



Claim No. HC-2016-002798

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

HC-2016-002798

25 March 2024

BEFORE MR JUSTICE MICHAEL GREEN (the Assigned Judge)

B E T W E E N:

RAS AL KHAIMAH INVESTMENT AUTHORITY

Claimant / Defendant to Counterclaim

-and-

FARHAD AZIMA

Defendant / Counterclaimant

-and-

DAVID NEIL GERRARD

Second Additional Defendant to Counterclaim

-and-

DECHERT LLP

Third Additional Defendant to Counterclaim

-and-

JAMES EDWARD DENNISTON BUCHANAN

Fourth Additional Defendant to Counterclaim

ORDER

UPON the Claimant and Defendant to Counterclaim (“**RAKIA**”) bringing proceedings against the Defendant and Counterclaimant (“**Mr Azima**”) by a claim form issued on 30 September 2016 (and the claim thereby brought being repeatedly amended) (“**RAKIA’s Claim**”);

AND UPON Mr Azima being granted permission to bring a counterclaim against RAKIA by the order of HHJ Kramer sealed on 13 August 2019 (the “**First Counterclaim**”), and the Court

thereby further ordering that the First Counterclaim was to be stayed following service of the pleading containing the First Counterclaim on RAKIA;

AND UPON the Court (Mr Andrew Lenon QC, sitting as a Deputy Judge of the High Court – the “**Deputy Judge**”) hearing the trial of RAKIA’s Claim between 22 January 2020 and 14 February 2020 (the “**First Trial**”);

AND UPON the judgments in [2020] EWHC 1327 (Ch) and [2020] EWHC 1686 (Ch) (together, the “**First Trial Judgments**”) and the order of the Deputy Judge dated 31 July 2020 (the “**First Trial Order**”) following the First Trial;

AND UPON Mr Azima appealing to the Court of Appeal from the First Trial Order and Judgments (the “**First Appeal**”)

AND UPON a bank account (the “**Joint Account**”) having been opened in the joint names of Burlingtons Solicitors LLP and Stewarts Law LLP (“**Stewarts**”) in accordance with paragraph 1.A. of the order of the Court of Appeal dated 9 September 2020 (the “**Appeal Permission Order**”);

AND UPON Mr Azima having caused certain sums to be paid into the Joint Account, in accordance with paragraph 1.A of the Appeal Permission Order;

AND UPON the judgment of the Court of Appeal on the First Appeal in [2021] EWCA Civ 349 (the “**First Appeal Judgment**”) and the Order of the Court of Appeal dated 15 March 2021 (the “**First Appeal Order**”) remitting Mr Azima’s counterclaim (the “**Hacking Counterclaim**”);

AND UPON the Order of Mr Justice Leech dated 21 June 2022 (the “**Leech Order**”), granting Stewarts’ without notice application under CPR 42.3 dated 20 June 2022, pursuant to which Stewarts were permitted to cease to act for RAKIA;

AND UPON RAKIA’s letter to the Court of 22 June 2022 wherein RAKIA stated that it would “*withdraw from the proceedings*”;

AND UPON the order of Mr Justice Michael Green sealed on 8 July 2022 providing that Stewarts had remained and were to remain the address for service on RAKIA until further order of the Court (the “**Service Order**”);

AND UPON the order of Mr Justice Michael Green dated 7 November 2022 (the “**Rescission Permission Order**”) which (i) granted permission for Mr Azima to amend his statement of case to bring an additional Counterclaim against RAKIA (the “**Rescission Counterclaim**”) seeking an order setting aside the First Trial Judgments and the First Trial Order and the First Appeal Judgment and (in part) the First Appeal Order on the basis that they were procured by fraud, and (ii) required RAKIA to file and serve its Re-Amended Defence by 6 December 2022;

AND UPON service of the Re-Re-Re-Amended Counterclaim and Claim Against Additional Parties (including the Rescission Counterclaim) on 8 November 2022;

AND UPON RAKIA’s failure to file an acknowledgment of service or a defence to the Rescission Counterclaim by 6 December 2022 (or at all);

AND UPON the judgment of the Court of Appeal refusing the Second, Third and Fourth Additional Defendants’ appeals against the Rescission Permission Order ([2023] EWCA Civ 507) and the order of 16 May 2023 dismissing those appeals;

AND UPON Mr Azima’s application by notice dated 6 June 2023 for default judgment against RAKIA in the Rescission Counterclaim pursuant to CPR 12.3(1) and/or CPR 12.3(2) (the “**First Rescission Application**”);

AND UPON Mr Azima’s application dated 3 July 2023 for an order striking out RAKIA’s Statement of Case in the Hacking Counterclaim, in the alternative for an ‘unless’ order, and consequential judgment on the claim (the “**Hacking Judgment Application**”);

AND UPON the Court granting the Hacking Judgment Application but refusing the First Rescission Application by order dated 3 October 2023 (the “**3 October Order**”), giving effect to a judgment delivered on 21 August 2023;

AND UPON the 3 October Order ordering RAKIA to pay Mr Azima his costs of the Hacking Counterclaim up to 6 June 2023 (without prejudice to any right that Mr Azima may have to seek costs of the Hacking Counterclaim as against the Additional Defendants in due course, subject to principles against double recovery), and listing all claims for damages or further costs against RAKIA under the Hacking Counterclaim for determination at trial of the Hacking Counterclaim;

AND UPON Mr Azima applying to vary the requirement for funds to be paid into the Joint Account under the Appeal Permission Order, and the Court of Appeal (Lewison LJ) by its order

of 15 December 2023 determining that application, varying the Appeal Permission Order and awarding Mr Azima his costs of that application on the indemnity basis, to be assessed (the ‘**Joint Account Variation Order**’)

AND UPON Mr Azima and the Second and Third Additional Defendants agreeing to a settlement of the Hacking Counterclaim against the Second and Third Additional Defendants by means of acceptance (in writing on 17 January 2024) of an offer made under Part 36 of the Civil Procedure Rules, and the Second and Third Additional Defendants having agreed not to oppose any fresh or renewed application issued by Mr Azima seeking default judgment against RAKIA of the Rescission Counterclaim;

AND UPON Mr Azima and the Fourth Additional Defendant agreeing to a settlement of the Hacking Counterclaim against the Fourth Additional Defendant as recorded in a Tomlin Order sealed on 11 March 2024, and the Tomlin Order reciting the Fourth Additional Defendant’s confirmation that he will not oppose any renewed application by Mr Azima seeking default judgment against RAKIA of the Rescission Counterclaim;

AND UPON Mr Azima’s application by notice dated 19 March 2024 for default judgment against RAKIA in the Rescission Counterclaim pursuant to CPR 12.3(1) and/or CPR 12.3(2), and for the determination of remedies against RAKIA under the Hacking Counterclaim, and for costs and other relief against RAKIA (the ‘**March 2024 Applications**’);

AND UPON the March 2024 Applications having been served on RAKIA;

AND UPON hearing leading counsel for Mr Azima, and RAKIA not attending the hearing of the March 2024 Applications

IT IS ORDERED THAT

1. There be judgment in default for Mr Azima and against RAKIA on the Rescission Counterclaim.
2. The First Trial Judgments and the First Trial Order are set aside.
3. The First Appeal Judgment is set aside.
4. Paragraphs 4-7 and 12-14 of the First Appeal Order are set aside.

5. Paragraph 13 of the 3 October Order is varied so as to read as follows: “*Any claims for damages or further costs (including the repayment of sums paid by Mr Azima to RAKIA in interest on damages, costs and interest on costs under paragraphs 1(b) and 3-7 of the First Trial Order) shall be listed for determination at the Pre-Trial Review to take place in a three day window on 25, 26 or 27 March 2024, and/or on such other date(s) as the Court may direct.*”
6. The following orders for costs in RAKIA’s favour are set aside: (i) paragraphs 6.2, 6.3 and 6.4 of the order of HHJ Kramer of 18 July 2018 (sealed on 25 July 2018); (ii) paragraphs 4.2 and 4.3 of the order of HHJ Kramer of 23 January 2019 (sealed on 24 January 2019). Within 14 days of this order, RAKIA is to repay all the amounts paid to it under those orders.
7. RAKIA shall pay Mr Azima’s costs of and occasioned by RAKIA’s Claim and the First Counterclaim, to be paid on the indemnity basis, with such costs to be subject to detailed assessment immediately if not agreed. RAKIA shall pay interest on those costs from the date on which they were paid by or on behalf of Mr Azima to the date of this Order at a rate of 1% per annum over the Bank of England base rate from time to time, and from the date of this order until the date the costs are paid at a rate of 8% per annum.
8. RAKIA shall pay Mr Azima’s costs of and occasioned by the First Appeal, to be paid on the indemnity basis, with such costs to be subject to detailed assessment immediately if not agreed. RAKIA shall pay interest on those costs from the date on which they were paid by or on behalf of Mr Azima to the date of this Order at a rate of 1% per annum over the Bank of England base rate from time to time, and from the date of this order until the date the costs are paid at a rate of 8% per annum. Within 14 days of this Order, RAKIA shall repay to Mr Azima the sums paid by Mr Azima under paragraph 14 of the First Appeal Order, together with interest on the same basis as in the preceding sentence.
9. RAKIA shall pay Mr Azima’s costs of and occasioned by the Rescission Counterclaim, to be paid on the indemnity basis, with such costs to be subject to detailed assessment immediately if not agreed. RAKIA shall pay interest on those costs from the date on which they were paid by or on behalf of Mr Azima to the date of this Order at a rate of 1% per annum over the Bank of England base rate from time to time, and from the date of this order until the date the costs are paid at a rate of 8% per annum.

10. RAKIA shall pay Mr Azima's costs of the Hacking Counterclaim insofar as those costs were incurred after 6 June 2023 and relate to the remedies and costs sought against RAKIA under the Hacking Counterclaim, with such costs to be subject to detailed assessment immediately if not agreed. RAKIA shall pay interest on those costs from the date on which they were paid by or on behalf of Mr Azima to the date of this Order at a rate of 1% per annum over the Bank of England base rate from time to time, and from the date of this order until the date the costs are paid at a rate of 8% per annum.
11. Within 14 days of the date RAKIA is served with this Order, RAKIA is to make the following interim payments on account of costs and interest:
 - a. The sum of £2,731,026.43 on account of the costs and interest on costs specified in paragraph 7.
 - b. The sum of £1,683,580.25 on account of the costs and interest on costs specified in paragraph 8.
 - c. The sum of £1,381,825.20 on account of the costs and interest on costs specified in paragraph 9.
12. Within 14 days of this Order, RAKIA is to pay Mr Azima damages (and interest on damages) assessed as follows:
 - a. The sum of US\$1,431,338.17 for Mr Azima's loss in financing the amounts paid into the Joint Account in order to satisfy the condition in paragraph 1A of the Permission Order.
 - b. The sum of £14,207.64 for Mr Azima's pecuniary loss.
 - c. The sum of £200,000.00 for Mr Azima's non-pecuniary loss.
 - d. The sum of £100,000.00 as exemplary damages.
 - e. The sum of £2,313.97 as interest on the pecuniary loss in paragraph 12.b.
13. RAKIA shall pay the costs of and occasioned by the March 2024 Applications, on an indemnity basis, summarily assessed at £113,789.50, within 14 days of the date RAKIA is served with this Order.
14. Within 28 days of the date of being served with this order, RAKIA is:

- a. to take all reasonable steps to remove or procure the removal of any websites, torrents, WeTransfer links or other internet sources containing statements about Mr Azima and/or providing means for this private data to be accessed by others;
 - b. to deliver up all copies of Mr Azima's private data in RAKIA's possession or the possession of RAKIA's agents.
15. The orders set out in paragraph 14 may (if so advised) be served by Mr Azima on RAKIA in an additional separate order under cover of a penal notice, in the form attached as Annex A to this order.
16. Any requirement for the order in paragraph 14 and the order and penal notice referred to in paragraph 15 to be personally served is dispensed with, subject to Mr Azima serving the order and penal notice in accordance with the Service Order.
17. Paragraph 11 of the 3 October Order is amended to state: "*RAKIA shall pay interest on the sums to be paid under paragraph 9: (i) from the date on which they were paid by or on behalf of Mr Azima to the date of this Order at a rate of 1% per annum above the Bank of England base rate from time to time; and (ii) from the date of this Order until the date of repayment at a rate of 8% per annum.*"
 - a. The date for Mr Azima to commence detailed assessment of: the costs awarded under paragraph 9 of the 3 October Order; and
 - b. the costs awarded to Mr Azima under the Joint Account Variation Order,is extended to three months from the date of this Order. Paragraph 10 of the 3 October Order (as amended by the order of Mr Justice Michael Green dated 12 March 2024) is amended accordingly.
18. This Order shall be served on RAKIA by Mr Azima.

ANNEX A – ORDER AND PENAL NOTICE

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

BEFORE MR JUSTICE MICHAEL GREEN (the Assigned Judge)

B E T W E E N:

RAS AL KHAIMAH INVESTMENT AUTHORITY

Claimant / Defendant to Counterclaim

-and-

FARHAD AZIMA

Defendant / Counterclaimant

-and-

DAVID NEIL GERRARD AND OTHERS

Additional Defendants to Counterclaim

ORDER AND PENAL NOTICE

PENAL NOTICE - WARNING

IF YOU, THE WITHIN NAMED RAS AL KHAIMAH INVESTMENT AUTHORITY, NEGLECT TO OBEY THIS ORDER BY THE TIME STATED, YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE PUNISHED BY A FINE, OR YOUR ASSETS MAY BE SEIZED, OR SUBJECT TO OTHER PUNISHMENT UNDER THE LAW

IF RAS AL KHAIMAH INVESTMENT AUTHORITY NEGLECT TO OBEY THIS ORDER BY THE TIME STATED, YOU, NASER THAFER HUSNI AL BUSTAMI, MOHAMAD SULTAN AL QADI, AND COLIN FREDERIC GLENROY CROOKSHANK (AS DIRECTORS OR OFFICERS OF THE SAID RAS AL KHAIMAH INVESTMENT AUTHORITY), MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED OR FINED OR YOUR ASSETS MAY BE SEIZED, OR SUBJECT TO OTHER PUNISHMENT UNDER THE LAW

Definitions

1. This order uses the following terms:
 - a. “RAKIA” refers to the Ras Al Khaimah Investment Authority, the Claimant and Defendant to Counterclaim in these proceedings.
 - b. “Mr Azima” refers to Mr Farhad Azima, the Defendant and Counterclaimant in these proceedings.
 - c. References to the “websites, torrents, WeTransfer links or other internet sources” refers to the websites, torrents, WeTransfer links and internet sources described in paragraphs 71-74, and 99-100 of the Re-Re-Re-Amended Counterclaim and Claim Against Additional Parties.

Order

2. Within 28 days of the date of being served with this order, RAKIA is:
 - a. to take all reasonable steps to remove or procure the removal of any websites, torrents, WeTransfer links or other internet sources containing statements about Mr Azima and/or providing means for this private data to be accessed by others;
 - b. to deliver up all copies of Mr Azima’s private data in RAKIA’s possession or the possession of RAKIA’s agents.