



Neutral Citation Number: [2021] EWHC 3031 (Ch)

Case No: HC-2016-001671

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Rolls Building
Fetter Lane
London
EC4A 1NL

6 October 2021

Before:

MRS JUSTICE BACON

Between:

CARE SURGICAL LIMITED

Claimant

- and -

PAUL SHANE BENNETTS

Defendant

Thomas Alkin appeared for the **Claimant**
Hugh O'Donoghue appeared for the **Defendant**

APPROVED JUDGMENT

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MRS JUSTICE BACON:

1. This is an application by the claimant for directions in proceedings brought by it for the committal of the defendant for contempt of court, in relation to a trial that took place in 2018 where the claimants were the EC Medica group of companies, purportedly controlled by the present defendant, and the present claimant was one of the defendants.
2. The contempt alleged is the interference with the due administration of justice by the defendant by (1) making a statement under oath at the trial, which the defendant knew to be false or did not believe was true, namely confirming the defendant's evidence that EC Medica was the owner of the unregistered design rights and confidential information asserted against the defendants at the trial; and (2) failing to disclose to the court before giving evidence that five days before the trial the defendant had purported to divest EC Medica of those rights.
3. The defendant to these proceedings has applied to strike out the claimant's application on the basis that the application required permission to proceed, and no permission application was made by the claimant.
4. CPR 81.3(5) provides that:

“(5) Permission to make a contempt application is required where the application is made in relation to—

(a) interference with the due administration of justice, except in relation to existing High Court or county court proceedings;

(b) an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement.”
5. The claimant says that the present application is made in relation to existing proceedings: namely, the proceedings in the underlying trial at which the defendant is said to have misled the court. In particular, the claimant points out that a damages enquiry ordered following that trial is still pending, albeit that it is not likely to proceed given the insolvency of EC Medica. Accordingly, the claimant says that the exception in CPR 81.3(5)(a) is engaged.
6. The defendant contends that the underlying proceedings are only existing in a limited technical sense, given that there is no realistic possibility of recovery of damages. The defendant also says that, in reality, the contempt application is made on the basis of there being a knowingly false statement in the defendant's witness statement, which falls squarely within the permission requirement in CPR 81.3(5)(b).
7. As to the first of those points, the CPR does not define the word “existing”. It is, however, on its natural meaning a broad term which does not appear to be confined to pending proceedings. The exception for existing proceedings would therefore appear to have the purpose of distinguishing between an alleged contempt that relates to proceedings that have come into existence, and contempt that relates to intended proceedings (or indeed does not relate to any proceedings in particular). If that is correct, the question of whether the proceedings are still pending or have been finally

determined is irrelevant. But even if that is not correct, the reference to existing proceedings must at least be wide enough to encompass the present situation in which there is an extant provision in the underlying proceedings for a damages enquiry, whether or not that enquiry has been actively pursued by the claimant.

8. That leaves the defendant's second point on permission, which is that in reality the substance of the claimant's contempt application relates to a false statement in a witness statement which falls within CPR 81.3(5)(b).
9. That submission is, in my judgment, misconceived. The claimant accepts that, at the time the defendant made his witness statement, EC Medica was indeed the owner of the relevant rights. The agreement purporting to divest those rights was made on 1st June 2018, with the trial starting five days later on 6th June. The false statement was therefore made when the defendant gave evidence on Day 2 of the trial confirming the truth of the contents of his witness statements. The case of *Cole v Carpenter* [2020] EWHC 3155 (Ch) cited to me by the defendant is therefore not in point. That was a case where the allegedly false statement was indeed made in a statement of case verified by a statement of truth. For the reasons just given, that is not the case here.
10. Permission to make the present contempt application is therefore not required.
11. For completeness, however, even if permission had been required, I would have had no hesitation in granting it in this case. There is in my view a very strong *prima facie* case against the defendant. His position is that he has now positively contended, in his defence to fraud proceedings subsequently commenced by the claimant, that five days before the commencement of the trial the relevant rights pleaded in the trial were sold by EC Medica to a third party company. By the time the trial started, therefore, on the defendant's own account, EC Medica no longer held the rights that it had asserted against the defendants in that trial.
12. The defendant's witness statements had, however, made clear, either expressly or implicitly, that EC Medica was the owner of the relevant rights. The defendant's confirmation at the trial of the evidence in his witness statements was therefore, on the position the defendant now advances, manifestly false, and the defendant must have known that it was false. Indeed, it is striking that for the purposes of this hearing the defendant does not deny that false evidence was given; nor does he offer any explanation whatsoever for doing so.
13. What the defendant has said in his defence in the fraud proceedings is that he was not given the opportunity to provide information on the June 2018 agreement, because he was "instructed by the judge to just answer the questions from Mr T Alkin". As is clear from the trial transcript, however, after being sworn in Mr Bennetts confirmed the truth of the evidence given in his witness statements, and in doing so took the opportunity to correct a small point in one of those statements. He therefore had every opportunity to set out the position now advanced as to the transfer of rights, but did not do so.
14. Even irrespective of the content of the defendant's witness statements, in the context of the claim advanced by EC Medica it was incumbent on the defendant to disclose the fact of the transfer of rights as a basic issue of standing to pursue the claim, or at least part of the claim, and again no explanation has been given for why the defendant did not do so.

15. In my judgment the claimant is in those circumstances right to say that the 2018 trial proceeded on a profoundly compromised basis. Injunctive and financial relief was claimed by EC Medica for the infringement of rights which the defendant now says were transferred out of that company, to a third party, before the trial had even started. The consequence is that, when EC Medica lost its claim, its business had disappeared and the claimant was unable to recover a penny of its costs. That is a serious abuse of the process of the court, and very significantly damaging to the claimant.
16. It is plainly in the public interest that a contempt application should be permitted to continue in these circumstances. Contrary to the defendant's submissions, this is not a case of a vindictive litigant attempting to have a second bite of the cherry. Rather, it is a case of an appropriate sanction being pursued for what would, if ultimately made out, be a serious misuse of the judicial process in circumstances where, as I have already noted, the defendant has not to date either denied the substantive allegation of contempt or proffered any explanation in mitigation (save for the claim made in the fraud proceedings which I have addressed above).
17. Mr O'Donoghue, for the defendant, has pointed out that this was to some extent taken into account in my non-party costs order of 14th May 2019. It is correct to say that that judgment did take account of the information before me at the time that it appeared that EC Medica's assets had been sold to a third party before the start of the trial. At that time, however, the information as to the sale was entirely incomplete. Further details of this are now known. In any event, the fact that this was one of the bases on which the non-party costs order was made, alongside other considerations, does not in any way preclude the claimant from pursuing the present contempt application in circumstances where I have found it is amply justified.
18. For these reasons, I would have given permission to proceed had it been required.
19. I will therefore dismiss the defendant's strike out application and will make an order for directions for the claimant's present application to proceed.

This judgment has been approved by Bacon J.