Neutral Citation Number: **[2023] EWHC 2445 (Comm)**

Case No: **CL-2021-000399**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **3 October 2023**

Before :

His Honour Judge Mark Pelling KC

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Between :

Hua She Asset Management (Shanghai) Co Ltd.	**Claimant**
- and -	
(1) Kei Kin Hung &	**Respondents**
(2) Sparkle Roll Capital Ltd & Ors	

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Mr James McWilliams (instructed by **RPC LLP**) for the **Claimant**
The First Respondent did not appear and was not represented
Mr Roger Masefield KC and Mr Nicholas Yell (instructed by **Lisa's Law**) for **Sparkle Role Capital Limited and Ms Meihe Qi**
Mr Daniel Scott (instructed by **DJM**) for the **Fourth Respondent**
Mr Hugh Miall (instructed by **PCB Byrne LLP**) for the **Fifth & Sixth Respondents**
Mr Jack Watson (instructed by **Sherrards Solicitors LLP**) for the **Seventh Respondent**

Hearing dates: **3rd October 2023**

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RULING

His Honour Judge Mark Pelling KC **Tuesday, 3 October 2023**
(**11:12** am)

Ruling by **HIS HONOUR JUDGE MARK PELLING KC**

1. This is an application for the costs of and occasioned by the adjournment of what was to be the substantive hearing of an application to make a charging order absolute.
2. The application was listed for a period of three days with half a day's judicial reading time. In the event all parties are agreed that the hearing will require a period of five days with one and a half days' judicial reading time. The main substantive issue which arises, very broadly, on this application is whether the second, third and fourth respondents are the ultimate beneficial owners of the property, the subject of the charging orders.
3. The application would have been complicated by two applications for relief from sanctions by respectively the claimant and fourth respondent. The application on the part of the fourth respondents was for relief from sanctions arising out of the fact that although the fourth respondents' witnesses are Mandarin speakers with no written or spoken English capacity, the witness statements that have been served were in English, with no evidence that they had been translated from Mandarin into English as the relevant rules require. This was a point which the claimants took against the fourth respondents and the fourth respondents were therefore obliged to apply for relief from sanctions having regularised the position in relation to the statements at least to a degree. There can be no issue but that the fourth respondent must pay the claimant's costs of the application for relief from sanctions that arise.
4. The application for relief from sanctions by the claimant gave rise to a much more extensive and serious problems. .The position adopted by the claimant, apparent most clearly in its skeleton argument filed for the substantive application is that some or all of the underlying agreements which are relied upon by the second, third and fourth respondents as justifying their claims to be the ultimate beneficial owners of the properties concerned are non-authentic and indeed are sham.

5. That is an issue which had not been pleaded in relation at any rate to the documents or the issues to which the relevant documents relate and, more fundamentally, the notice which was required to be served challenging the authenticity of the documents upon which the second to fourth respondents rely was not served when it should have been in accordance with the rules. The first indication that the claimant required authentication to be proved was an attempt to serve a notice a week before the skeleton arguments were due to be filed in relation to the hearing of this application – that is two weeks before the start of the hearing and long after the timing for filing evidence and giving disclosure had passed.
6. When it was made clear that late service would be resisted, an application for relief from sanctions was issued and the claimants caused that application to be listed for hearing at the start of the trial. Mr Masefield KC on behalf of the second and third respondents submitted that it must have been close to obvious that any application for relief from sanctions would be resisted strenuously. I agree.
7. By the same token, there is a more general problem that arises in this case. The time estimate, as I have said for this hearing was three days. Three days was described euphemistically as "a little tight" when the Master gave directions but in my judgment was and ought to have been seen to be inadequate. It rapidly became more and more inadequate as (i) the seventh respondent was added, (ii) it became apparent that the evidence of at least some of the witnesses would have to be given in Mandarin and therefore cross-examination was likely to take significantly longer and (iii) it became apparent that the application for relief from sanctions issued by the claimant would take at least half a day to resolve in consequence of which three days for resolution of the substantive issues became two and a half days, with two days for cross-examination, which meant that half a day was left for submissions on behalf of a total of seven respondents represented, I think, by four separate counsel. This led all parties to recognise, at any rate after I enquired as to the adequacy of the time estimate yesterday, shortly after I had started pre-

reading, that the appropriate time estimate for the determination of the application is four to five days. In the result, the parties are all agreed that this application should be adjourned and in consequence it is agreed that the relief from sanctions should be granted to the claimant as well and I have given various directions as to how the consequences that are likely to flow from relief from sanctions being granted to the claimant should be resolved.

8. All of this means, however, that this is a very late indeed last-minute adjournment which has resulted in the loss of three full days of Commercial Court time. That is wholly unacceptable. It is wholly unacceptable for the reasons identified in the practice note issued by Mrs Justice Cockerill when she was judge in charge of the Commercial Court and co-signed by me as judge in charge of the London Circuit Commercial Court now some two years ago. It is unacceptable too because under estimates of this sort are likely to lead to attempts to cram within an inadequate time limit a vast amount of submission delivered in a manner which will border on unfairness and possibly even result in unfairness.

9. All parties bear equal responsibility in my judgment in relation to the failure to address the adequacy of the time limit, with the exception of the fifth, sixth and seventh respondents whose role in this litigation is limited, whose understanding of the scope of cross-examination is therefore limited, and whose role in the litigation will be to make legal submissions at the end of the hearing with a combined time estimate, as I understand it, of about one and three quarter hours.

10. Against that background the question arises as to what should happen in relation to the costs of and occasioned by the adjournment. The submissions made by all the respondents, or at any rate their primary submissions, are that the claimant must pay the costs of, occasioned and thrown away by the adjournment to be assessed on the standard basis in any event. The claimant submits that I should reserve the costs over because when the trial judge comes to determine the issues that arise it may well be determined by the trial judge that the second, third and/or fourth

respondents are unable to make good their claim to be ultimate beneficial owners of the properties, the subject of the application, and that is likely to have an impact on the outcome of who should pay the costs of the adjournment.

11. I reject the claimant's submission. The issue which has to be determined today relates to who should meet what parts of the costs of the adjournment and other than in a tangential sense, that has nothing to do with the substantive outcome of the application.

12. The need for an adjournment in large part arises from a failure on the part of the claimant (i) to issue the relevant notices challenging authenticity in time, (ii) to issue an application for relief from sanctions until two weeks before this hearing was due to commence, and (iii) the claimant requiring the application to be listed at the start of the trial.

13. By the same token, some responsibility must rest on the shoulders of each of the second, third and fourth respondents for their failure to engage directly with the court and/or with the claimant in relation to the time estimate once it became apparent that the time estimate was plainly inadequate. Had that been addressed, then an application for directions could have been made at short notice and the wasting of at least some of the court time could have been avoided.

14. As will be apparent from what I have said so far, in principle I consider that the primary responsibility in relation to the costs of and occasioned by the adjournment must rest with the claimant. However, I accept a submission made on behalf of the claimant that that is not solely so in respect of the second to third and fourth respondents.

15. The second and third respondents must have the costs that they recover reduced to reflect their share of responsibility for failing to address the time estimate issue much more timeously than it was. In my judgment therefore the second and third respondents are entitled to recover 75% of their costs of and occasioned by the adjournment from the claimant, to be assessed in the standard basis in the usual way.

16. So far as the fourth respondent is concerned, there is an added issue to be built in, namely that which addresses the costs of her application for relief from sanctions in relation to the witness statement issue. That must result in a reduction of the costs that the fourth respondent is otherwise able to recover and I conclude that the fourth respondent should recover 50% of her costs of the adjournment, so as to take account of the costs which the claimant would otherwise be entitled to recover in respect of the fourth respondent's application for relief from sanctions and reflecting too the fourth respondent's share of the responsibility for dealing with the time estimate.

17. Turning now to the fifth, sixth and seventh respondents, as I have indicated I consider their position to be different for the reasons set out on their behalf in the course of the submissions. They have no direct responsibility in relation to judging how long cross-examination should take and the applications for relief from sanctions by the claimant has no direct impact on them either. Their role in these proceedings is to make purely legal submissions which will take a limited amount of time, as I have indicated. They will have incurred costs in coming to this hearing ready to deal with the issues with which they are concerned and they are entitled to recover their costs of and occasioned by the adjournment in any event from the claimant.