

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS
IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

CLAIM NO. BVIHCV 2006/0307

BETWEEN:

MICHAEL WILSON & PARTNERS LTD

Claimant

-and-

**(1) TEMUJIN INTERNATIONAL LIMITED
(2) TEMUJIN SERVICES LIMITED
(3) HAKKISAN FINANCE CORPORATION LIMITED
(4) MYRZALY LIMITED
(5) NORGULF HOLDINGS LIMITED
(6) INCOMEBORTS LIMITED
(7) TIGERKHAN LIMITED
(8) MANTY INVESTMENT SERVICES LIMITED
(9) FANTARA COMPANY, INC.
(10) DIEGO PRODUCTION LIMITED
(11) ALOASGAS HOLDINGS LIMITED
(12) TOCANTIN HOLDINGS LIMITED
(13) FUCHS CAPITAL INTERTRADE AG**

Defendants

-and-

**PAUL PRELOVE
(as Court-appointed receiver of Hakkisan Finance Corp Ltd
and Myrzaly Ltd**

Applicant

Determined on paper

2022 July 20

JUDGMENT

- [1] **JACK, J [Ag.]:** In this matter, the claimant (“MWP”) applies under CPR 11.18 for a rehearing of an application which I heard in MWP’s absence on 18th July 2022. At that hearing I discharged Mr. Paul Pretlove of his receivership over the third and fourth defendants (“Hakkisan” and “Myrzaly” respectively).
- [2] As can be seen from the action number, this claim is extremely old. Receivers were appointed as long ago as 2007. No step has been taken in the action since 2008. Mr. Pretlove applied to discharge his appointment as receiver on three grounds. The first was the excessive length of the proceedings. The second was that such limited assets as had been identified were not sufficient to pay the receiver’s costs and disbursements. The third was that both Hakkisan and Myrzaly had been dissolved in 2019 and no step had been taken by MWP to restore them to the register.
- [3] The application to discharge the receivership originally appeared before me on 28th June 2022. It was a virtual hearing. Mr. Wilson was given the Zoom meeting details and was able to participate fully from Almaty in Kazakhstan, where he lives. The same meeting details are used for all cases before me this term. Mr. Greg O’Keefe-Davis of Mourant Ozannes appeared for Mr. Pretlove. Mr. Michael Wilson appeared on behalf of MWP in his capacity as a director. He asked for time to put in evidence. I adjourned the case to 18th July 2022 for that purpose.
- [4] The hearing on 18th July was again heard virtually. Mr. Wilson did not appear and did not appear to have filed any further evidence. Mr. O’Keefe-Davis said that there had been some contact with Mr. Wilson over the weekend. It has since appeared that Mr. O’Keefe-Davis had just before the hearing seen an unfiled affidavit made by Mr. Wilson, which he been forwarded to him by Mr. Pretlove’s office, however, that was not made clear to me.
- [5] In the absence of any affidavit evidence filed by Mr. Wilson I decided to proceed with the hearing. I agreed with all three grounds on which Mr. Pretlove relied and discharged the receivership.

[6] After the hearing had completed, Mr. Wilson was able to get an email to me explaining his absence from the hearing. I directed that the order I made should not be sealed until noon on Thursday 21st July 2022 and indicated that MWP's remedy was to apply under CPR 11.18 for a rehearing. By an application dated 19th July 2022, MWP duly applied for a rehearing of the application.

[7] CPR 11.18 provides:

(1) A party who was not present when an order was made may apply to set aside or vary the order.

(2) The application must be made not more than 14 days after the date on which the order was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing

(a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the applicant attended some other order might have been made.

[8] It can be seen that there are two hurdles over which an applicant must jump: firstly the existence of a good reason for failing to attend the hearing; and secondly the likelihood that, if the applicant had attended, some other order might have been made.

[9] In the current case, Mr. Wilson says that no Zoom details were provided. That in principle might amount to a good reason for failing to attend a virtual hearing. However, what he in fact says is this:

"19. [A]s can be seen from the following, unfortunately, unlike as was the case with the Prior Hearing, for the Hearing the High Court erred and failed to provide MWP with a link for that particular hearing, despite MWP's requests, and further failed to inform MWP that the prior link for the Prior Hearing remained good and could and should be recycled and reused:

19.1. on 11 July 2022, Ms George at the High Court sent MWP an email attaching the Daily Cause List for hearings before Justice Jack on 18 July 2022. [The] email and the enclosure did not provide details of any link;

19.2. having not heard further from the court, at 5.54am BVI time (3.54pm Almaty time) MWP to the High Court by email on 18 July 2022, well in advance of the hearing that was scheduled for 11am, requesting the Zoom link dial-in details. Unfortunately, no reply was received at all;

19.3. at 9:40am on 18 July 2022, MWP served MEW-28 [i.e. Mr. Wilson's 28th affidavit] on the Applicants...

19.4. at 9:47am on 18 July 2022, MWP sent MEW-28 to the Registry for filing,... in accordance with the protocol in place and agreed by MWP with the High Court, given that, unfortunately, MWP has not yet been allowed access to the e-litigation portal, for reasons which remain unclear. MWP is always required to email to the Registry the document that needs filing, who thereafter advise and confirm the fees payable, whereupon MWP sends a credit card authorisation, after which the High Court staff send back the sealed pages, thus enabling MWP to then also serve the sealed version. Of course, this procedure is rather slow and cumbersome, unfortunately MWP has still not been allowed the usual e-litigation portal online access, for reasons which remain unclear;

19.5. having still not received any Link, at 9:05pm Almaty time, 11:05am, BVI time, on 18.07.22, MWP wrote to the other side, advising them of that fact, and requesting them to promptly provide MWP with the same, no reply was received;

19.6. having also still not received any Link also from the High Court, at 9:08pm Almaty time, 11:08am BVI time, on 18.07.22, MWP wrote once again to the High Court, yet further reminding and advising them of that fact, and requesting them to promptly provide MWP with the same, no reply was received;

19.7. MWP also wrote to the High Court, at 9:34pm Almaty time, 11:34am BVI time, on 18.07.22, MWP wrote to the High Court, asking why no Link was provided, no reply was received;

19.8. MWP also wrote to the other side at 9:41pm Almaty time, 11:41am BVI time, on 18.07.22, asking why they also did not provide the Link, as requested;

19.9. finally, at 9:59pm, Almaty time, 11:59am BVI time, long after the Hearing had concluded MWP finally received an email from Ms George at the High Court enclosing the link for the Hearing which had already finished, once again it should be noted that this link does not say it is

anything other than a one-off link and does not say it applies and is to be used at all and any future hearings, just as with the link provided for the Prior Hearing...”

- [10] In my judgment, this does not show good reason for his failure to attend the virtual hearing. It is perhaps excusable for his not to have known that the Court reuses the Zoom meeting details. However, he already knew on 11th July 2022 that he had not been provided with the link. He then did nothing to obtain the link until the morning of the hearing itself. It would have been a simple matter to have emailed the Court in the previous week (or Mourants for that matter) to request the link. When he did write to the Court on the morning of the case, he addressed his email solely to Ms. George. She, however, only came into work later in the morning and thus only read his email after the hearing had concluded. Mr. Wilson did not ask for the link when he sent his email with his twenty-eighth affidavit attached. These in my judgment are all derelictions on his part.
- [11] As 11am BVI time approached, he did nothing. When it was clear that no reply had been or was to be made to his email of 5.54am BVI time, he could have telephoned the Court. He could also have emailed Mourants prior to the hearing, rather than at 11.05am, after the hearing had commenced. Instead he did nothing to obtain the link.
- [12] Accordingly, in my judgment MWP’s application for a rehearing fails *in limine*.
- [13] Since the matter may go further, however, I should deal with the second limb of CPR 11.18. The first matter to observe is that his twenty-eighth affidavit was not filed with the Court prior to the hearing. He had sent an email timed at 9.47am BVI time with the affidavit attached, but it was only after payment was made that the affidavit would be filed by the Court. He was aware of this. Payment was only made in the small hours of the (BVI) morning of Tuesday 19th July. Accordingly, the affidavit was not before me at the hearing. Again, because Ms. George was not in until later, I was not told by the Court staff that there was an unfiled affidavit.

Mr. Wilson complains that this case is not on the ePortal, but since it long predates the existence of the ePortal filing must be affected “old style”. The Registry (as he acknowledges) does what it can to assist him with filing documents sent electronically from abroad. This does not change the rules on when a document is filed.

[14] Mr. Wilson says that he served “the Applicants” with his affidavit at 9.40am. In fact, he sent his email attaching the affidavit to Mr. Pretlove and Johnny Law at their firm, Kalo. He did not send the affidavit to Mourants and they became aware of it only very shortly before the hearing. There was then a misunderstanding. I understood from Mr. O’Keefe-Davis that, so far as he was aware, Mr. Wilson had served no evidence. That was an error.

[15] If I had known that Mr. Wilson had made an unfiled affidavit, I would have had enquiries made as to why Mr. Wilson had not attended and would have risen for a short time for that purpose. Although there is no evidence to this effect, I shall assume that an email to him, sent shortly after 11am, would have reached him and allowed him to participate in the hearing. The question would then have been whether I would have adjourned to allow the affidavit to be filed and give directions for further evidence on Mr. Pretlove’s part.

[16] I have subsequently read his twenty-eighth affidavit *de bene esse*. It is a very confusing document with reference to numerous judgments in England and Australia as well as an arbitration award. None of the judgments are exhibited and it is not for the Court to track judgments down using their neutral citation numbers. There is no coherent narrative to explain what practical purpose is served by the receivership continuing. Mr. Wilson suggests that there is very substantial misconduct on Mr. Pretlove’s part in failing to report his efforts and to get very valuable assets in. Indeed he asserts at para 24.9 that there is “some evidence of possible collusion by the Applicants with Mr Emmott [the man behind the opposition to the world-wide litigation brought by MWP], who is doing all that he can to avoid the Temujin Partnership inspection, disclosure, account, inquiry and

proprietary tracing, even though all of its cash and assets are in his possession, custody and control...”

[17] Given Mr. Wilson’s view of Mr. Pretlove’s behaviour, it is difficult to see why he wants Mr. Pretlove to remain as receiver of Hakkisan and Myrzaly. His interest is surely in applying to the Court to appoint a different receiver, assuming a receivership was appropriate at all. Yet, he has made no such application and appears to have no intention of making such an application. In these circumstances, I would not have adjourned Mr. Pretlove’s application further to permit the filing of MEW-28. In the absence of any filed evidence from Mr. Wilson, I would have granted Mr. Pretlove’s application.

[18] For these reasons, in my judgment the second limb of CPR 11.18 would not be satisfied. This would have been the result, even if (on an undertaking by MWP to file the affidavit) I had treated the unfiled affidavit as having been before me.

[19] Accordingly, I dismiss MWP’s application for a rehearing of the application dealt with on Monday 18th July 2022. I shall, however, direct that the order discharging Mr. Pretlove from the receivership be not sealed before Thursday 28th July 2022 in order that MWP can, if so advised, seek a stay of execution from the Court of Appeal. I shall give carriage of this order to Mourant Ozannes.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar