



Neutral Citation Number: [2022] EWHC 1716 (Comm)

Case No: CL-2021-000685

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice, The Rolls
Building, London EC4A 1NL

Date: 10 June 2022

Before:

HIS HONOUR JUDGE PELLING, QC
(Sitting as a High Court Judge)

Between:

WENDA COMPANY LIMITED
(a company incorporated in China)

Claimant / Applicant

- and -

(1) WANG JIHONG
(2) SYNER LIMITED
(3) EFFS GLOBAL INVESTMENT CO. LTD.
(a company incorporated in the British Virgin Islands)
(4) ROLAND FREDERICK PETIT

Defendants

- and -

HSBC INVOICE FINANCE (UK) LTD.

Respondent

MR. J. GARDNER (C) (instructed by **Sherrards Solicitors LLP**) for the **Applicant**
MR. R. CHOLAKOV (C) (instructed by **Eversheds Sutherland LLP**) for the **Respondent**

Approved Judgment

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JUDGE PELLING :

1. This is an application for third party disclosure brought by the claimant against HSBC Invoice Finance (UK) Limited, which arises in the following circumstances.
2. The claimant has brought a claim in fraud against the first, second and third defendants arising out of the management by the second defendant of invoice sums collected on behalf of the claimant from third party customers of the claimant by that company. That company was established in 2012 by the claimant for the sole purpose of handling invoice financing on its behalf.
3. The underlying general method by which this arrangement was to be managed in summary comes to this. The second defendant (Syner) was required to collect sums due to the claimant from the claimant's customers. For the purpose of carrying that exercise into effect, it was required to use the invoices rendered to the claimant's buyers and which required the buyers to pay Syner to obtain invoice discounting finance.
4. It appears that invoice discounting finance facilities were made available by the respondent to Syner and the third defendant (Effs Global Investment Company Limited), a company controlled by the first defendant. The first defendant was appointed by the claimant as the sole director of the second defendant.
5. The object of the invoice discounting finance arrangement was that the second defendant would obtain payment in due course for the full invoice value from the claimant's buyers, would thereupon repay the respondent to this application the sums advanced pursuant to the invoice discounting arrangement and account for the surplus to the claimant less the repayments to the respondent and various other administrative and operational costs.
6. On the claimant's case, the way in which the first defendant, Ms. Wang, has operated the affairs of the second defendant has been entirely unsatisfactory and in particular the method by which she caused the second defendant to account to the claimant gave rise to very serious concerns within the organisation of the claimant. In those circumstances, demands were made for proper and clear accounting, which was never forthcoming and ultimately in the summer or early autumn of 2016 the claimant recruited a new finance director. The result of that appointment and the subsequent investigation carried out by the new finance director is that it is alleged that several millions of US dollars have been misappropriated by the first defendant from the claimant, hence this claim.
7. As I have explained, there was an invoice discounting arrangement entered into by the second defendant and I think also the third defendant with the respondent to this application. Broadly, what the claimant seeks is third party disclosure as against the respondent in order to obtain all the necessary records to identify the full value of the invoices submitted to the respondent and against which it made discounted payments. This will enable the claimant to establish as a matter of near certainty the maximum sums which were received by the second defendant and I think also the third defendant on behalf of the claimant and it will then be possible, by deducting from those sums the sums which were actually received by the claimant from the second

and third defendants, to arrive at the total value of the sums lost once account has been taken of the expenses that could legitimately be deducted by them.

8. The application is made by reference to CPR 31.17. That rule requires that the court should make an order only where the documents for which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties, and the disclosure is necessary in order to dispose fairly of the claim or save costs. As will be apparent from the outline description I have given so far, it is plain that the documents are likely to support the applicant's case by enabling the applicant to identify whether and if so how much has been lost to it as a result of what it alleges to be the illegitimate activities principally of the first defendant in which the other defendants have become involved. I also have to be satisfied that there are documents falling within the classes which are sought in the application, which I have summarised earlier in this judgment. I am so satisfied; indeed the respondent does not suggest the contrary.
9. The respondent's position in relation to this application is that whilst it does not consent to it, it has seen the draft order proposed and does not oppose the making of an order in those terms.
10. I am satisfied that the documents which are sought by the claimant on this application, which are broadly the statements of account relating to the invoice financing facility that I have described, are relevant and will assist the claimant by enabling the claimant to ascertain the maximum amount of its claim in a way that merely looking at its invoices will not because it will enable the claimant to identify what was paid by the respondent to whom and when and what sums were received by it from the defendants in respect of the claimant's invoices and when. On that basis, I am satisfied that the requirements identified in the rule have been made out and I am satisfied that any discretion ought to be exercised in favour of the claimant by making the order sought. In those circumstances, I propose that the order sought should be made.
11. The only issue that remains concerns the respondent's costs. As to that, the issue between the parties is a narrow one because it is accepted as a matter of principle by the claimant that it must pay the respondent's costs. It is accepted too that it is appropriate that I should carry out a summary assessment of those costs by reference to the schedule produced by the respondent. In those circumstances, there will be an order in the terms sought

For proceedings, see separate transcript

JUDGE PELLING:

12. The issue I now have to determine concerns the assessment of the costs of the respondent in relation to this hearing. The principles that I have to apply are those which apply to any assessment and require me to identify the work which it was reasonable and proportionate for the receiving party to carry out and then to arrive at a sum payable for that work which is reasonable and proportionate in amount.
13. So far as this case is concerned, the claim for costs in the round is a relatively modest one, being for slightly over £7,000 at the aggregate. The hourly rates that have been adopted are not objected to by the claimant and so I say no more about them. The

focus of attention so far as the claimant is concerned is on a total of slightly over five hours of communications in the form of letters and emails out by the respondent's lawyers to the respondent itself. It is said that these sums are in excess of what is reasonable and proportionate, having regard to the relatively straightforward nature of the application.

14. It is submitted on behalf of the respondent that a significant amount of time and effort was expended by the respondent in dealing with the application when it was first trailed, at a time when it was premature for the application to have been mentioned, and that there was a further review that had to be carried out once the application resurfaced again.
15. It is not suggested on behalf of Mr. Gardner that in principle the costs which were incurred from the outset of the consideration of this application are not properly recoverable by way of assessment at this stage, and I am not satisfied that the sums that have been claimed are in excess of what is reasonable and proportionate, having regard to the length of time for which the respondent was involved in dealing with the defendants.
16. In those circumstances, and having regard to the fact that there are no objections raised to counsel's fees, to the hourly rates which have been adopted or to the work done on documents, it seems to me that in the circumstances of this case it is appropriate to assess the sums due to the respondent in the sum claimed, that is to say, £7,097.26.

This judgment has been approved by the Judge.