Neutral Citation Number: [2009] EWHC 2451 (QB)

Case No: HQ08X03060

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 October 2009

Before :

THE HONOURABLE MR JUSTICE EADY

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Between :

(1) SAIYED REZA QUREISHI KAHANGI
(2) MOHAMMED TAHERI
(3) SWIFT COLLEGE LTD
(4) SWIFT INVESTMENT & DEVELOPMENT COMPANY LTD **Claimants**

- and -

DR ALI REZA NOURIZADEH **Defendant**

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Mark Warby QC and **Victoria Jolliffe** (instructed by **Collyer Bristow LLP**) for the **Claimants**
Richard Parkes QC and **David Hirst** (instructed by **J Tehrani**) for the **Defendant**

Hearing date: 2 October 2009

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Judgment

Mr Justice Eady :

1. The Defendant, Dr Ali Reza Nourizadeh, applies for security for costs in these consolidated libel actions, which are due to be tried next term. He is an Iranian exile and dissident, who is by profession a journalist. The four Claimants consist of two individuals, Saiyed Reza Qureishi Kahangi and Mohammad Taheri, and two corporations. The Third Claimant is Swift College Ltd, which the evidence shows is a dormant company incorporated within this jurisdiction. The Fourth Claimant is Swift Investment & Development Company Ltd, incorporated in Gibraltar.

2. They complain of defamatory allegations contained in a total of six articles published by the Defendant in a journal called *Kayhan* and on various websites between July and September 2008. It is unnecessary to set out the articles *in extenso* for present purposes. It will suffice to record, in general terms, that the First and Second Claimants are accused of fraudulently obtaining thousands of pounds from the deliberate and criminal deception of young people by the offering of non-existent educational services. It is also said that they are accused of money laundering. The articles may convey the impression also that the Third and Fourth Claimants are bogus companies established as a cover for the First and Second Claimants' criminal activities (in respect of fraud, money laundering and/or taking gold and jewellery out of Iran illegally).

3. One of the articles also conveys the meaning, it is submitted, that the Claimants made unlawful threats and inducements to the Defendant by way of response to the first article. Additionally, the fourth article is alleged to convey the meaning that the First and Second Claimants are guilty of espionage, arms dealing and terrorist activities. The fifth article is said to convey the general allegation that the First and Second Claimants had been involved in criminal transactions "involving many millions of dollars".

4. The sixth article is pleaded as conveying additional imputations to the effect that the First and Second Claimants bribed or otherwise corrupted Iranian government officials into validating the non-existent educational institution, Swift College, and granting exemptions from military service in order to further their frauds on young Iranians. It is also suggested that it means that the First and Second Claimants established the Fourth Claimant as a bogus company to cover up "criminal activities on a massive scale from which they have earned vast sums".

5. The consolidated defence runs to some 29 pages, a significant proportion of which is devoted to setting out particulars of justification in support of the following *Lucas-Box* meanings:

    a) that the First and Second Claimants, on their own behalf and on behalf of the Third Claimant company, have fraudulently obtained large sums of money from a substantial number of Iranian students by promising them places on educational courses at a college in England which does not exist;

b) that there are reasonable grounds to suspect that the First and Second Claimants have bribed or improperly persuaded corrupt officials handling educational matters at the Iranian Ministry of Science, and officials at the Iranian Ministry of Defence, to grant exemptions from military service where student applications to the non-existent Swift College were concerned, thereby assisting the First and Second Claimants in perpetrating the fraud;

c) that the Third Claimant exists only as a vehicle for the First and Second Claimants' fraudulent enterprise;

d) that the First and Second Claimants, on their own behalf and/or on behalf of the Third Claimant and/or the Third Claimant through its director Ahmad Mokhtari, caused or permitted their employee or agent Ahmad Mokhtari to threaten their victims that they would be reported to the Iranian military authorities and to the UK authorities, with consequent loss of their right to remain in the UK and deportation to Iran, if they complained about their treatment at the hands of the First, Second and/or Third Claimants;

e) that the First and Second Claimants, on their own behalf and/or on behalf of the Third and/or Fourth Claimants, have made sinister threats and have offered corrupt inducements to the Defendant to persuade him not to publish any more articles about them;

f) that there are reasonable grounds to suspect that the Fourth Claimant is a bogus company and that the First, Second and Fourth Claimants are engaged in money laundering.

There is also a plea of *Reynolds* privilege.

6. The application for security is supported by two witness statements from the Defendant's solicitor, Sobashni Wimalasena, dated respectively 15 July and 30 September 2009. It is opposed on the basis of evidence from Steven Heffer, the Claimants' solicitor.

7. The principles applicable to such applications are essentially common ground between the parties. The requirements for an order for security are to be found in CPR 25.13(1). It is necessary for an applicant to persuade the court that, having regard to all the circumstances of the case, it is just to make such an order *and* that one or more of the conditions set out in CPR 25.13(2) applies (or that an enactment specifically permits the court to require security).

8. It is clear that applications of this kind should not be allowed to degenerate into a mini-trial of the issues in the case. Sometimes, however, it is possible to demonstrate that a claimant has a high degree of probability of success or failure. Generally, the court will be reluctant to order security where the claim appears to be one that is highly likely to succeed. Where there are serious allegations of fraud and dishonesty, and conflicting assertions of fact that are unlikely to be resolved without disclosure, witness statements and cross-examination, it will be most unlikely that the court will find itself in a position to predict the probable outcome to a sufficient degree.

9. The court will also be reluctant to grant an order for security for costs where the consequence of that would be to stifle a claim. No conclusion can be reached on such an issue, however, unless there is convincing evidence put forward by the party (i.e. the claimant) seeking to establish that proposition: see e.g. *Al-Koronky v Time Life Entertainment Group Ltd* [2006] EWCA Civ 1123. There has been no suggestion in this case, so far, that an order for security would have the effect of stifling the claim on the part of any of these Claimants. Indeed, on the contrary, their case is that there is sufficient wealth to meet any order for costs that might be made against them.

10. It is conceded, in relation to the First, Second and Fourth Claimants, that they are to be treated as outside the jurisdiction and not resident in a Brussels contracting state, a Lugano contracting state or a regulation state as defined by s.1(3) of the Civil Jurisdiction and Judgments Act 1982. Thus the basic requirement of CPR 25.13(2)(a) is fulfilled. Furthermore, in relation to the Third Claimant, reliance is placed on CPR 25.13(2)(c) on the basis that there is reason to believe it will be unable to pay the Defendant's costs if ordered. As a matter of fact, the Defendant also maintains this position in relation to the Fourth Claimant.

11. The principles to be applied are founded upon the public policy considerations identified by the Court of Appeal in *Nasser v United Bank of Kuwait* [2002] 1 WLR 1868. In particular, it is important that there shall not be discrimination against those who are resident outside the Brussels or Lugano Convention states. The court should not exercise its discretion to order security merely on the basis that the precondition specified in CPR 25.13(2)(a) is established. It is necessary for an applicant to go further and to demonstrate that there would be significant additional obstacles to enforcement within the relevant foreign jurisdiction.

12. It is clear that it will not be sufficient to demonstrate merely impecuniosity on the part of a foreign claimant but, by the same token, it would appear equally to be no answer on the part of a claimant to establish that he has considerable wealth. The matter upon which emphasis was laid by the Court of Appeal in *Nasser* is that of enforceability in the foreign jurisdiction.

13. It was acknowledged in that case that there may be some parts of the world in respect of which there could be an assumption that enforcement would be difficult or impossible. It was not, however, the case argued by Mr Parkes QC, on the Defendant's behalf, in relation to Iran. He sought to support the application by evidence rather than assumption. It was acknowledged by his instructing solicitor, however, that there had been great difficulty in identifying any Iranian lawyer prepared to give evidence about enforceability in Iran, despite her best efforts over several months. She was unable to say why she could find no willing candidates and it is not for me to speculate. In those circumstances, Mr Parkes placed reliance partly upon publicly available materials to show that enforcement in Iran of any costs order would be extremely difficult, if not impossible. As he pointed out, the nature of the evidence put forward here in relation to Iran was comparable to that advanced in the context of Sudan in the case of *Al-Koronky*, cited above. More importantly, he points to problems specific to this Defendant.

14. First, there were the transactions of the International Commission of Jurists dating from 2002, which cast considerable doubt on the independence of the judicial process in Iran. Its introductory paragraph was in these terms:

> "The judiciary in Iran remained heavily under the influence of executive and religious government authorities. The functioning Islamic Revolutionary Courts severely undermined judicial authority in the country. Lawyers were not adequately protected in exercising their functions by an effective professional association."

It also included the following passage:

> "The Supreme Leader maintains direct control over all internal security and police forces, the judiciary and the state broadcasters.… According to Article 57 of the Constitution, the legislature, the judiciary and the executive, all must function under the 'absolute rule of the Supreme Leader'."

15. Further comments are made in the section headed "The Judiciary" at p.196:

> "The judiciary in Iran is not free from government influence. Religious minorities, women and men are not treated equally before the courts. Although the Constitution endorses certain rights of fair trial, these are not respected in practice."

It is perhaps unnecessary to cite any further passages from this document. It clearly presents a troubling picture and, what is more, there is no evidence before me to suggest that the report was either inaccurate at the time it was published or that there have been improvements in the position since.

16. More particularly, there is evidence that the Defendant himself has received threats and inducements from persons purporting to act on behalf of the Iranian government with a view to preventing his publishing comments or criticisms of these Claimants. There is nothing before me, at this stage, which would justify my rejecting that evidence. If it is right that the judiciary operate under government influence in that jurisdiction, it is plainly a relevant factor in assessing the likelihood of enforcement of any order made in *this* Defendant's favour against *these* Claimants.

17. Another publication put in evidence before me was an article contained in the *Trade & Forfaiting Review*, which appears to have been published on 4 August 2006. It is on the theme "Trade financing in Iran: a political minefield". It contains the following information under the heading "Choice of forum and enforcement":

> "Choice of forum clauses whereby the parties submit to the jurisdiction of a foreign (i.e. non-Iranian) court are permitted provided that there are certain disputes, such as disputes involving real property located in Iran, that fall within exclusive jurisdiction of Iranian courts. Foreign court judgments are enforceable in Iran subject to obtaining the judicial recognition of that judgment from the Iranian court. The granting of judicial recognition is subject to certain conditions, with one of the most important of which being the reciprocal treatment of Iranian court judgments by the courts of the jurisdiction where the foreign court judgment has been

> issued. Iran is not a party to a multinational treaty for the reciprocal enforcement of judgments and has entered into bilateral treaties for such purpose only with a very few countries (for example, no such bilateral treaty exists between the UK and Iran)."

Again, no evidence has been produced on behalf of the Claimants for the purpose of refuting this assessment of the situation.

18. It is accepted by Mr Parkes that the mere absence of such a treaty does not conclude the matter. There is no such treaty with the United States, but in many instances recognition and enforcement will take place. It might be possible, at least theoretically, to persuade an Iranian court that judgments from that jurisdiction have been enforced in England and Wales and, in the light of such evidence, to invite reciprocity – notwithstanding the absence of a treaty. On the other hand, I have seen nothing to show that such a scenario would be a realistic possibility.

19. Eventually, the Defendant's solicitor managed to obtain an email from an Iranian lawyer dated 24 September 2009 which does address the position. Unfortunately, for whatever reason, the lawyer in question wishes to remain, at least for the moment, anonymous. His evidence was put in by Ms Wimalasena on that basis. I cannot, on the other hand, totally discount it for that reason – not least because it is consistent with the other materials I have just attempted to summarise. His response contains the following comments:

> "1– According to Iranian law enforcement of foreign court judgments is subject to judicial recognition of the relevant foreign court judgment by the Iranian court of competent jurisdiction and the granting of such judicial recognition is subject to satisfaction of the following conditions:
>
> (1) reciprocal treatment of Iranian court judgments by courts of the jurisdiction in which the judgment is issued (i.e. English courts, in this case);
>
> …
>
> 2– To the best of our knowledge, there is no treaty between Iran and UK for reciprocal enforcement of judgments. As a result, the requirement of reciprocity will, in practice, be the more difficult one to satisfy. Although affidavits of English lawyers and scholars quoting cases where an English court has enforced an Iranian court judgment should be sufficient evidence to satisfy this condition, due to relatively limited cases of enforcement of foreign judgments in Iran, to the best of our knowledge (noting that Iranian court judgments are not published) there is no established practice as to standard of proof required for satisfaction of this condition.
>
> In conclusion, absent a treaty for reciprocal enforcement of judgments between Iran and UK, enforcing an English court

> judgment in Iran could prove to be very difficult and, at best, a lengthy process with no reasonable guarantees as to the outcome."

20. In the light of this evidence as a whole, it seems to me to be clear that there is sufficient material here relating to the potential burden of enforcement within Iran of any costs order to fulfil the requirements laid down by the Court of Appeal in *Nasser v United Bank of Kuwait*. In view of the decision in *Al-Koronky*, general allegations about lack of judicial independence may not be sufficient to surmount the hurdle, but here there is the important evidence (a) that government representatives have offered the Defendant threats or inducements with regard to his coverage of the Claimants' affairs and (b) that Article 57 of the Constitution requires judges to function under the "absolute rule of the Supreme Leader". This in itself would suggest that there would be serious problems over enforcing any costs award.

21. The next question which arises is whether the discretion should be exercised in favour of granting an order for security.

22. I cannot possibly conclude here that the Claimants have demonstrated a high probability of success. There are many factual issues in dispute and, so far as I can tell before service of witness statements (due in the near future), it is likely that there will be significant conflicts of evidence. These matters plainly cannot be resolved on an application of this kind.

23. It is quite true that a number of questions have been raised on the Claimants' behalf as to the accuracy of some of the particulars of justification and, specifically, as to the authenticity of some of the documents referred to. It is said that there are inconsistencies and contradictions to be exposed in the Defendant's case.

24. It is also argued that both the original publications and the present application for security have been made in bad faith, in that they have been prompted by an acquaintance of the Defendant who is involved in ongoing arbitration proceedings with the Claimants. This is a serious allegation. It would no doubt require close scrutiny at trial, but I cannot uphold it at this stage. Nor can I conclude that the apparent inconsistencies and the suspicious documents drawn to my attention fatally undermine the Defendant's pleaded case of justification. That may, quite possibly, be made out at trial, but I cannot anticipate such an outcome now. The position remains, at present, that there are simply a host of disputed claims and counterclaims. These are likely to be expensive to resolve and that is why security is now sought in a significant amount.

25. I should add that there is a challenge also to the defence of *Reynolds* privilege, on the footing that the Defendant can already be shown to have failed one of Lord Nicholls' ten non-exhaustive tests: see [2001] 2 AC 127, 205. That is to say, the Claimants were not given any opportunity in advance of publication to comment upon, or refute, the charges made against them. Again, however, that is a matter for trial. The issue of "responsible journalism" is one that has to be addressed in the round. It is not possible, even at trial, to reject such a defence merely because one or more of the specified ten questions has not been answered in the Defendant's favour. All depends on a close analysis of the particular circumstances of the case. It may be held, for all I know, and can certainly be argued at trial, that on the facts of this case it was

reasonable not to put the case to any of the Claimants in advance; for example, because they would be bound to deny it. As Lord Nicholls observed: "An approach to the [claimant] will not always be necessary". All that is for later. In the meantime, I am left with a fairly lengthy defence which has not been challenged as unsustainable, or fit to be struck out, and which would undoubtedly be very expensive to bring home at trial.

26. Against that background, it seems clear to me in principle that an order for security is appropriate. The sum sought at this stage is undoubtedly high at more than £500,000. Yet that is to an extent attributable to the fact that the Defendant is, in part, represented under a conditional fee agreement and there is thus likely to be a significant uplift in the event of success. It is common ground that this is a legitimate element to take into account when it comes to assessing security.

27. I acknowledge that the balance may shift, in the light of exchanging witness statements, or for other reasons, between now and the pre-trial review which is anticipated for January 2010. I think, therefore, that a conservative stage by stage approach is thus appropriate. I do not propose to make an order to cover costs down to the end of the trial or even to its commencement. It may well be that any order I make at this stage will need to be varied at, or possibly before, the pre-trial review. Nevertheless, a substantial sum is still appropriate in view of the evidence placed before me.

28. I have come to the conclusion that it is right to exercise the court's discretion and to make an order for security in the Defendant's favour in the sum of £275,000. I will hear counsel in due course as to the timing and mechanism for complying with that order.