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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY & COMPANIES LIST (ChD)
[2023] EWHC 1410 (Ch)

Claim No. CR-2023-001166

Rolls Building
Fetter Lane
London EC4A 1NL

Friday, 5 May 2023

Before:

MR JUSTICE MILES

B E T W E E N :

SHAHEEN SHAN (in her capacity as Administrator of the Estate of the late Ali Akbar Shan) — Claimant /Respondent

- and -

(1) THE REGISTRAR OF COMPANIES
(2) YORKSHIRE HALAL MEAT SUPPLIER LIMITED
(3) SHANS SUPERMARKET LIMITED
(4) AFTAB ALI
(5) SAJAD ALI SHAN — Defendants/Applicants

MR S PASSFIELD (instructed by Schofield Sweeney LLP) appeared on behalf of the Claimant/Respondent.

MR G CLARK (instructed by Hunter Legal Ltd) appeared on behalf of the Fourth and Fifth Defendants/Applicants.

J U D G M E N T

Mr Justice Miles:

1 This is my judgment in the interim application list. The dispute relates to a company called Yorkshire Halal Meat Supplier Limited (**the Company**). The evidence shows that this is a substantial business with a turnover of £50 million or more. It supplies meat in the UK and overseas.

2 On 20 April 2023 Edwin Johnson J made a short term injunction until the afternoon of the following day restraining Shaheen Shan (**the Respondent**) and Yorkshire Halal Meat Supplier Limited from attending, pursuing, organising, arranging or conducting any general or other meeting in respect of the company at any time before midnight on 5 May 2023. The application was made by Aftab Ali and Sajad Ali Shan (**the Applicants**). They are brothers and they were also brothers of Ali Akbar Shan (**the deceased**), who died on 26 January 2022. The Respondent is the widow of the deceased. On the following day, 21 April 2023, a further application was made to Edwin Johnson J. He continued the injunction until 5 May.

3 There is a dispute about the identity of the true shareholders and directors of the Company. Until his death on 26 January 2022 the deceased was registered in the records at Companies House and in the Company's own books as the sole registered director of the Company. As at that date the registered shareholders were the Deceased as to 50 per cent, the First Applicant as to 20 per cent, the Respondent as to 15 per cent, and Ruksana Shan (**Ruksana**) as to 15 per cent. Ruksana is the sister-in-law of the deceased.

4 Immediately following the death of the deceased, an accountant, Mr Imran Mahmood of Southbrook Accountants Limited, who had acted as an accountant in respect of a number of family businesses for about 10 years, filed at Companies House forms AP01 recording that the Applicants had been appointed as directors of the Company on 25 January 2022, the day before the death of the deceased. There was also, somewhat later, a filing of a confirmation statement with Companies House, recording that the deceased had transferred 90 of his 150 shares in the Company to the First Applicant. The effect of that transfer would have been to increase the First Applicant's shareholding to 150 shares (50 per cent) and reduce the shareholding of the deceased to 60 shares (20 per cent). Importantly that filing still recorded the Respondent and Ruksana as each having 15 per cent of the shares.

5 Mr Mahmood has served a witness statement in which he says that the reason for the changes made after the death of the deceased was that he was asked by the Second Applicant to change the shareholdings and directors of the company to the Applicants.

6 Mr Mahmood says that he had no reason to doubt what he had been told and he made the changes at Companies House adding the Applicants as directors of the company as requested. He explains that he also made the filing of the confirmation statement which changed the shareholdings in the way the Applicants had described.

7 He says that in subsequent months he asked for documentation and paperwork confirming these changes and that he spoke to the Respondent in or around June or July 2022. He says that as a result of those conversations he came to the conclusion that the changes should be reversed. He says that he pressed the First Applicant again for the paperwork in about September 2022 but none was produced. He then made

further Companies House filings in September 2022, which returned things to the position that had prevailed before the death of the deceased.

8 Shortly after that, further changes were made to the Companies House filings, which returned the position to that shown by the filings Mr Mahmood himself had made earlier in 2022, i.e. the Applicants were shown as director of the Company and the First Applicant was shown as the holder of 150 shares in the Company. The deceased was shown as the holder of 60 shares and Shaheed and Ruksana were shown as the holders of 15 per cent of the shares each. It is common ground that the Applicants made those filings.

9 In February 2023 the Respondent obtained an interim freezing injunction against the Applicants, which was subsequently continued on 3 March 2023. In the first of those orders Trower J restrained the Applicants from acting as directors of the Company, other than in relation to the ordinary course of its business, pending the determination of an application made by the Respondent under the Companies Act to rectify the Company's register to return the position to that which prevailed before the death of her husband.

10 In March 2023 the Respondent obtained an interim probate grant in respect of the estate of the deceased which gave her the power, according to the face of the order, to take steps in respect of the shares in the company as well as having certain other specified powers.

11 On 4 April 2023 the Respondent purported to call a general meeting of the Company to be held at 9.30 a.m. on 21 April 2023 by Microsoft Teams. The notice calling the meeting purported to be given on behalf of the Company. It was called to consider the appointment of herself and two other named people as directors of the Company.

12 There have also been complaints to the police which led to the imposition of bail conditions which, on their face, would have prevented the First Applicant from attending a meeting with the Respondent.

13 In the run-up to 21 April 2023 (the date on which the meeting for which notice had been given was to take place) there were communications between the criminal solicitors acting for the First Applicant and the police about the bail conditions. In particular, on 19 April 2023 the litigation solicitors acting for the First Applicant (Hunter Legal Limited or **Hunter**) sent to the Respondent's solicitors an email saying that the First Applicant wished to attend the 21 April meeting. He was concerned that his attendance might give rise to problems under his bail conditions and he was making every effort to vary those conditions but that the police had not responded. They asked for a response by 9.30 the following day and also asked that the Respondent would move the 21 April meeting until such time as the First Applicant was able to participate without risk of breaching his bail conditions, saying that failing that they would be left with no alternative but to apply for urgent injunctive relief.

14 On 20 April at 9.30 in the morning Ms Foster of the Respondent's solicitors telephoned Hunter and eventually spoke to a Mr Passmore. Ms Foster asked what Mr Passmore's concerns were about the bail conditions, and she suggested that the First Applicant could attend the meeting by proxy or that, alternatively, the Respondent could attend by proxy. Mr Passmore agreed that he would take instructions and revert.

15 At about 11.30 on 20 April the First Applicant's criminal solicitors, **SAK**, emailed a police officer, PC Spruce, of West Yorkshire police, asking for a variation to the bail conditions to allow the 21 April meeting to take place. At 13.50 PC Spruce emailed the Respondent informing her of the email from SAK, saying that the police had no objection to an online meeting taking place, provided that the discussion was limited to business affairs only and asking her to contact him if she wished to make any representations as to this. At 14.59 her solicitors emailed PC Spruce confirming that she had no objection to the bail conditions being varied in that way.

16 At 15.06 on 20 April PC Spruce emailed SAK confirming that the bail conditions could be varied to allow an online meeting to take place. An email from PC Spruce has been put in evidence, confirming that he told SAK of the variation of the bail conditions at that time. The relevant part of the evidence about this was served on 2 May 2023 and although the First Applicant has put in a witness statement since then, he has not suggested that that did not happen. There has been no evidence seeking to explain why it was that SAK did not pass on the information to the Applicants, if indeed they did not.

17 The first application to Edwin Johnson J was made on 20 April 2023. That was done without any notice being given to the Respondent. It was supported by a witness statement from the First Applicant in which he asserted that he was a director and shareholder of the Company. He mentioned that there was an underlying dispute as to the composition of the shareholding. He asserted that he owned 100 per cent of the shares and that litigation in that matter was imminent, although he did not explain what he meant by that. He said that as it currently stands he owns 50 per cent of the shares with the remaining 50 per cent being held by the deceased, 15 per cent by the Respondent and 15 per cent by Ruksana. He said that he had recently discovered that the Respondent had colluded with the then Company accountant in fraudulently creating stock transfer forms and forging his signature on the forms. He said that he was subject to bail conditions which prevented him from participating at the 21 April meeting; that SAK had been attempting to contact the police to vary the bail conditions in order for him to participate in the general meeting, but that he had been unable to do so, which meant that if he did participate in the general meeting, he would breach the bail conditions and be subject to arrest. He said that Hunters had written to the solicitors for the Respondent to request that the general meeting be changed but that those solicitors had not responded in any substantive manner.

18 There was apparently no skeleton argument served by counsel then acting for the Applicants. It appears from a note of the judgment which was produced some time later that Edwin Johnson J was not fully satisfied that the application should have been made properly outside normal court sitting hours. However, he granted a very short temporary injunction until 16:00 the following day. As part of that order, he required that a note of the hearing be served on the Respondent. No note of the hearing has been provided. The only note of that hearing appears to be a brief note of his judgment.

19 The following day, 21 April 2022, the order of 20 April was served. That was shortly before the meeting was due to take place - at about 09.15.

20 There was then a further application to Edwin Johnson J as the interim applications judge at 14:00 on 21 April 2023. About 15 minutes' notice of that application was

given by email to the Respondent's solicitors. Again, it appears that no skeleton argument was provided by counsel then acting for the Applicants. It appears from a note of that hearing that Edwin Johnson J was again told that the First Applicant was unable to attend the meeting on 21 April due to his bail conditions. The judge was not told that in fact the police had agreed, at about 15:00 the previous afternoon, that the meeting could take place without breach of the bail conditions.

21 Edwin Johnson J was given very little further information about the underlying disputes. At neither of the two hearings before him was he told about the events in 2022 after the death of the deceased. He was not informed about the changes to the shareholdings that had taken place in January and September 2022 on the Companies House records. He was not told that, even on their own case, the Applicants had only become de jure directors on their own case, in January 2022 - after the death of the deceased. He was not given much information at all about the freezing injunction application, although it does appear that he was shown a copy of the second freezing injunction.

22 In the order he made on that day, Edwin Johnson J accepted undertakings from the Applicants that they would provide a note of the hearing as soon as practicable and that they would issue an application for this return date as soon as reasonably practicable. In fact, it took a long time before any note was provided, despite the Respondent pressing for it.

23 This current application was only issued on 2 May 2023, well after the 21 April. The Applicants have accepted that that was short notice. Their counsel said to me that the reason for that was that they were hoping that the matter might be agreed. However, it appears that the only communication seeking the consent of the Respondent to the continuation of the injunction was in a letter sent at 15:06 on 2 May 2023. That was more than a week and a half after the second order of Edwin Johnson J, and the application was then issued later that afternoon. It seems to me clear that there was a breach of the undertaking to issue the application as soon as reasonably practicable after the second order of Edwin Johnson J.

24 The Applicants put their case in the following way. They say that there is a dispute as to the shareholders and directors of the company. They say that the Respondent says that she is entitled to 50 per cent of the shares in the Company as the personal representative or beneficiary of the deceased, plus 15 per cent in her own personal right. The Applicants say, for their part, that the First Applicant is either the 100 per cent shareholder or is a 50 per cent shareholder in the Company.

25 Although they did not advance this case, I take it that their final fallback position would be that the First Applicant is a 20 per cent shareholder in the Company, reflecting the position as at the date immediately before the death of the Deceased.

26 Counsel for the Applicants say this is a fiercely contested dispute, which involves essentially a swearing match between the parties who accuse one another of serious wrong-doing. Indeed there have even been allegations of physical violence. There is, he says, a clear dispute about who the members and directors of the Company are. He says that the Respondent apparently wants to call and hold a general meeting in order to change the directors of the Company and that at any meeting there will be serious questions as to who is able to vote.

27 Moreover, he says, there are serious questions as to whether the Respondent even has sufficient shares to be able to request a meeting under the provisions of the Companies Act 2006. Under section 303 of the 2006 Act members representing at least 5 per cent of the paid up capital of the Company carrying a right of voting at general meetings may request a general meeting, and under section 304 of the Act directors are under a duty to call meetings required by members. Counsel for the Applicants says that there is a serious issue as to whether the Respondent is even in a position to request a meeting under those provisions.

28 He also says that even if a meeting were to be requested, there would then inevitably be disputes about the voting rights at such meetings. He says that it is unrealistic to think that a meeting could then take place concerning the control and further direction of the Company until the question of the voting rights of the various parties have been resolved. He says that if a meeting were to be requested, called and held and there was then a dispute about the directorships, that would inevitably lead to more litigation.

29 He says the damages in this case would not be an adequate remedy for the Applicants. They would potentially suffer very serious harm. He submits that this may well be a case where it is impossible to see damages as an adequate remedy for either side and that in the circumstances the court is thrown back on the balance of convenience and the importance of the status quo.

30 He says that the Applicants have been running the Company for a long time and certainly as the *de facto* directors for over a year, and they should not be removed or their powers limited by the appointment of more directors.

31 On behalf of the Respondent, counsel submitted first that the orders made by Edwin Johnson J should be discharged. He said that this was the return date of the second of those orders and it is for the court to decide what to do about them. He said that the basis on which the application is now put is fundamentally different from how it was put to the judge on those occasions. Before him, the basis was to stop any meeting taking place without the participation of the defendants. Now it appears to be seeking an order to stop the Respondent from exercising rights as a member of the company even to request a meeting.

32 In relation to the hearings before Edwin Johnson J, he submits that there was no basis for the out of hours application. There was no basis for the applications being made *ex parte*. He says that there was serious and material non-disclosure; in particular, that the Applicants failed to put the full factual position before the court as to the bail conditions. By about 15:00 on the afternoon of 20 April the police had varied the bail conditions so as to enable the hearing to take place. Moreover, the evidence before Edwin Johnson J was, he says, materially misleading. It did not explain the dispute as to the true directors of the company. It did not explain the nature of the dispute. It did not set out the position in relation to the changes to the Companies House filings that had taken place in 2022. It said nothing at all about the existing proceedings under Part 8 or the freezing injunction, albeit it appears, as I have said, that a copy of the freezing order was put before the court, but with very little explanation.

33 Counsel for the Respondent also complains about the notes that have been produced, which he says were produced very late, and are inadequate in various respects. For example, in one of the notes it is suggested that the judge actually reached a view that

the allegations which have led to the bail conditions have been wrongly made. That cannot have been what the judge said. He also said there was no proper justification for the late filing of the application for continuation of the injunctions. He says that the injunctions granted by Edwin Johnson J should be discharged.

34 Turning then to the application for what is effectively a new injunction, counsel for the Respondent accepted that the meeting that had been called for 21 April had not taken place. It had not been adjourned and therefore there was nothing more to be done in respect of it.

35 Nonetheless, the Applicants were asking the court now to enjoin the Respondent from exercising such rights as she has as a member of the Company, even to request a further meeting.

36 In relation to that question, counsel submitted that there was no serious issue to be tried as to the respondent having at least a 5 per cent shareholding, giving her the statutory right to request a meeting. As regards the dispute about the changes that were made in 2002, if the Respondent is successful she will be the 65 per cent shareholder. There are two ways in which she might lose in relation to the Part 8 proceedings, at least as currently formulated, namely she might lose but will still be treated as the holder of 20 per cent of the shares representing the deceased's shareholding, or she might lose and be treated as the holder of 35 per cent, being the holder of the deceased's shareholding of 20 per cent and her own of 15 per cent. That would be on the basis that the changes which were originally made earlier than 2022 and then found in the latest filings in September 2022 were correct. In relation to that submission it is significant that counsel for the Applicants accepted that the last changes that were made in relation to the shareholdings in September 2022 were made at the instance of the Applicants. I will come back this point in a moment.

37 Counsel for the Respondent said that there was simply no evidence for the broader claim of the First Applicant that he was entitled to 100 per cent of the shares in the Company. There is no evidential basis for that other than bare assertion. Counsel for the Respondent said that that lacked any real credibility in light of the September confirmation statement filed at the behest of the Applicants which showed the deceased having 20 per cent, the Respondent 15 per cent, and Ruksana 15 per cent.

38 Counsel for the Respondent said that in short there was no serious issue to be tried that the Respondent has at least 5 per cent of the shares in the Company. The question then is whether the Respondent should be prevented from exercising her rights as a shareholder, at least to request a meeting. He said that things may change; that peace may break out; it may be, he accepted, that if his client takes that course, there may be a need for further litigation, but that will be a matter for another day.

39 In response to that submission counsel for the Applicants said that that was likely to be setting up another contest in this court; that that was contrary to the overriding objective; and that the court should seek to avoid repeated hearings and should grasp the nettle now. Any meeting that is called would either be futile or would lead to further litigation.

40 I come to my conclusions.

41 In relation to the orders made by Edwin Johnson J, I accept the submissions of the Respondent that those orders should be discharged. It seems to me that the manner in which they were obtained and the circumstances in which they were obtained was seriously flawed. I say this for four main reasons.

42 In the first place, I do not see any justification for the first application having been made without notice or out of hours. The notice of the meeting had been given some weeks before the application was made and no proper justification was given for an out of hours application or for the application being made without notice. It is a basic principle of justice that where possible notice should be given to the other side. What makes it worse is that the previous day the solicitors for the Applicants had said that they might need to apply for urgent interlocutory relief and it is inexplicable that notice was not given of the first application.

43 Second, I consider that the failure to draw to the attention of the court the fact that the bail conditions had been relaxed on the afternoon of 20 April was a serious failure to comply with the obligation of full and frank disclosure on an *ex parte* application. I do not conclude that the failure was deliberate, but parties who make *ex parte* applications and their lawyers are under a duty to take reasonable steps to ensure that the information that they put before the court is accurate. Given that the criminal solicitors acting for the Applicants had been seeking a relaxation of the bail conditions and the police gave that relaxation, had reasonable diligence been carried out, then the statements that were made to the judge would not have been made.

44 Third, I consider that the evidence that was put before the judge also failed fairly and adequately to disclose the background to the dispute. There was a bare assertion as to the directorships and no further details were given. There was no explanation of the sequence of events in 2022 immediately following the death of the deceased, and then the further changes that were made in September. No information was given about the existing Part 8 proceedings or the freezing injunction. It seems to me that it was incumbent on the Applicants to provide that background in order that the judge was properly in a position to understand the nature of the disputes.

45 These points also apply to the hearing that took place on 21 April. Again, I consider it wholly inadequate notice to have given only 15 minutes' warning of the application. The same deficiencies in the evidence concerning the dispute applied, and it is still more remarkable that the judge was not told that the bail conditions had been relaxed the previous afternoon. The Applicants remained under a duty of full and frank disclosure and it seems to me that what happened on that day fell well below that standard. As I have said, reasonable steps have to be taken to ensure that the information which is provided to the court is comprehensive and accurate. I do not think that it was proper to go before the court making the arguments about bail conditions without having fully investigated the up-to-date position.

46 Counsel said on instructions that the Applicants still believed at both hearings that they would be in breach of the bail conditions. However, the First Applicant has put in a witness statement dated 4 May 2023, which was two days after he was served with the evidence, including that showing that the police had relaxed the bail conditions and time when this took place. The First Applicant did not respond to that evidence or seek to explain what had happened, nor did he apologise for the misleading presentation to the judge. There has therefore been no explanation of the failure to tell the judge the full story.

47 Fourth I also take seriously the failure by the Applicants to comply with their undertakings contained in the second order, in particular the undertaking to issue and serve an application to continue the injunction as soon as reasonably practicable after 21 April 2023. There was no proper reason given as to why the application was not issued until 2 May 2023. It is no good saying that the Applicants hoped there might be an agreed resolution. Indeed there is no evidence of any attempts to reach agreement.

48 In the circumstances I agree with counsel for the Respondent that the two orders of Edwin Johnson J should be discharged. The court, nonetheless, does have a jurisdiction to make a further order even where an earlier order is discharged.

49 I consider that there has not been a good reason for this application being issued and served within time, but nonetheless because the Respondent did not take the point that the court should not entertain the application at all, I will move on to consider the application for a fresh injunction.

50 I have already summarised the submissions in some detail. It seems to me that there is no serious issue to be tried on the evidence before the court as to the respondent having a shareholding in excess of 5 per cent. The first applicant has said, on a number of occasions, that he asserts that he is in fact entitled to 100 per cent of the shares in the Company, but no explanation has been given for that in the evidence. It is no more than the barest of assertions.

51 It seems to me that it is in any case impossible to square that assertion with the Applicants' acceptance that they were responsible for the last confirmation statement in relation to the shares which was filed in September 2022. That confirmation statement, for which they are responsible, recorded that the deceased had transferred 90 of his 150 shares in the Company to the First Applicant, but that that left the deceased with 60 shares, namely 20 per cent. The same statement also recorded the Respondent and Ruksana as having 15 per cent each.

52 The Applicants have recently contended as to the 15 per cent shareholding of the Respondent, that this derives from a transfer from the First Applicant in 2015 which they now say constituted a forgery.

53 Again, that is a bare, unsupported, assertion, but even if one assumes it is arguable, the underlying assumption is that at that stage, namely in 2015, the First Applicant was a 50 per cent shareholder, and the deceased was also a 50 per cent shareholder. And, even taking the case most favourable to the Applicants, and one ignores the personal shareholding of the Respondent, according to the latest confirmation statement for which the Applicants accept they were responsible, the deceased still would have been entitled to 20 per cent of the shares. I accept the Respondent's case that under the grant made in the administration proceedings of the deceased’s estate she is entitled to exercise the rights in respect of those shares as a member. Indeed that was not contested by the Applicants.

54 I do not need to say more about the merits of the arguments now advanced by the Applicants, but I do also note that on 2 May 2023 the Respondent served a witness statement from Mr Mahmood which set out the position in relation to the events of

2022 after the death of the deceased. Other than a bare joinder of issue, the Applicants have not responded to that evidence.

55 In summary I do not consider that the Applicants have raised a serious issue that the Respondent is unable to exercise a members' rights in respect of at least 5 per cent of the shares.

56 The question then is whether it is appropriate for the court on this application to grant an injunction preventing her from exercising her statutory rights. I do not think that it is. It may be that if the Respondent chooses to do so there will indeed be further litigation because it may be the case that the meeting will not be capable of going ahead or at least being of any real effect, while the questions about the identity of the shareholders in the Company remain to be resolved. However, that would be a separate application. It would be necessary for the Applicants to persuade the court that there is a serious issue to be tried about the shareholdings. The court, hearing that application, will no doubt take into account any updated evidence and in that regard I note that the Applicants have yet to put in a defence in the rectification proceedings. At the moment the Applicants, on whom the burden of persuasion lies, have not established a serious issue that the Respondent is entitled to less than 5 per cent of the shares.

57 It also seems to me that on any such application it may very well be the case that one or other of the parties may raise with the court the possibility of the appointment of a receiver.

58 At any rate, it seems to me that it would be a strong thing to prevent the Respondent even from exercising the statutory rights to request a meeting to take place and I am not prepared to grant a further injunction.

59 I also take into account, in reaching that decision, the previous conduct of the matter which I have already addressed. It seems to me that a party seeking injunctive relief needs to be in a proper position to justify their conduct, and the conduct of the Applicants in this application appears to me to be profoundly flawed.

60 So I will discharge the existing injunctions and will not make a new injunction.

61 I will make an order that the costs be assessed on the indemnity basis for all the reasons I have given in my judgment. It seems to me that the court should mark its disapproval of the conduct of the Applicants by making an order for indemnity costs. I think that the conduct is sufficiently out of the norm to justify that. The costs claimed are £17,575.58, including VAT. There was a point taken about the hours spent on the telephone. I think it is unlikely that that can be seen as unreasonable or disproportionate given the nature of the case with that amount of disputes between the parties, and the ultimate amounts at stake. The other point that was taken was about the statement of Mr Mahmood where something over seven hours was spent. It is said that that is a short statement. It seems to me that considering my order for indemnity costs and the reversal of the burden, I do not think that can be said to be unreasonable. The statement involves what are essentially serious allegations and it had to be considered carefully and the time spent on it seems to me not to be unreasonable. I will make an order in the amount claimed in the costs schedule.

CERTIFICATE

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