient and we spent some time discussing treatment options for this condition. Ideally he would benefit from a combination of medication and psychological help. At this stage however he still has commitments that he wants to try and meet and as a compromise we have agreed to start him on **Vortioxetine 10 mgs daily** (I have given him a prescription for this).*

Mr Sandle would benefit from a dis-engagement from the work pressures and the expectations placed upon him. He is certainly not functioning as a Chartered Accountant normally would in relation to the complex disputes that he is facing. His concentration is impaired. In this respect I think it is reasonable to conclude that he would not be able to muster arguments and represent himself in Court in a manner that would do the process justice.

At this stage I would like to suggest:

- 1. Start Vortioxetine 10 mgs daily.*
 - 2. Stop drinking alcohol completely.*
 - 3. Out patient review by me in three weeks' time."*
11. The 1st Respondent's application to adjourn proceedings on account of his health is opposed. The grounds are contained in an email dated the 2nd October 2017 from the Applicants and are in principle the same grounds as those stated in a previous application dealt with by me in Judgment 2 at paragraphs 4-14. Whilst the Applicants do not dispute the findings of Dr Wear, save for the second sentence of his assessment, they submit that clinical depression alone is not sufficient grounds for adjourning the matter further. It is quite evident in their submission that the First Respondent is at the very least able to engage with the Court process and is able to make submissions on key elements of the case. They cite as an example, his submissions dated the 14th September 2017, now withdrawn. In their view, although those submissions are disputed by the Applicants, they are nonetheless concise, coherent and evidence of the First Respondents' ability to effectively engage with the Court process, as well as he already has.
12. A further ground of objection to an adjournment is the delay which will cause the Applicants material prejudice. There are monies currently held in escrow, which will remain so until such time as a final decision can be reached in this matter, and will thus prevent the Applicants from receiving funds legitimately due to them. In addition, this matter is now more than two years old and 'justice delayed is justice denied'.

Discussion

13. To my mind, despite the Report of Dr Wear, little has changed since my decision to dismiss the First Respondents' application for an adjournment, dealt with in Judgment 2. At that time, my judgment was based on medical evidence from his treating doctor which was for back pain, but also stress and exhaustion. The Report of Dr Wear is not unequivocal. It refers to the fact that there are "a number of diagnostic possibilities but the **most likely** [my emphasis] is that he has developed clinical depression in the context of work related stress". I also note that Dr Wear states, "*Mr Sandle is something of a reluctant patient*".
14. I now turn to the events of the 14th September 2017 with regard to the submissions made by the First Respondent, pursuant to paragraph 4b of the Act of Court and subsequently withdrawn. Those submissions were filed at Court and were served on the Applicants who accept that they have been withdrawn. A fact of which I take judicial notice. Nonetheless, they have been filed with the Court and in coming to my decision with regard to the request

for an adjournment, I take note of them. They, like the email I referred to in paragraph 10 of Judgment 2, are in my judgment, cogent submissions relating to issues which the First Respondent wishes to bring to the Court, albeit that the First Respondent has withdrawn those submissions and wishes to elaborate or modify them in some shape or form.

15. This is not the first time that the First Respondent has sought an adjournment or further time to comply with Court Orders based on his medical conditions. I commented in paragraph 11 of Judgment 2 that I was satisfied that based on his current medical condition (as it then was), the First Respondent was unable to attend the Court to advance oral submissions in relation to outstanding issues. However, I remain far from satisfied (as I was then), that the First Respondent is unable to deal with matters on the basis of written submissions. My decision in relation to the request for an adjournment is that the First Respondent is in a position to provide the Court with written submissions in connection with the issues that remain in dispute. For those reasons, I am not minded to grant a general adjournment of these proceedings, but what I am prepared to do is to accord the First Respondent some further time in which to respond to the outstanding issues in this case.

Balance of Issues to be Determined

16. A brief perusal of the First Respondent's submissions dated the 14th September 2017 (now withdrawn) demonstrates that he appears to have misread the provisions of the Act of Court and in particular, paragraph 2. That Order made it clear that I would "*finally determine*" the issues of the provisional assessment in Judgment 1 based on the written representations of the parties "*already filed*" with the Court. Paragraph 15-19 of Judgment 2 is a final determination of those issues. It is not open for the First Respondent to file further submissions thereon. Turning to paragraph 3 of the Act of Court, paragraphs 20-22 of Judgment 2 deal with two invoices, namely 04280 and 05264 which were contained within item 72 of the Scott Schedule in this Fee Claim. As far as invoice 04280 is concerned, this is an invoice relating to the professional services of Mourant Ozannes in the sum of £3,490. At paragraph 22 of Judgment 2, I allowed the sum of £3,000, against the sum claimed. Invoice 05264, was another invoice from Mourant Ozannes in the sum of £10,864. For the reasons set out in paragraph 22 of Judgment 2, I allowed the sum of £4,000.
17. I note that in the First Respondent's submissions of the 14th September 2017, he makes reference to these two invoices by stating, "*These have been dealt with by separate correspondence*". I can find no such correspondence dealing with any further submissions, which in accordance with the Act of Court were to have been filed at the latest by the 14th September 2017.
18. Bearing in mind the overriding objective in Rule 1(1) of The Royal Court Civil Rules 2007 and in particular, having regard to Rule 1(2)(c)(i) I am required to deal with the case in a proportionate manner. Taking into account the amounts involved in relation to these two invoices and the fact that I have already allowed a substantial element of invoice 04280 in any event, it is disproportionate in my judgment to await any further submissions from the First Respondent. The Applicants have confirmed that they have no objection to the provisional assessment and I have received no submissions from the Second Respondents in any event. In those circumstances, I propose to make final (subject to any appeal), my findings in relation to both invoices, namely in relation to invoice 04280 the sum of £3,000 and in relation to invoice 05264 in sum of £4,000.
19. Consequently, the only outstanding issues which the First Respondent needs to address his mind are in relation to the Application dated the 12th July 2017 by the Applicant for Orders that:

- (1) The Respondent pays the Applicants' cost of the Fee Claim. In that regard the First Respondent needs to consider:
 - (a) The joint liability of the Respondents for the costs of the Fee Claim.
 - (b) The summary bills of costs in connection with the Fee Claim which was served on the First Respondent by email dated 24th August 2017.
 - (c) Whether any costs be assessed on the indemnity or recoverable basis.
 - (2) Whether any amount in excess of £1 million, held pursuant to the Escrow Arrangements contemplated by Schedule 4 to the 25th May Order be released and paid to or at the direction of the Applicants pursuant to item 3 of the Schedule to that Order.
 - (3) The Applicants' contention that the Respondents shall not be entitled to an indemnity from the assets of the Trust in respect of their costs of the Fee Claim, including any such costs as are payable to the Applicants.
20. In my judgment, these are the only outstanding issues to be resolved between the parties. Taking into account my conclusions with regard to the First Respondent's Application for an adjournment and for further time to prepare his submissions, I am of the view that it would be proportionate and just to allow the First Respondent until 4.00 pm on the 24th November 2017 to file any further submissions in relation to the issues referred to in paragraph 19. I direct that should the Applicants wish to respond to any submissions made by the First Respondent in relation to the issues which I have canvassed in this judgment they do so by 4.00 pm on the 8th December. The First Respondent must take the extension of time which is in excess of two months already granted by the Act of Court, as a final opportunity to put in any outstanding submissions regarding the issues of costs and the Application for release of funds in the Escrow Arrangements. It is my intention to conclude this matter by way of written submissions and in that regard I intend to reach a final determination in respect of all outstanding issues on the 11th December 2017. Consequently, the First Respondent must take this judgment as his last opportunity to make submissions in the timescale allowed in respect of the costs of the Fee Claim and related issues.

Lieutenant Bailiff Master Peter Haworth

Dated this 17th October 2017