

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
(FINANCIAL LIST)
[2021] EWHC 2766 (Ch)



No. FL-2020-000023

Rolls Building
Fetter Lane
London, EC4A 1NL

Monday, 27 September 2021

Before:

MR JUSTICE MILES

B E T W E E N :

BUSINESS MORTGAGE FINANCE 4 PLC
& OTHERS

Claimants

- and -

RIZWAN HUSSAIN
& 8 OTHERS

Defendants

MISS A.L. DILNOT QC and MR A. RIDDIFORD (instructed by Simmons & Simmons LLP)
appeared on behalf of the Claimants.

MR H. GILLOW appeared on behalf of Epiq Europe Ltd in respect of the retrospective permission
application.

THE DEFENDANTS were not present and were not represented.

J U D G M E N T
(via Microsoft Teams)

MR JUSTICE MILES:

- 1 There are two main applications before the court in a number of related proceedings. The first is a committal application brought in relation to an injunction that I granted in February 2021. The application is against Mr Rizwan Hussain. The second application concerns an application for retrospective permission to record proceedings for the purposes of transcribing them. That relates to several sets of proceedings and seven different hearings.
- 2 The proceedings have a long and complex history but, in very brief terms, they concern a series of steps taken by Mr Hussain and a number of associates in respect of several securitisation structures, of which a number of companies called Business Mortgage Finance are the issuers. Business Mortgage Finance Holdings (“Holdings”) is the parent company of those issuers.
- 3 I found in my judgment in February that there had been an unauthorised and unwarranted corporate assault upon the issuers, in the course of which Mr Hussain and his associates had purported, among other things, to become directors of the companies, remove the existing directors, replace the note trustees and special servicers and rescind the retainer of the solicitors acting for the Business Mortgage Finance companies, Simmons & Simmons. I will not repeat the detail of my decision here.
- 4 Since I made my order in February, further steps have been taken whereby, to put it neutrally, a number of persons or entities have claimed that they have become directors of the various issuer companies and Holdings and another company which was previously an issuer of notes, BMF3; and have purported to call meetings of directors and revoke the powers and authorities of the existing directors and terminate the retainers of various parties, including Simmons & Simmons. They also claim that the charged property of the issuers has been sold to an offshore company for sums well in excess of £500 million.
- 5 The application made by the Business Mortgage Finance companies in relation to the committal application are based on the contention that Mr Hussain has breached the injunction and, to put it in broad terms, that he is behind the various steps which have occurred since my order in February.
- 6 This matter has now been listed together (under my direction) with the retrospective permission application. On Friday last week, a Mr Artemiou served various documents and contacted my clerk via email, contending that the hearings today should be adjourned and should come on together with a number of other applications which have been listed before me pursuant to an order of Cockerill J made in August 2021. Mr Artemiou contended in the email and in the attached documents that various corporate steps had taken place since my order in February and that, as a result of those steps, the directors of the companies have changed, and that Simmons & Simmons are no longer properly retained by the issuer companies to act on these applications. He referred to a witness statement signed by himself, and a witness statement signed by one Usman Ahmed.
- 7 Today I received another email (via my clerk) saying that Mr Artemiou no longer intended to appear before me today. He says that he has an elderly mother who has

taken ill, and that he is forced to take care of matters in relation to her. No medical evidence was served, and nothing was served to say whether Mr Artemiou was the sole carer. I have no proper evidence about that.

8 The email also states, as did some of the other material served on Friday, that Mr Artemiou and a company of which he appears to be a director called “Kipling Firs” are unable to obtain the services of solicitors or counsel and, for some reason, he seeks to blame Simmons & Simmons and Ms Hunter-Yeats for that.

9 Miss Dilnot QC made clear that she does not accept that Mr Artemiou or Mr Ahmed are anything other than the alter egos of Mr Hussain but, for present purposes, I shall follow the course she did of assuming that they are separate people who genuinely exist and that they are capable of giving witness evidence.

10 Miss Dilnot made the following submissions. Mr Artemiou and Kipling Firs have no standing whatsoever in relation to the committal application. Their only possible involvement in relation to the retrospective permission application is in relation to hearings which took place in July and August this year, in which Kipling Firs was a party but, otherwise, they have no conceivable standing. Mr Artemiou has not attended today; nor has anyone else on behalf of Kipling Firs, there are no solicitors on the record to act and nobody has appeared; therefore all one has is some emails and some documents which purport to be witness statements. (I should also say that I was provided on Friday with a document which purported to be some form of written submission on behalf of, it seems, Kipling Firs). Miss Dilnot says that, given the history, the court should only even begin to entertain any submissions concerning the proper authorisation of these proceedings and of Simmons & Simmons to act on the basis of cogent evidence in proper form. There has been a sustained attempt to undermine the authority of the directors of the issuers in these circumstances, the court requires proper evidence in proper form, presented properly, before accepting the allegation that Simmons & Simmons act without authority.

11 I accept Miss Dilnot’s submissions. I do not consider that Mr Artemiou or Kipling Firs has any standing in relation to the committal application. None of the materials that have been filed begins to satisfy me that there is any real question about the standing of Simmons & Simmons to bring these applications on behalf of the companies, or of the directors themselves to represent the companies. There is merely a series of unclear and incoherent assertions which do not, even on their face, amount to a proper legal basis for even calling into question the authority of the directors to continue to act for the companies or for BMF Holdings or for BMF3.

12 I also note in this regard that, in July and August 2011, orders were made by a judge of the ICC which were premised on the directors of Holdings and BMF3 remaining the original directors, that is to say Ms Bidel and Mr Speight. Although there was an attempt to set aside the July decision, that was rejected in August 2021, when a final order was made, and there has been no appeal from that decision. Though those proceedings did not concern the issuers, the same fundamental questions arose in relation to BMF3 and Holdings, and the judge reached a clear conclusion and made a final order.

13 To my mind it is very important, for the reasons given in the extensive evidence that I have read, that the committal proceedings progress as rapidly as possible, consistent with fairness to Mr Hussain, and I am concerned that the proceedings should not be

derailed by informal applications of the kind suggested by Mr Artemiou, particularly in circumstances where he has not appeared before the court.

- 14 For these various reasons, I shall continue with the hearing and shall not accede to the suggestion (and it is no more than a suggestion as there is no properly formulated application before me) that case management decisions in the committal proceedings should be put off.

Ruling on the application or retrospective permission to record proceedings

- 15 There is a series of applications made in a number of separate proceedings for retrospective permission to record those proceedings for the purposes of the transcribers, Epiq Europe Limited (“Epiq”) making transcripts of the proceedings.

- 16 The background is this. As I have already said, there has been a large number of proceedings connected with the interference carried out by Mr Hussain and individuals or entities associated with him against the various applicants. In broad terms, the applicants are either the issuers of various securitisation notes or other parties in some way connected with the securitisations. The issuers of the notes are known as the “BMF issuers” and the holding company is BMF Holdings. This has led to proceedings in the Financial List, but also in other parts of the Business and Property Courts, and, more recently, there have been two hearings in a set of proceedings in the ICC to do with the rectification of the various companies’ registers at Companies House. I will refer to the first group of proceedings as the “Financial List proceedings”, albeit not all of the cases were in fact in the Financial List, and the latter two hearings as the “rectification claim”.

- 17 The applicants at the various hearings were historically, and are still, represented by Messrs Simmons & Simmons LLP. The relevant hearings consist of some six hearings in the various Financial List proceedings and two hearings in the rectification claim. The defendants in the various proceedings included Mr Hussain and a large number of companies and individuals alleged to be associated with him in taking steps concerning the BMF securitisations. Another company involved in the recent rectification claim was “Kipling Firs”. That is a company of which the director, or one of the directors, is said to be Mr Artemiou. I have already dealt with the way in which I decided to address some materials filed by Mr Artemiou and some emails sent by him to the court last Friday.

- 18 The reason for the present applications is that Epiq prepared audio recordings of the eight relevant hearings without the relevant Form EX-107 having been completed by Simmons & Simmons or Epiq. Epiq prepared the audio recordings to enable them to produce transcripts. The evidence shows that, in most cases, the audio recording was routinely deleted after the relevant transcript had been prepared and approved. The only purpose of producing the audio recordings was, as I say, to enable the transcripts to take place. It appears clear that, in each of the various hearings, the tribunal was aware that a transcription was taking place, but was not necessarily aware that an audio recording was being prepared too. The evidence shows that the solicitors did not realise that the hearings were being recorded.

- 19 I have been taken to two witness statements of Ms Caroline Hunter-Yeats, a member of Simmons & Simmons, who was the lead partner for the BMF companies. I have also been taken to two witness statements of Mr Timothy Boyce, who is also a member of

Simmons & Simmons, and who was instructed to investigate what had happened once it emerged, in the course of the ICC hearings, that an unauthorised recording had taken place.

- 20 On the basis of that evidence, I have no doubt that as far as Simmons & Simmons and their lay client is concerned, the unauthorised recording was entirely inadvertent. The solicitors knew of the prohibition on unauthorised recording but did not know that the recording had taken place. As soon as they learnt of the fact that recordings had taken place, they immediately apologised to the court, reported themselves to the Solicitors Regulation Authority, made the applications for permission very quickly, and appointed Mr Boyce to investigate what had happened. Simmons & Simmons have also put in place further processes and procedures internally so that the issue is properly flagged up in its dispute resolution department.
- 21 As regards Epiq, in a decision published on 24 June 2021, called *JR&B Farming v Hewitt* [2021] EWHC 1704 (Comm), HHJ Davis-White QC set out a clear and comprehensive statement of the relevant legal principles. He concluded that, in any case where there was a transcription taken and an audio recording was taken for that purpose, advance court consent was required. He also held that Epiq's terms and conditions did not clearly explain to their clients that they were responsible for an audio recording and that an audio recording would be taken in the case of a live-time transcription. It is unfortunate that though that judgment was published in June of this year, the two further hearings took place before ICC judges in July and August without Epiq ensuring that the audio recording was properly consented to by the court in advance.
- 22 I heard from counsel for Epiq, Mr Gillow, who explained that, as far as Epiq was concerned, their terms and conditions required the client to ensure that all necessary consents were obtained, and that that applied both to the process of transcription and to the audio recording. That submission was not entirely satisfactory since HHJ Davis-White had already ruled, in June 2021, that its terms and conditions did not make it clear to solicitors that wherever a transcription was taken there would also be an audio recording.
- 23 After some further exchanges, Mr Gillow went on helpfully to explain that from today, Epiq will be putting a notice on the front page of their order form for transcriptions that the consent of the court is required for audio recordings and for transcriptions, and that an EX107 form will have to be properly filled in before the transcription process can take place. He also explained that Epiq would be contacting existing bookings to alert them to this issue, which should cover cases where existing customers have already booked Epiq to carry out a transcription but were unaware of the problem arising in relation to the need for an EX107 form.
- 24 The first question for me is whether I should grant retrospective permission in relation to the eight hearings. I am satisfied that it is appropriate to grant retrospective permission. First, the audio recordings were taken in order to allow the transcriptions to take place, and only for that purpose, and have not been used for any other purpose, published or disseminated in any way. Second, I am in no doubt that had the court been asked for consent in respect of any of the hearings, it would have granted consent. Third, no harm has arisen as far as the other parties to the proceedings are concerned. Fourth, it is important that the integrity of the court's process is properly protected (and the applicants did not seek to suggest that what had happened was not serious) but on

the other hand, I am satisfied that the applicants and Simmons & Simmons have taken all appropriate steps since finding out about the unauthorised recordings to put the matter right, to make this application and to put in place protections against a similar breach occurring in the future. Fifth, Epiq's position is separate and should not affect the position as regards the applicants. It is unfortunate that the steps which they are now saying they will take were not taken earlier but I am satisfied that they have now taken proper steps to seek to prevent a similar breach.

25 I therefore consider it appropriate to grant retrospective permission. In reaching that decision, I should make two other points. First, that I think it appropriate to make such an order in respect of all of these eight hearings, notwithstanding that different judges heard them. The same issues arise in relation to all of them and I have also given directions for these various applications to be listed before me and for notice to be given to all of the various respondents to the applications. None of the respondents have appeared today to oppose.

26 The second observation flows from the first; it is that Mr Artemiou, purporting to act on behalf of Kipling Firs, has objected in writing to this order being made. But, as I said in an earlier ruling, he has not appeared to make any submissions, and the material he has put before the court is an informal email. I do not think there is anything in anything which he has said which should cause the court to pause before giving retrospective permission. I am concerned that among the documents that he has put before the court is a so-called "charge sheet" addressed to Ms Hunter-Yeats, a copy of which has been sent to junior counsel for the applicants. I have read that charge sheet. It seems to me that there is absolutely no merit or substance in the suggestion that Ms Hunter-Yeats was in any way guilty of criminal conduct in relation to the recording of the hearings. The charge sheet is in my judgment an entirely vexatious and frivolous document. Mr Artemiou also said, in a communication to the court, that criminal proceedings had been instituted in the magistrates' court against Ms Hunter-Yeats, but the evidence shows that that is not true, and that no such criminal proceedings have in fact been instituted. This episode demonstrates, as the applicants submit, that parties hostile to the applicants are seeking opportunistically to seize on any event to try to muddy the waters. If anything, it seems to me that is a further reason why the court should grasp the nettle and grant retrospective permission.

27 Finally, I turn to the question of whether any further steps should be taken as regards Simmons & Simmons. The court has a jurisdiction to take various steps, including reporting the matter to the judge in charge of the relevant list, or to the Divisional Court, or to the Solicitors Regulatory Authority. I am entirely satisfied that no further steps should be taken by the court. Simmons & Simmons recognised the error when it was raised by the court in August of this year, they immediately and quite properly apologised for the breach, they took steps to ensure that this would not happen again and they have referred themselves to the SRA. There is no warrant for any further action being taken by the court.

Service and directions in the committal proceedings

28 I now turn to the substantive application in relation to the committal proceedings. I have already given two rulings earlier today in which I have set out in very broad terms the nature and present stage of the proceedings. In very broad terms, I granted an injunction in February 2021 requiring Mr Hussain to refrain from taking a wide variety of steps in

relation to the issuers and BMF Holdings, and the applicants contend that Mr Hussain has committed various breaches of that order and they seek to commit him to prison for contempt of court. The contempt proceedings were issued on 28 June 2021.

- 29 Mr Hussain has not appeared before me today on this CMC, and the first question is whether I should proceed in his absence. Counsel for the claimants has taken me through the history of the attempts to serve Mr Hussain with the application and the supporting materials, and the ways in which the material has been brought to this attention.
- 30 The starting point is that there is evidence from two process servers of their attempts to serve Mr Hussain personally. On a number of days in early July, two process servers observed three addresses where it was believed Mr Hussain might be living. That led to a telephone conversation on a landline on 7 July 2021 when Mr Hussain confirmed that he was living at an identified address in Fishwick Parade, Preston, which is his parents' address.
- 31 On 9 July 2021 one of the process servers, Mr Majuric, tried to serve the committal application personally on Mr Hussain at the Fishwick Parade address. He spoke to a woman at the property who confirmed that Mr Hussain was at home but did not want to come to the door to collect the documents. Having briefly spoken to a male person inside the house, she returned to the door to say that she was mistaken, and Mr Hussain was not in fact at home at all. A little while later Mr Majuric spoke to Mr Riaz Hussain, who is believed to be Mr Hussain's father, at Fishwick Parade. Mr Riaz Hussain refused to let Mr Majuric leave the committal application at the address for his son. Mr Majuric placed the documents inside the door, but Mr Riaz Hussain threw them back at Mr Majuric's car and they landed in the road, where they remained later that day. It is unclear whether they were later collected from the road.
- 32 I am satisfied that reasonable steps were taken to serve Mr Hussain personally and that he has deliberately evaded service. It is clear that he was at the Fishwick Parade address on 9 July 2021, and that he then sought to avoid service on him by falsely contending, through the woman who had opened the door, that he was not there.
- 33 The next point is that there is evidence of Mr Hussain using at least three email addresses. Each of them has the same initial format of the name "rizwan.hussain", then followed by "@clifden", or ".personal@outlook.com" or "@clavissecurities". Clavis Securities is another securitisation structure which Mr Hussain has claimed to have various rights in respect of and where the securitisation vehicles are contesting his claims. There are ongoing proceedings concerning the Clavis securitisation structure. There are also a number of other proceedings concerning other securitisation structures.
- 34 I was taken to evidence showing Mr Hussain using each of those three email addresses, in the case of the outlook address, at least twice in April 2021, including a formal communication with Westminster magistrates' court on 13 April, which expressly gives the @outlook address as his address for communications. The @clavissecurities address has been used as recently as 16 April 2021, and the @clifden address has been used as recently as 12 July 2021, in an email to the court which also refers to CE files, which suggests that Mr Hussain understands and actually uses the court's CE file system.
- 35 Returning to the history, on 9 July 2021, Simmons & Simmons sent the committal application, together with the supporting documentation, to Mr Hussain at the three

email addresses, providing either or both a zip file attachment and a secure link for the documents to be downloaded. The covering letter attached to that email itemised the material. It also informed Mr Hussain of the importance of the matter, of his right to apply for Legal Aid, and of the fact that the court might proceed in his absence on this hearing and at any trial.

- 36 There was a further email sent shortly afterwards with an unredacted version of the supporting affidavit. I was shown two delivery receipts for the @outlook.com address and the @clavissecurities address. The email sent to the @clifden address did not seek a delivery receipt. As I have already said, was after the sending of those emails that Mr Hussain used the @clifden address in the email to the court of 12 July 2021. There is a further example of him using that email address on 13 July 2021, and there is also evidence which suggests that he knows how to use file transfers.
- 37 After the service of the application, a number of further letters were sent to his email address or addresses notifying him of this hearing, including a letter of 15 September 2021 which set out the proposed timetable for evidence, and again reminded him of the importance of the matter and his right to apply for Legal Aid. Again, there were delivery receipts for the @outlook.com and @clavissecurities email addresses. There is no receipt for the @clifden address. There was a further letter of 21 September 2021, giving the date of this hearing, and also a communication was sent to Kipling Firs, giving the date of this hearing (since Kipling Firs had, at an earlier stage, said that it intended to attend with counsel).
- 38 In these circumstances, I am satisfied of the following matters. First, that Mr Hussain took steps, deliberately, on 9 July 2021, to avoid service of the committal application on him. Second, Mr Hussain has had notice of the application and the supporting materials via his various email addresses. It is overwhelmingly likely that he is still using these email addresses, for the reasons I have already outlined, including in emails to various courts. Third the delivery receipts show the documents being delivered. Fourth, Mr Hussain knows how to use the relevant technology to open the various attachments or use the file delivery services. Fifth, he knows the potential consequences of a finding of committal. This has been drawn to his attention. It is also apparent from the fact that he has already been committed to prison for contempt of court in unrelated proceedings. Sixth, he knows of his ability to apply for Legal Aid. This was made clear in the various communications from Simmons & Simmons, and it appears that he had the benefit of Legal Aid in relation to an appeal in relation to his sentence in the earlier committal proceedings. Seventh, there is a need for these proceedings to come on as quickly as possible, consistently with fairness to Mr Hussain. The allegations made in the committal proceedings are serious ones. As I explained when granting the injunction, the securitisation vehicles have been subjected to a campaign of illegitimate attempts to suggest that third parties are directors or otherwise involved in acting on behalf of the various parties to the securitisation. The question whether Mr Hussain is behind the various steps that have been taken since my order is the matter in issue in the committal proceedings, but that needs to be decided as soon as is fairly possible. If the claimants are correct, then further steps are being taken which are disruptive and expensive for the securitisation, and it seems to me this is a matter that needs to be resolved. If Mr Hussain is not behind these steps and is innocent of the allegations of committal, then that too is something that should be established as soon as fairly possible. I therefore consider that it is important to avoid unnecessary delay and for matters to proceed.

- 39 I have considered whether I should issue a bench warrant and require Mr Hussain's attendance at this hearing, but that would lead to further delay. It is not certain where he is or that he would immediately be amenable to arrest. There would also be the need for the claimants and the court to be available for another hearing. It seems to me that, in all the circumstances, it is appropriate to proceed in his absence. At the moment, the court is being asked to give directions. If Mr Hussain can demonstrate hereafter that he is not in attendance today it is possible that he will be able to apply to vary any orders that are made. I say "possible" because I do not wish in any way to pre-judge the attitude the court will take if there is such an application, but that is a further reason why it is appropriate to get on giving directions today and not to adjourn the matter further for his compelled attendance.
- 40 I turn to the application for alternative service. This application is made under CPR 6.27 and CPR 81.5(1). It seeks permission to serve the committal application and connected documents on Mr Hussain by service to the three email addresses that I have already referred to. The relevant principles concerning an application under CPR 6.15 were conveniently set out in the judgment of Popplewell J in *Société Générale v Goldas* [2017] EWHC 667 (Comm) at [49]. I shall follow those principles.
- 41 It is necessary to consider all the relevant circumstances in determining whether there is a good reason for granting the relief. It is not enough to point to a single circumstance taken in isolation. I have set out the relevant history above and have concluded that Mr Hussain has deliberately taken steps to avoid service but has had notice of the application and its contents via the three email addresses. As Popplewell J said, this is likely to be a critical factor. These are factors which require specific attention in relation to proceedings under CPR Part 81. It was also clear from the covering letters sent to those email addresses that Simmons & Simmons were seeking to serve him with the documents and were not providing the documents for information only. The fact that (as I have found) he has become aware of the fact and contents of the application is an important factor but not a decisive one. It is of particular importance where, as here, he has sought to avoid service and where, for the reasons I have already given, there are powerful reasons why the application should proceed as quickly as possible consistently with justice.
- 42 I next take account of the fact that the claimants took what reasonable and careful steps to seek to effect service on Mr Hussain. There has been no relevant delay here, as the application for alternative service was brought promptly and the documents were served by email promptly.
- 43 The next point is that Mr Hussain, though a litigant in person, is highly sophisticated and well versed in court proceedings. The evidence shows that he has been party to or involved in multiple complex cases. His level of sophistication is obvious from his communications with the court, for example in the email of 12 July 2021 referred to earlier, and his communications with the Magistrates' Court in Westminster. It was also apparent to me from the trial that took place in January 2021, when Mr Hussain made submissions from prison seeking an adjournment, that he is a sophisticated and intelligent man who well understands court processes. I have already concluded that he also understands full well the consequences of a finding of committal for contempt of court.

- 44 In these circumstances, I am satisfied that there is good reason to grant the relief sought, both retrospectively in respect of the service of the application and notice for today, and prospectively in relation to further steps in the proceedings. It also seems to me that the claimants should continue to monitor the question whether Mr Hussain is participating in these proceedings and should give careful consideration to whether an application should be made in due course for the issue of a bench warrant concerning the trial. That is a matter that will depend on how things develop, and it is something that should be, it seems to me, determined in advance of the trial itself. It may be that the claimants' position is that a trial should take place in the absence of Mr Hussain, but that is something they will have to consider, and if it is their position, something the court will have to consider in due course.
- 45 I should finally mention that the claimants and their solicitors and counsel have drawn to my attention a number of sets of proceedings which have been either brought or threatened against partners in Simmons & Simmons and junior counsel. These include some civil proceedings and also some threatened criminal complaints. As to the criminal complaints, although Kipling Firs has repeatedly stated in correspondence that these proceedings have been instituted in the magistrates' court, that appears on analysis to be no more than an assertion that they have made representations to the magistrates' court that proceedings should be brought and there have been no proceedings issued by the magistrates' court, endorsed by the magistrates' court or otherwise sanctioned by them. The reason this matter has been raised is that contempt proceedings must be brought fairly and cannot be brought to advance the private interests of the lawyers or their litigants. No ruling is sought at the moment, but I can say that I see nothing in the materials which have been raised to date to suggest that it is improper for the lawyers to continue acting. They say that they will keep the matter under review and if things change, will draw it to the court's attention. It is in my judgment appropriate to include the recital in the order, but I make no formal ruling on it.