

Neutral Citation Number: [2024] EWHC 1134 (Comm)

Case No: CL-2021-000501

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

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

Date: **10 April 2024**

Before :

Mrs Justice Cockerill DBE

Between :

(1) OCM Maritime Nile LLC
(2) Maritime Kama LLC
- and -

Claimant

(1) Courage Shipping Co
(2) Amethyst Shipping Co
(3) Oryx Shipping Ltd
(4) Abdul Jalil Mallah

Defendant

Michael Ryan (instructed by Reed Smith) for the Claimant

Hearing dates: 10th April 2024

APPROVED RULING 2

Mrs Justice Cockerill DBE
(12:33pm)

Wednesday, 10 April 2024

Ruling by **MRS JUSTICE COCKERILL DBE**

1. Again, given the position that Mr Mallah finds himself in, I have considered carefully whether some grace should be given to him in terms of the service of the affidavit and exhibits which were put in earlier this week. I have concluded that I should exclude that evidence. This is a case where, as the timetable which has been outlined to the court by Mr Ryan has made very clear, the contempt proceedings have been on foot for a long time.
2. There was agreement, when Mr Mallah was represented by lawyers, to a timetable for service of evidence. Nothing was put in at that period. Requests were made for an extension of time. Those requests were granted and an extension of time was given during the course of last year, and still nothing was served.
3. Some of the evidence which is now sought to be deployed is plainly evidence which was available during the period when PCB were on the record for Mr Mallah and therefore it is evidence which could have been served at that time. There is no explanation for why it was not served at that time.
4. I accept the submission made that there was a conscious, deliberate decision taken not to serve evidence prior to November when PCB came off the record. But that evidence plainly was still available to Mr Mallah in that he has now been able to deploy it and it plainly pre-dates that date when PCB came off the record.
5. In those circumstances this is not a question of late arising evidence where Mr Mallah puts forward evidence that he could not have got this material sooner. It is a case where there was a timetable in place, which has been ignored.

6. Further the nature of the evidence is not such that it would cause no unfairness if it were admitted. Although I have to be very careful to be fair to Mr Mallah, who is not legally represented at the moment, I have also to be fair to the claimants and they must be given a fair opportunity to deal with evidence which is being relied upon and when matters are produced so late in the day they are deprived of that.
7. Mr Ryan directed my attention to the case of *Business Mortgage Finance 4 and others v Hussain* [2022] EWCA Civ 1264 [2023] 1 WLR 396, part of the long-running litigation between those parties. He read out to the court and to Mr Mallah paragraphs 42 and 43 and the main part of 45 of that judgment.
8. He highlighted the strong parallels between the decision reached by Mr Justice Miles in that case and the present case; and it seems to me that the submissions that he made as to those parallels being strong are sound submissions.
9. This is a case, like that, where there have been detailed directions for evidence. The witness statement evidence now sought to be relied on is not in compliance, it is months late. There is obvious prejudice to the claimants by the late deployment of that evidence and there is no good reason advanced for the witness statement being put forward so late.
10. The nub of the point, as I would make clear to Mr Mallah, is at sub-paragraph 5 of that paragraph 45, where the court summarised Mr Justice Miles' decision and said:

“Although committal proceedings are very serious proceedings and the consequences potentially very grave, liberty being at stake, they must, like other proceedings, be conducted in accordance with the orders of the court. There was no suggestion that the evidence could not have been provided earlier and no explanation for the delay in production. To admit it would unfairly prejudice the claimants and disrupt the trial.”

11. That is a fair summary of the position here, that is a decision which was endorsed by the Court of Appeal in that case. It seems to me entirely appropriate that I take the same course, having carefully considered the balance of fairness between the parties in this case.

12. Therefore I am going to exclude that evidence and we will, I think, have to decide how best to proceed in terms of allowing Mr Mallah a fair opportunity to deal with the individual points in a way that is appropriate for him without legal representation.