CLAIM NO: CL-2021-000406

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)
Neutral Citation Number: [2021] EWHC 2258 (Comm)

Rolls Building
Remote Hearing
6 August 2021

BEFORE:

HIS HONOUR JUDGE PELLING QC (sitting as a Judge of the High court)

BETWEEN:

(1) HURRICANE ENERGY PLC
(2) HURRICANE HOLDINGS LIMITED
(3) HURRICANE (WHIRLWIND) LIMITED
(4) HURRICANE GROUP LIMITED
(5) HURRICANE GLA LIMITED
(6) HURRICANE GWA LIMITED
(7) HURRICANE (STRATHMORE) LIMITED
(8) HURRICANE PETROLEUM LIMITED
(9) HURRICANE BASEMENT LIMITED
(10) FVS INVESTMENT LIMITED (a company in the Republic of the Marshall Islands)
(11) SARET HOLDINGS CORP (a company in the Republic of the Marshall Islands)

Claimants

- and -

(1) RICHARD PAUL CHAFFE
(2) DAVID IAN CRAIK
(3) ANTONY WAYNE MARIS
(4) ALAN JOHN WRIGHT

Defendants

- and -
RIZWAN HUSSAIN

Respondent

MR R PERKINS on behalf of the 1st to 9th Claimants and the Defendants.
The 10th and 11th Claimants and Respondent did not appear and were not represented.

JUDGMENT

(Approved)

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JUDGE PELLING:

1. This is an application made by the first to ninth claimants and defendants for an order striking out the claim for various declarations and injunctions arising out of it. The first to ninth claimants also seek an order joining the Respondent for the purpose of seeking injunctions and a costs order against him.

2. The circumstances leading to this application are set out in the very comprehensive evidence filed in support of it and so I don't propose to take up time in this judgment repeating seriatim what is to be found in the witness statement of Mr Daniel Jankes in or the exhibits. What I propose to do is to summarise the allegations made and why in summary I consider the orders sought are entirely appropriate.

3. The background to this claim is an attempt by the Respondent (" Mr Hussain") to fraudulently seize control of a publicly-owned company and its subsidiaries by dishonest means. The mechanisms by which he has sought to do that are set out in length in the evidence in support of the application and the relevant documents that he has used to take those steps are exhibited to that statement.

4. Mr Hussain is described in the skeleton argument in support of this application as being a very experienced litigant. That is to understate the vexation that Mr Hussain has created for large and well respected corporations trading in this jurisdiction, often publicly owned companies, and the waste of time and expense that he has generated by his activities. That has resulted in terms of imprisonment for contempt of court, to serious findings of dishonesty made by judges on numerous occasions and in particular by Mr Justice Miles in Business Mortgage Plc v Hussain, Mr David Halpern QC in Clavis Securities v Hussain and also and by Mr Halpern's earlier judgment in Kilimanjaro AM Limited v Corporate Manmade Corporate Services Limited.

5. In each case the technique has been broadly the same. Each case involves an attempt by Mr Hussain usually through foreign registered companies to assert entitlement to take over the management and control of a major corporation with a view to obtaining benefits as a result.

6. This case is a particularly bad example because the first claimant is a publicly-owned company listed on the London Stock Market's AIM, and the assertion by Mr Hussain to be entitled to remove the defendants as directors and to be himself appointed as a director of that company or to have his nominees appointed as a director of that company is fatally and fundamentally flawed because the only circumstances in which such a removal or appointment could be made is either by resolution of the existing board or by a general meeting of the company. There has been no such meetings at which either the defendants have been removed as directors of the first claimant or at which either Mr Hussain or those of his nominees through whom he seeks to act (on this occasion including FVS Investments Limited, Highbury Investments Limited and Saret Holdings Corporation) has been appointed as a director or the first claimant. It follows from this that everything that Mr Hussain or his nominees have purported to do in the name or on behalf of the first claimant or any of its subsidiaries the 2nd to 9th claimants is void and of no effect.

7. The mechanism by which Mr Hussain through his various entities has sought to advance this particular fraudulent scheme has been by the commencement of these proceedings. These proceedings are apparently commenced in the name of the plc as first claimant, various subsidiaries of the first claimant, who are the second to ninth claimants, and are proceedings brought against the first, second, third and fourth defendants who are all directors of the first claimant and I think also directors of the subsidiaries as well. This claim suffers from a number of fundamental defects, as one might expect. The critical and overarching fatal defect is that the proceedings (by which the claimants apparently claim in excess US$64m) have been commenced without authority against the first claimant's directors. That of itself merits the striking out of the claim.

8. There are other serious defects to which I should draw attention. The claim form is apparently signed on behalf of the claimants by a Mr Quirk who is described as the manager and signatory of the claimant companies. In fact there is no evidence at all that Mr Quirk exists as anything other than an alias or pseudonym of Mr Hussain and there is evidence that "Mr Quirk" is simply a pseudonym for Mr Hussain. For the reasons I've already explained, Mr Hussain never had any authority to commence proceedings on behalf of the Hurricane group of companies against its directors. To the extent Mr Quirk exists, he had no authority to commence these proceedings on behalf of the 1st to 9th claimants. In those circumstances and for those reasons, these proceedings must

plainly be struck out. It follows that an application for a default judgment must also be struck out.

9. The particularly pernicious aspect of this particular situation has been that Mr Hussain through his various pseudonyms and acolyte foreign entities has sought to adversely affect the business of the claimants by drawing the attention of the existence of these entirely fraudulent proceedings to the counterparties with whom the claimants do business. Even worse have purported to change the banking mandates of the claimant companies by reference to the entirely fictitious suggestion that there has been a takeover of the control of the claimants. It is this factor that leads the applications to go further than merely seeking the strike out of this application but to seek declarations and injunctions that have the effect of putting the true position beyond doubt.

10. The applicants firstly seek a declaration that these proceedings have been issued and prepared without the authority of the first to ninth claimants. Plainly the first to ninth claimants are entitled to a declaration in those terms for the reasons I've already identified.

11. Secondly, the applicants seek a declaration that "Daniel Quirk" had no authority to sign the claim form on behalf of the first to ninth claimants. That is an important declaration not merely because the supposed Mr Quirk had no authority to sign the claim form, but because the first to ninth claimants must be in a position to disclose to their counterparties, who have been vexed by Mr Hussain, declarations of this court which make clear that the proceedings were fundamentally flawed in the ways that I've described including by the signature of a claim form for which there was no authority.

12. The third declaration sought is a declaration to the effect that the officers of the first to ninth claimants are those set out in the table at schedule 1 of the order. That is necessary because of the attempts by Mr Hussain in the course of this fraud to persuade counterparties, banks and others that the defendants to these proceedings had no authority to act on its behalf. The surest way this can be addressed is by a declaration contained in a court order. Plainly attempts by an individual such as Mr Hussain to damage the business of a publicly owned company in which the public have invested either directly or through pension and other funds in which they are interested is contrary

to the public interest and it is plainly necessary there should be a declaration which makes abundantly clear that it is the directors of the company and only the directors of the company who are the officers of it and entitled to act on its behalf.

13. The concomitant of that declaration is contained in paragraph 8 of the draft order which is a declaration that Mr Hussain whether using his various pseudonyms or otherwise his various nominees have no authority and never have had any authority to act as either directors, officers or advisers of the company. That is the necessary concomitant of the declaration I referred to earlier concerning the status of the current directors and is necessary in my judgment for exactly the same reasons.

14. Paragraph 9 is designed to make clear to all that any steps taken by any of Mr Hussain and those who act in his name and on his behalf had and have no authority to act in any way on behalf of any of the first to ninth claimants and thus anything done by them was not merely voidable but was void and of no effect from the outset.

15. Paragraph 10 is concerned with a declaration concerning various resolutions which were purportedly passed in relation to the subsidiaries. These were resolutions which were entirely void and of no effect because they were purportedly made by Mr Hussain and those with whom he was concerned, by reason of him being a director of the first claimant, which he never was, and therefore that declaration is properly sought and will be made. An attempt has been made by Mr Hussain to convene an extraordinary general meeting of the first claimant, which on the face of the documentation is a further attempt to carry into effect this fraudulent scheme. That likewise is void and of no effect and a declaration to that effect can and should be made.

16. The next issue that arises concerns what if any injunction should be granted in order to further protect the company and those who act on its behalf. So far as that is concerned in paragraphs 11 and 12 there are proposed orders which are designed to preclude the tenth and eleventh claimants and Mr Hussain from holding out any of the relevant persons, that is the various pseudonyms and nominees through which Mr Hussain acts, as being or having been directors and officers of the Hurricane companies, and to preclude each of the 10th and 11th claimants and Mr Hussain from taking any steps to

purportedly appoint or remove anyone as a director or officer. Those are orders which in principle it is plainly right should be made, having regard to what I've already set out.

17. So far as that is concerned, Mr Hussain is not a party to these proceedings as yet. However, I'm entirely satisfied that he should be joined to these proceedings for the purposes of enabling the first to ninth claimants to obtain injunctive relief in the terms I've indicated. CPR part 19 permits the joinder of parties where it is necessary or desirable to do so for the purposes of resolving all relevant issues in dispute and there can be hardly a stronger case than for the joinder of someone in the position of Mr Hussain to these proceedings so as to enable the relevant injunctions to be obtained. The evidence which has been filed in support of this application makes it abundantly clear that everything that has taken place has been orchestrated by and is for the ultimate benefit of Mr Hussain.

18. The more difficult question concerns what appears in paragraph 13 of the draft order, which as it as presently formulated seeks to preclude Mr Hussain, FVS and Saret from issuing or continuing any proceedings of any nature in any jurisdiction against any of the Hurricane companies or any of the directors, officers, legal advisers of subsidiaries of the Hurricane companies including without limitation any solicitor in the firm of Dentons and counsel. This proposed order is entirely unqualified, is global in its scope and controls the future actions of Mr Hussain, FVS and Saret for all time.

19. There are a number of difficulties with this paragraph in the way it is presently formulated. First, it purports to preclude each of the three identified defendants from issuing proceedings in the future. This in my judgment gives rise to quite serious potential article 6 points although that might be regarded by some as an academic point in the circumstances of this case. Nonetheless, article 6 rights exist for the benefit of Mr Hussain as they exist for the benefit of everybody else. The mechanisms which are available to control proceedings brought in a civil court in England are broadly speaking the jurisdiction which enables the Attorney-General to apply for an order declaring someone to be a vexatious litigant, which is contained in primary legislation and the more limited civil restraint order mechanisms contained in the Civil Procedure Rules, which have been carefully formulated by the Civil procedure Rules Committee in order to be compliant with article 6. In my judgment it would be wrong in principle to make

an order that purported to control the commencement of future litigation other than by recourse to those mechanisms. There is already in existence a general civil restraint order against Mr Hussain which is designed to control conduct of this sort. It was submitted on behalf of the applicants that I could properly make the order sought since any proceedings could safely be assumed to be proceedings which would be maliciously prosecuted and therefore tortious, and therefore proceedings which would entitle the court to grant injunctive relief. The difficulty about that is it's impossible to say in the future that there would be no circumstances in which proceedings could be commenced which could be anything other than vexatious and malicious therefore I prefer to proceed in the way I've identified.

20. There is a particular problem, however, in relation to the solicitors and counsel for the claimants in these proceedings. There is a well-proven track-record of Mr Hussain seeking to take proceedings against solicitors and counsel who act on behalf of companies seeking relief similar to that which has been sought in this case. In relation to Dentons in particular, there was an attempt by Mr Hussain, entirely fictitiously, to purportedly remove Dentons as the solicitors for the claimants in an attempt to disrupt the steps that could be taken by the applicants to protect themselves from Mr Hussain's fraudulent scheme. That is a strong evidential indicator of the risks that are likely to be run in the future. I'm satisfied that it is appropriate that there should be an injunction which, in principle, restrains the commencement of proceedings against the solicitors who act for the claimants, and counsel who act for the first to ninth claimants in these proceedings. However if that is to be based on a fear of proceedings that are malicious and not to be disproportionate that must be subject to two qualifications, both of which I indicated were appropriate in the course of the argument. The first is that the injunction should be limited to any proceedings arising out of or relating to these proceedings. The second qualification is that there should be a provision within the order which enables Mr Hussain or the 10th or 11th claimants to apply for permission to commence such proceedings, but on the basis that any application for permission must be served by the party applying for permission on all those who it is proposed to make defendants to the proposed new proceedings.

21. The next issue which arises now concerns costs.

22. An order for costs is sought against the tenth and eleventh claimants on the basis that they were the entities who, prior to the joinder of Mr Hussain, were those responsible for these proceedings. The difficulty about that is first of all that they are companies incorporated in accordance with the laws of the Marshall Islands, with no obvious presence in the English jurisdiction. Secondly, and more fundamentally, the evidence suggests that both of those companies have been dissolved and therefore don't exist at all. Therefore, the prospects of recovering any costs by reference to either of those entities is limited. In those circumstances, an application has been made by the claimants to join Mr Hussain as a party to this litigation for the purpose of seeking an order for costs under CPR part 41.

23. So far as that is concerned, the structure of the rules requires, first of all, that there should be an application and then a reasonable opportunity for the person joined for that purpose to respond to any application for costs. If that procedure was mandatory then it would have to be stuck to, and the consequence would be that further costs would be incurred in relation to this already quite expensive litigation which should be avoided if it's at all possible. I am satisfied that in the circumstances of this case that can be avoided.

24. I am satisfied that it is appropriate to make an order joining Mr Hussain for the purpose of seeking a costs order against him. He is the person who has orchestrated the commencement of these proceedings. Mr Hussain has had notice of these proceedings for at least the minimum three days that will be required for an application of this sort and has chosen not to appear or be represented at this application. Thus he could have appeared at this hearing and responded to what was being sought against him but has chosen not to do so. It strikes me as entirely unnecessary as well as wasteful of costs time and public resources to require a further hearing to take place at which the cost issues against Mr Hussain are to be resolved when they could and should have been resolved today. Therefore what I propose to do is to make an order in the terms sought in respect of costs as against him, but subject to the qualification that it will not take effect if within 14 days of today's date he applies to vary or discharge that part of the order.

25. Two points remain. The first is the basis on which costs should be assessed and, secondly, what I should do in relation to the assessment of those costs.

26. So far as the first issue is concerned, it is, in my judgment, plain beyond doubt that it's appropriate that costs should be awarded on the indemnity basis. The conventional test for the award of costs on the indemnity basis is the so-called Excelsior test, that is to say is the conduct of the paying party conduct which goes beyond the norm to be expected in civil or commercial litigation, of the sort concerned? The answer, of course, in the circumstances of this case, is plainly yes. In those circumstances it is plain that the costs should be assessed on the indemnity basis.

27. The next question which arises is whether I should either (a) make an order which directs a detailed assessment of those costs and order a payment on account, or whether I should proceed to a summary assessment of those costs? I'm entirely satisfied that it's appropriate that I should proceed to the summary assessment of costs. To direct that there should be a detailed assessment of costs in the circumstances of this case is merely to inflict upon the claimants a further layer of avoidable cost to no useful purpose.

28. Therefore, what I propose to do is to assess the costs. The sums claimed total £97,738.20, which is relatively modest in the circumstances of this case. I remind myself for the purposes of the summary assessment exercise that no issue as to proportionality arises when assessing costs on an indemnity basis, and that I must be satisfied merely that the costs are reasonably incurred and reasonable in amount with any issue of doubt being resolved in favour of the receiving party.

29. In those circumstances I look at this bill in the round. The sums which are claimed are slightly in excess of the London 1 guideline hourly rates identified in the draft guideline rate report issued a few months ago by the Civil Justice Council Working Party. But I'm entirely satisfied that it's appropriate that these rates should be adopted in the circumstances of this case, having regard to the complexities that were involved and the speed with which the solicitors acting for the claimants were forced to act.

30. I then look at the hours for which payment is claimed which, as it seems to me, are reasonable in all the circumstances. The only possible issue would be concerning the preparation of the witness statement where there are very substantial numbers of hours, particularly by the second A fee-earner. But so far as that is concerned, I am satisfied that this was a lengthy statement that had to be prepared with great care, and whilst it

might arguably be that the hours are marginally in excess of what is reasonable, this is very borderline and an issue that in my judgment, should be resolved in favour of the claimant.

31. That leads me to the only other issue which concerns counsel's fees. Counsel's fees have been included in the sum of £30,000. That is a very substantial sum for an application of this sort. Even allowing for the fact that this is a case which involves very important issues for the applicants, it is in excess of what is reasonable and it goes beyond the threshold for what is borderline and therefore to be resolved in favour of the paying party. I resolve that issue by reducing counsel's fees by £10,000 to £20,000.

32. With that modest reduction, I assess the costs otherwise in the sum asked.

33. The final issue concerns whether or not there are any other directions that I should giving relation to those proceedings. So far as that is concerned, as is apparent from what I've said in the course of this judgment, and as is apparent from the evidence and from the skeleton submissions that have been filed, and indeed from the contents of the authorities bundle that have been filed, there is an increasingly serious problem developing concerning the activities of Mr Hussain and the way he behaves in relation to entirely legitimate businesses, often publicly-owned. The consequence of this conduct is to cause vexation and enormous cost for no good reason; and it also takes up increasing quantities of court time and public resources needlessly.

34. There has been a general civil restraint order made against Mr Hussain which appears to have had precisely no effect on the way in which he conducts himself. Terms of imprisonment imposed upon Mr Hussain appear to have had no effect either. The time has come when the opportunity ought to be given for the taking of more general action against Mr Hussain in the interests of protecting the commercial world from his activities.

35. In those circumstances what I propose to do is to direct that the claimants' solicitors should pass a copy of the evidence and order made in these proceedings, copies of the reports of the other cases that have been relied upon, and a copy of the skeleton in this case, together with the transcript of this judgment to the Attorney-General for the

purpose of enabling the Attorney-General to consider whether proceedings should be taken against Mr Hussain for the purpose of making him a vexatious litigant.

36. The very final point I record is that it goes without saying from what I have said before that I should declare these proceedings to be entirely without merit. I have considered, as required by the rules, whether or not to make a civil restraint order in the light of my declaration that these proceedings are totally without merit. So far as that is concerned, I am satisfied that no useful purpose would be served by me making any further civil restraint orders. The general civil restraint order that is in place against Mr Hussain continues until the middle of next year, and the only orders that I could legitimately make as against the tenth and eleventh claimants would be a limited civil restraint order which is likely to be futile because both those entities have been dissolved, are controlled by Mr Hussain and are outside the jurisdiction.

37. Subject to those qualifications, there will be an order made in the terms of the revised draft prepared by counsel.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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