Case No: A4/2019/2156

IN THE COURT OF APPEAL (CIVIL DIVISION)

Neutral Citation Number: [2019] EWCA Civ 1626

The Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 24 September 2019

Before:

LORD JUSTICE LEWISON
and
LADY JUSTICE ASPLIN

Between:

LAKATAMIA

Respondent

- and -

SU

Applicant

Transcript of Epiq Europe Ltd, Lower Ground, 18-22 Furnival Street, London EC4A 1JS
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Dr van Dellen appeared on behalf of the **Applicant**
Mr Phillips, QC appeared on behalf of the **Respondent**

Judgment

(Approved)

LORD JUSTICE LEWISON:

1. This is an application for an extension of time for appeal against a committal order made by Sir Michael Burton sitting as a High Court judge on 29 March 2019. The grounds for the committal were multiple breaches of freezing orders, orders requiring disclosure of assets and orders requiring Mr Su not to leave the jurisdiction.

2. CPR Part 52.3 provides that an appeal against a committal order is an exception to the rule that permission to appeal is generally required, but CPR 52.12(2) provides than at appellant's notice must be filed within certain limits. It is accepted by Dr van Dellen on Mr Su's behalf that that rule is applicable in the present case and that therefore an extension of time is necessary. The time limit applicable to the present case was 21 days. The appellant's notice ought therefore to have been filed by 19 April 2019. In fact it was filed on 27 August 2019 and stamped on the following day. It is therefore four months out of time.

3. Since the committal order was made, Mr Su has been held in custody in HMP Pentonville, where he still remains. In the decision of this court in *Denton v T. H. White* [2014] 1 WLR 795, this court laid down the test for a relief against sanctions, and in a further case in this court called *R* (*Hysaj*) *v Secretary of State for the Home Department* [2014] EWCA Civ 1633, this court said that an application for an extension of time ought to be treated in the same way. The three-stage approach in *Denton v White* requires us to assess the seriousness and significance of the breach, consider why the default occurred and consider all the circumstances of the case.

4. It is accepted by Dr van Dellen, quite rightly in my judgment, that the delay in filing the appellant's notice is a serious and significant breach. Two reasons are put forward. The first is that following the committal, Mr Su disinstructed his lawyers and correspondence was conducted on his behalf by a McKenzie friend. *Hysaj* establishes that the absence of legal representation is not a good reason for a delay and that litigants in person, whether or not assisted by a McKenzie friend, are required to comply with the rules just as a legally represented party is.

5. The second reason put forward in the appellant's notice, and indeed the only reason put forward in the appellant's notice, is that Mr Su did not have access to the sum of £1,199 for the court fee. Dr van Dellen tells us that he visited Mr Su in prison on 23 August and organised a fee remission which enabled the appellant's notice to be filed four days later. The judge was satisfied that there was money available, not so much for the purpose of paying a court fee but for purging Mr Su's contempt, which related to the dissipation of millions of euros. Mr Su has submitted in support of his appeal over 50 pages of manuscript, but nowhere in that material is there any explanation of what attempts, if any, he made to find the money with which to pay the court fee. In considering a different aspect of this case on the papers, Coulson LJ said that he could see no good reason for extending time for appeal, and I agree with him.

6. So that leaves a consideration of all the circumstances of the case. It is perfectly true that Mr Su's human rights are engaged because he is in prison, but it is not incompatible with the European Convention on Human Rights for a national system to impose time limits even in the case of criminal convictions resulting in prison sentences provided that they are not too short or too rigorously enforced. In the *Hysaj* case which I mentioned, this court held that in most cases the merits of the appeal have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process outlined in *Denton v White*. Mr Phillips QC submits that this is one of those cases, and in addition the case has been listed as a rolled-up hearing, that is to say, an application for permission to appeal with the appeal to follow if the extension of time is granted.

7. There are two particular groups of contempt which the judge thought were particularly important. He made that clear at paragraph 45 of his judgment, and he described those contempts as "the non-disclosure and dissipation of the Monaco assets leading to the disappearance of 27 million euros and the attempt to flee the jurisdiction". The Monaco properties consisted of two villas, the Villa Rignon and the Villa Du Royan, held through a corporate structure. Mr Su was required to disclose his assets insofar as they exceeded a value of £10,000. The contempt allegation contained in the application notice dated 19 March 2019 and repeated in subsequent iterations of the application notice is that Mr Su failed to disclose his interest in either the properties themselves or in the companies through which the properties were held. That applies whatever the nature of his interest and whether he was a one-hundred-percent beneficial owner or not.

8. Dr van Dellen has suggested that Mr Su was not required to disclose any interest if it had a value of less than £10,000, but having heard the evidence, the judge was quite satisfied that Mr Su had a substantial interest in each of the two properties. It is true, as the judge said in paragraph 15 of his judgment, that there was some doubt whether he was the one-hundred-percent beneficial owner of those properties. The judge thought it was more likely than not that he was. But that in my judgment does not matter. It does not detract from the essential thrust of the allegation, which is a failure to disclose at all. The judge was well aware of the standard of proof which he had to apply, and he said in paragraph 16 of his judgment that he was satisfied that each of the Monaco contempts was satisfied beyond reasonable doubt. So far as the dissipation of proceeds is concerned, there does not appear to me that there is any appeal against the judge's finding in that respect. It is argued on the papers that the judge was wrong to find that Mr Su had agreed that he was the beneficial owner. That however misses the point. Whether Mr Su agreed or not, the judge found as a fact that he had a beneficial interest in the properties which he failed to disclose.

9. The second group of contempts which the judge regarded as particularly serious were, as I have said, the attempt to flee the jurisdiction. That arose in the context of an order which required Ms Su to give an address and telephone number and also which restrained him from leaving the jurisdiction. I need not deal with the point about failing

to provide an address. The judge, as is clear from the quotation from paragraph 45 of his judgment, thought that the attempt to flee the jurisdiction was the real nub of the contempt in that case. The judge heard evidence from Mr Su. He recorded that evidence at paragraphs 26 to 28 of his judgment. For reasons which are entirely understandable, the judge rejected his explanation as incredible.

10. The principal point that was taken in relation to that evidence was that the primary evidence was given by two police officers in relation to the trip to Liverpool by a PC Williams and that that evidence was tendered by way of a witness statement rather than by way of affidavit, as CPR Part 81 requires. There are three points to be made in relation to that. The first is that the essential facts were confirmed by Mr Gardner on affidavit in his ninth affidavit. The second is that there was no application to cross-examine the police officer. The third is that despite the fact that Mr Su was represented by leading counsel at the hearing, no objection was taken to the form in which the evidence was given.

11. When the judge came to sentence, it is clear that those were the two groups of contempt which informed his sentence. There is no complaint about the self-direction that he gave himself in relation to the sentencing process. In agreement with Mr Phillips, I consider that this is one of those cases where even a brief examination of the grounds of appeal show that they are extremely weak. In those circumstances I do not consider that the third stage of the *Denton* process requires us to extend time. I would refuse to extend time accordingly.

LADY JUSTICE ASPLIN:

12. I agree that an extension of time for the filing of the appeal notice in this case should not be granted for the reasons given by my Lord, Lewison LJ.

Order: Application refused

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