



Claim No. HC-2016-002798

HC-2016-002798

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

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 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 a trial in those proceedings (the “**First Trial**”);

AND UPON the judgment of the Court of 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 providing that, in the event that Mr Azima succeeds in the Hacking Counterclaim, paragraphs 1(b) and 3-7 of the First Trial Order shall be set aside;

AND UPON the Order of Mr Justice Michael Green dated 27 May 2022 pursuant to which RAKIA was obligated to provide Extended Disclosure by 14 October 2022;

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

AND UPON the Order of Mr Justice Michael Green dated 8 July 2022, suspending the parties’ obligation to provide Extended Disclosure;

AND UPON the Order of Mr Justice Michael Green dated 7 November 2022 (the “**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, First Trial Order, the First Appeal Judgment and part of 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 Particulars of Counterclaim and Claim Against Additional Parties (including the Rescission Counterclaim) on 8 November 2022;

AND UPON the Order of Mr Justice Michael Green dated 21 November 2022 giving further case management directions and reinstating the parties’ obligation to provide Extended Disclosure;

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 Order of Mr Justice Michael Green dated 4 May 2023, pursuant to which RAKIA was obligated to provide Extended Disclosure by 2 June 2023;

AND UPON RAKIA failing to comply with its obligation to provide extended disclosure;

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 “**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 Application**”);

AND UPON hearing leading counsel for Mr Azima, for Mr Gerrard, for Dechert LLP and for Mr Buchanan;

AND UPON Handing down judgment in the absence of the parties on 21 August 2023, and that hearing being adjourned for the purposes of permitting Mr Azima to apply for permission to appeal from Mr Justice Michael Green

IT IS DECLARED THAT

1. RAKIA is in breach of the Order of Mr Justice Michael Green dated 4 May 2023.

IT IS ORDERED THAT

The Rescission Counterclaim

2. The Rescission Application is refused.
3. Mr Azima shall pay Dechert LLP’s costs of resisting the Rescission Application on the standard basis, in the agreed sum of £92,582, by 4 September 2023.
4. Mr Azima shall pay Mr Gerrard’s costs of resisting the Rescission Application on the standard basis, in the agreed sum of £56,828 by 14 September 2023.
5. Mr Azima’s application for permission to appeal paragraph 2 of this Order is refused.
6. Mr Azima shall have until 21 days from 15 September 2023 to file an appellant’s notice at the Court of Appeal pursuant to CPR 52.12(2)(a).

The Hacking Counterclaim

7. RAKIA’s Statement of Case shall be struck out without further order of the Court.
8. There shall be judgment in default for Mr Azima and against RAKIA on the Hacking Counterclaim.
9. RAKIA shall pay Mr Azima’s costs of the Hacking Counterclaim to the date on which the Hacking Application was issued (without prejudice to any right Mr Azima might have

to seek costs of the Hacking Counterclaim as against the Additional Defendants in due course, subject to principles against double recovery). Those costs shall be paid on an indemnity basis, to be subject to detailed assessment immediately if not agreed.

10. The time for Mr Azima to commence detailed assessment proceedings pursuant to CPR 47.7 shall be extended to six months.
11. RAKIA shall pay interest on the sums to be paid under paragraph 7 (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.
12. RAKIA shall make an interim payment in the sum of £8,442,744.20, being 75% of Mr Azima's costs of the Hacking Counterclaim, within 28 days of the date of this Order.
13. 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 trial of the Hacking Counterclaim listed for 10 weeks in a 5-day window commencing 6 May 2024.
14. RAKIA shall pay the costs of and occasioned by the Hacking Application, on an indemnity basis, being £16,495.50, within 14 days of the date it is served with this Order.

Other provisions

15. Liberty to apply.
16. This Order shall be served on RAKIA, Dechert LLP, Mr Gerrard and Mr Buchanan by Mr Azima.