



Neutral Citation Number: [2021] EWHC 1455 (Ch)

Case No: BL-2019-001517

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Rolls Building
Fetter Lane
London, EC4A 1NL

27 May 2021

Before :

NICHOLAS THOMPSELL
Sitting as a Deputy Judge of the High Court

Between :

BARONESS JACQUELINE VAN ZUYLEN

Claimant/
Respondent

- and -

(1) RODNEY WHISTON-DEW

First
Defendant/
Applicant

(2) GBT GLOBAL LIMITED

Second
Defendant/
Respondent

Derrick Dale QC and Imran Benson (instructed by **Lock & Marlborough**)
for the **Claimant**

John Davis (instructed by **Davis-Law Solicitors**) for the **2nd Defendants**

Application heard on paper 27 May 2021:

Judgment

Covid-19 Protocol: This judgment is handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10 am on 27 May 2021.

Nicholas Thompsell:

1. I have received an application dated 21 May 2021 by the first defendant, Mr Rodney Whiston-Dew asking the court to be excused from attending in person the substantive hearing that has been set down in this matter for five days commencing on 7 June 2021.
2. I was asked to consider this application on paper and I am content to do so. Mr Colin West QC, on behalf of the claimant, has kindly indicated that there is no objection on behalf of the claimant for this be considered on paper and neither has there been any objection to this from Mr John Davis representing the second defendant.
3. As well as considering the first defendant's application, and the documentation supporting this, I have considered representations made on behalf of the claimant by Mr West and by Mr Davis on behalf of the second defendant.
4. Mr Whiston-Dew requests this adjustment to the proposed arrangements for the substantive hearing on the grounds of his ill-health and he has produced witness statement evidence and other evidence as to the difficulties he was experiencing with depression and anxiety. The arrangements proposed for the trial would involve his needing to be transferred from the prison where he is currently residing to one closer to the court in London. He has explained that he considers that such arrangements would add to his anxiety and make it more difficult for him to concentrate at the trial.
5. Mr West, on behalf of the claimant is not opposing this application, but has stressed the claimant's strong position that the substantive hearing should not be further adjourned. Mr Davis also supports allowing Mr Whiston-Dew to appear remotely and would wish there to be no further delay, although he is concerned about the possibility that a delay may be necessary if Mr Whiston-Dew will be unfit for trial.
6. Having given this matter careful thought, I am minded to grant the claimant's request and I have approved an order to this effect based on the draft order provided by the first defendant, with amendments.
7. In ordering this, I am mindful that the substantive hearing was originally due to take place by means of CVP. I previously changed this to a physical hearing. This was partly on the grounds that I thought that this would generally be more satisfactory in the case of a multi-day trial involving witness evidence, but also on the grounds that I thought it might be less stressful to the claimant if he were to be physically present rather than having to participate via a screen. I had tried to establish whether he agreed with this proposition before making the Production Order but I was defeated by the difficulties of communicating with Mr Whiston-Dew in prison. I think that he (with his medical advisers) must be the best judge of what he would find less stressful.

8. For the purposes of this decision I have accepted the evidence that Mr Whiston-Dew has proffered as to his mental state. I should, however, say something about this evidence, as well as the medical evidence that accompanied his previous application to adjourn the substantive hearing, which was originally timetabled to have commenced on 17 May 2021.
9. This medical evidence has not been of the quality that the court would expect in relation to an important matter relating to the conduct of these proceedings. Acknowledging the difficulties that Mr Whiston-Dew has in arranging for medical advice, I have reluctantly accepted what has been on offer on these two occasions. But I think I should put down a marker that if a further occasion arises where medical evidence is required - particularly should Mr Whiston-Dew need to consider any further request for adjournment - the court would expect the application to be supported by a full, signed medical report addressed to the court by a suitably qualified physician, and would need to consider providing opportunities for the claimant and the second defendant to challenge any such evidence. Whilst the court will always wish to consider making reasonable accommodations for someone who is experiencing difficulties with his mental health to lessen the inevitable burden of stress involved in a trial, this cannot be used as a means for indeterminate delay. The court needs to be vigilant to prevent any unjustified delay particularly if there is any possibility that a party may be playing up medical difficulties for tactical reasons.
10. Enquiries have been made to establish that it should be possible to make a courtroom available that has the appropriate audio-visual equipment for the five days commencing 7 June 2021 and that the prison will be able to accommodate these arrangements also. As the defendant will not be attending physically, it is proposed that this hearing will be in the Rolls Building, rather than the Royal Courts of Justice as previously discussed.
11. I have heard from Mr Becker, who represented Mr Whiston-Dew at the last hearing, that he is hopeful of being instructed to represent the defendant at the substantive hearing. I very much hope that Mr Whiston-Dew is able to be represented at that hearing as I am sure that that would not only assist the court, but I think it would also do much to reduce the stress of the trial on him.
12. I also understand that Mr Whiston-Dew has applied to the Court of Appeal for permission to appeal my previous decision to dismiss his application on the grounds that the matter should be instead dealt with by the courts of the Nevis Islands. If this permission is granted, then it may be necessary to delay this trial further whilst that matter is considered by the Court of Appeal, but pending hearing that the Court of Appeal has granted this permission, the parties should continue to prepare for trial.

I do not expect the costs on any side of this short application to be particularly significant in the context of this matter. I was invited by the first defendant to make no order for costs in relation to this matter but considering all aspects of this I am ordering instead costs in the case.