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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2022] EWHC 3447 (KB)



No. QB-2022-000071

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 1 December 2022

Before:

MR JUSTICE FREEDMAN

B E T W E E N :

NGUBENI & ANOR

Claimants

- and -

LCJ & TN ACCOUNTING SERVICES LIMITED & ANOR

Defendants

MR SIMON SINNATT (instructed by Barwells solicitors) appeared on behalf of the Claimants.

MR DALE TIMSON (instructed by Rainer Hughes solicitors) appeared on behalf of the Defendants.

J U D G M E N T

(Transcript prepared without the aid of documentation)

MR JUSTICE FREEDMAN:

- 1 A claim has been made by the first claimant and/or the second claimant against the first defendant and/or the second defendant arising out of loans made. For the purpose of convenience, I shall refer to the claimants as “the claimants” and the defendants as “the defendants” rather than referring each time to the first claimant and the second claimant, and the first defendant and the second defendant.
- 2 The contracts which are the subject of this action are contracts of loans advanced by the claimants to the defendants. There is a question to which I shall return of whether the correct lender is the first claimant or the second claimant and whether the correct borrower is the first defendant or the second defendant.
- 3 The business of the defendants is said to involve the provision of invoice factoring or financing services to healthcare companies providing services to the NHS and local authorities in the United Kingdom. The claimants say that the defendants have been in substantial default under the loans as a result of which they have made the claim in this action.
- 4 On 20 January 2022, Morris J made an interim freezing order against the defendants. On the return day, 11 February 2022, the freezing order was continued. The interim freezing order required the defendants to make disclosure of assets. That order for disclosure was extended to 14 February 2022. There was an unless order made on that date that unless the respondents disclosed the information required by the order of 20 January 2022 by 4.30 p.m. on 14 February 2022, they would be debarred from defending the claim. The order for disclosure was in the usual form and included a requirement of disclosure of all of the assets of the defendants worldwide exceeding £1,000 in value.
- 5 There was an issue between the parties as to whether assets went beyond bank accounts and included information relating to the business of the defendants of what money was owed to the defendants arising out of the factoring or financing services of their business. In other words, the suggestion was that the defendants in the course of their business lent money to customers/borrowers and that a part of the assets of the defendants would be their debtors, namely those who owed money to the defendants pursuant to such loans. The claimants could have made an application to debar the defendants from raising a defence by reason of the non-provision of that information but, instead, sought an order from the court clarifying the information to be provided.
- 6 On 21 June 2022, an order was made by Mr David Pittaway KC, sitting as a Deputy Judge of the High Court. He ordered, among other things, that:

“(8) By 4.00 p.m. on 5 July 2022, the defendants shall file and serve a schedule setting out all details of ledgers and loan sheets of outstanding money owed to them, setting out with particularity the amounts of the principal advanced, the amount of principal repaid, the interest due there on, and the name or other form of identification of the third party debtor.”
- 7 When that order was made, the defendants did not inform the claimants or the court that at some point in June 2022, the police had seized the documents of the defendants in

connection with an ongoing investigation against the defendants. The defendants now say that they believed that they would be able to retrieve documents from the police in order to comply with any order of the court. When it emerged that the defendants were unable to obtain that information, they sought from the claimants their consent to an extension of time for compliance with the order of Mr Pittaway KC. The claimants refused to provide an extension of time and the defendants did not make an application for an extension of time.

8 The claimants then applied on 1 August 2022 for an unless order in the same form as the order provided for as para.8 of the order of Mr Pittaway KC. The claimants put before the court the correspondence relating to the contention of the defendants that they had some difficulty in complying.

9 The matter came before Bourne J on paper on 2 August 2022. He made an unless order in which he provided:

“Unless the defendants by 4.00 p.m. on 16 August 2022 file and serve a schedule setting out all details of ledgers and loan sheets of outstanding money owed to them setting out, with particularity, the amounts of the principal advanced, the amount of principal repaid, the interest due thereon, and the name or other form of identification of the third party debtor:

1.1 The defendants’ defence shall be struck out;

1.2 Judgment shall be granted for the claimants in the sum of £1,275,995.69; and

1.3 The defendants shall pay the claimants’ costs to be the subject of detailed assessment if not agreed.”

10 At para.3 of the order, Bourne J provided in the usual way that since the order had been made on paper and without a hearing, any party may apply to have the order set aside or varied within seven days of service upon that party. In the reasons for the order, Bourne J said the following:

“The evidence filed on behalf of the claimants suggest that the defendants are not complying with the court’s orders and not cooperating with the claimants. This unless order gives them the opportunity to rectify the situation.

But if the defendants wish to contest the factual basis on which this application has been made, they must urgently make the appropriate application and ask for it to be placed before a judge before 16 August 2022.”

11 Within the seven-day period, the defendants made an application to set aside the order of Bourne J dated 2 August 2022 pursuant to para.3 of that order. The defendants in their application said that they did contest the factual basis that they were not complying with the court’s orders and not cooperating with the claimants. The reasons that they gave included the following: namely, the attendance of the police on 8 June 2022 at the first defendant’s home address and at the premises of the second defendant. They provided information to

the effect that their solicitors, Rainer Hughes, had sought to cooperate with the Metropolitan Police. When there was no information as to when the defendants' possessions would be released, they informed the claimants about the problem. There were then attempts to regain copies of the documents but the defendants were unable to gain access to the documents. The defendants submitted that they had made reasonable endeavours to comply with the original order dated 5 July and the order dated 2 August 2022 but that they had been prevented from so doing because of the intervention of the police.

- 12 On 15 August 2022, there was a hearing before Sweeting J who adjourned the application dated 9 August 2022 to the first open date after 12 September 2022 with a time estimate of one hour thirty minutes, certifying that it was fit for vacation business. He varied the order of Bourne J by the substitution of the conclusion of adjourned hearing of the defendants' application to set aside this order for 4.00 p.m. on 16 August 2022. He ordered that the defendants should not later than seven days before the adjourned hearing file and serve a witness statement setting out what documents and electronic devices have been seized by the Metropolitan Police, what steps they have taken to retrieve the same, and exhibiting all supporting communications. The claimants were ordered not less than seven days before the adjourned hearing to serve a witness statement setting out what judgment the claimants contend they would be entitled to in the event of default judgment and the basis for the same.
- 13 On about 7 November 2020, the matter did not proceed to an early hearing. There is evidence of steps being taken by the defendants to procure the return of documents including an application issued against the police in September 2022 for the return of their documents. That was with a view to enabling the defendants to deal with the orders against them and the adjourned application.
- 14 On 7 November 2022, when the matter still had not come before the court, the police informed the defendants that they did not intend to proceed against them. There was a return, at that stage, of about five boxes of documents. There was also a return of computer equipment which the claimants say were damaged. There was a witness statement that was prepared pursuant to the order of Sweeting J by Ms NCube dated 9 November 2022. That referred to the fact that the items seized had been obtained on 8 November 2022 and that it was a difficult task to work through the papers because of their volume and because some papers were missing.
- 15 There was a witness statement by Ms Chambers on behalf of the claimants dated 3 November 2022 about the order that was being sought by the claimants. It was accepted in that witness statement that the claim for interest under the Late Payment of Commercial Debts (Interest) Act 1998 was no longer pursued. In addition, the claimants accepted that a loan made on 22 June 2021 for a sum of £15,000 was not pursued. The claimants said that they would accept an election under which the second claimant would receive judgment in the matter. There was no reference in that witness statement against which of the defendants would be the operative defendant.
- 16 The matter came before me on 16 November 2022. On that occasion, there was an oral update as regards what was happening. Mr Timson on behalf of the defendants informed the court that there was a very large volume of material that was required to be investigated. He referred in his skeleton argument to a witness statement of the first defendant dated 15 November 2022 to the effect that:

- (a) Not all of the documents had yet been returned to the defendants and also some property not belonging to the defendants had been returned to them;
 - (b) The defendants could not access their online banking due to the freezing injunctions. Requests for bank statements directly from the banks were taking some time to arrive;
 - (c) Some of the defendants' electronic devices returned from the Metropolitan Police were damaged; and
 - (d) The defendants could not access cloud storage due to subscriptions not being paid as a result of the freezing injunctions. More particularly, it appeared that there was a particular bundle of documents that was available for collection but was still with the police.
- 17 The defendants had been told that it was going to take some time before receiving various bank statements and that in those circumstances, the defendants sought an adjournment for several weeks in order to be able to provide further information.
- 18 The claimants were represented by Mr Sinnatt at that hearing. He set out the history of the matter to date and submitted that there was a history of non-cooperation and that what was being put before the court was effectively more of the same. The court on that occasion needed to have more information as to what was and what was not available with a view to considering the application made to set aside the unless order of 2 August 2022. To that end, the court adjourned the application dated 9 August 2022 to set aside the order of Bourne J. It extended the order of Sweeting J to the conclusion of the further adjourned hearing. It provided that nothing in the order should affect the obligation of the defendants to comply with the order of Bourne J as varied by Sweeting J and as varied by myself.
- 19 There were then included in the order the following orders:
- “4. The defendant shall by 4.00 p.m. on 24 November 2022 file and serve:
- (a) The schedule as required by para.1 of the order of Bourne J;
 - (b) All bank statements for both defendants from September 2020 to present;
 - (c) Copies of all outstanding loan agreements under which the defendants are still owed funds and copies of all loan agreements entered into from September 2020 to present.”
- 20 There was then an order that the defendants shall by themselves and with the assistance of their solicitors take reasonable steps to procure the defendants' banks to provide the requirement bank statements forthwith and, in any event, by 24 November 2022. Likewise, there was an obligation for the defendants by themselves and with the assistance of their solicitors to take all reasonable steps to obtain their property still in the possession of the Metropolitan Police.
- 21 Paragraphs 7 and 8 of the order were as follows:

“7. Without prejudice to the obligation, to the extent that the defendants contend that despite having taken all reasonable steps to comply with the obligation, they are unable to provide the full details required by para.1 of the order of Bourne J, the defendants must, by 4.00 p.m. on 24 November 2022, provide the best particulars available to them in respect of each and every loan, the name of the debtor, the amount advanced to each, the principal sum repaid, and the amount still owing, referencing which entry in the disclosed bank statements evidences the same in the form of witness statement from the first defendant.

8. By 4.00 p.m. on 24 November 2022, the defendants shall make and file a witness statement setting out written communications with their cloud provider to demonstrate that the defendants’ data held by that cloud provider has been deleted. If it transpires that such data has not been deleted, the defendants must take all reasonable steps to obtain it, and file and serve it, by the same date.”

22 There was then provision in relation to the inspection of the electronic devices that were said to be damaged.

23 At para.14, it was ordered as follows:

“The defendants must forthwith instruct their bank to release £13,800 to the claimants pursuant to para.5 of the order of Mr David Pittaway KC dated 21 June 2022.”

24 That was a payment that had been ordered by the court. The defendants informed the court through their legal advisors that such money could be released by a bank so that the claimants would be paid that money. In the event, no money has been released to the claimants because there is no money in the relevant banks, in this case NatWest Bank, to pay to the claimants. The defendants say that they were under a misapprehension that this money was available in the bank. The court expected that that money would be paid forthwith and that this is simply a mechanical way of doing it.

25 In the meantime, a hearing date was fixed for 1 December 2022 for the adjourned hearing of the application to set aside the order of Bourne J. There was evidence by the first defendant in a witness statement dated 25 November 2022 in which she set out her communications with the cloud provider. The purpose of this was to demonstrate their communications with a view to obtaining information from the cloud provider, including whether their data had been deleted. If it transpired that it had not been deleted, the defendants being ordered by para.8 of the order of 17 November 2022 to take all reasonable steps to obtain it. The defendants rely upon this witness statement as evidence that it had been deleted.

26 The witness statement also said that they had collected the folder that was in the police’s possession, which is a bundle of documents relating to this litigation: see para.12 of the first defendant’s witness statement. The defendants were able to obtain bank statements from Santander bank in addition to the bank statements which they had already obtained from NatWest for the period from September 2020.

27 On 24 November 2022 at 15.33, the defendants served the above mentioned NatWest Bank statements and Santander bank statements for the periods between 1 September and 18

November 2022. They also served what was called “an Excel spreadsheet named ‘Rosetti Group Ledger’”. They also served confirmation that the defendants had retrieved the documents that were previously in the possession of the Metropolitan Police. They also served various loan agreements to which I shall refer. They also confirmed to the claimants’ solicitors that an email had been sent to NatWest on 5 July 2022 to pay the £13,800 of costs. As regards the instructions of an expert to inspect the defendants’ damaged devices, the parties had been liaising with a view to an expert providing information relating to the damaged devices and the information that can be retrieved from them.

- 28 There is a witness statement from the first claimant dated 29 November 2022 referring to what the claimants believe to be an inadequate, or inaccurate, or incomplete information provided by the defendants and, in particular, they submit that the ledger does not comply. In particular, they complain about non-compliance with the terms of the order of 17 November 2022. I shall first of all consider the extent to which the information provided does and does not comply with the orders made by the court on 17 November 2022. I shall then go back to the unless order made by Bourne J and the application to seek to set it aside. In my judgment, the information that has been provided is deficient at least in the following respects. This may not be comprehensive but this is summary of the major respects in which there have been deficiencies.
- 29 At para.4(a) of the order of 17 November, the defendants were to provide a schedule as required by para.1 of the order of Bourne J. They rely upon what is described as a ledger where there were numerous statements that had a heading of a name of an individual or a company and that then had a series of columns of dates, money in, money out, and the account reference number. This does not, in my judgment, comprise what was required which was documents, whether in the nature of ledgers and loans, of outstanding money owed setting out with particularity the amounts of the principal advanced, the amount of principal repaid, the interest due thereon, and the name or other form of identification of the third party debtor. It is difficult to discern from that anything more than various dates when money was paid in and money was paid out as between the claimants and the debtor that was there referred to. What is not referred to is information of the outstanding money owed and a statement as to whether the amounts shown in the ledgers represent the entirety of the principle advanced and the principle repaid. There is no information as to what is precisely due at this stage in so far as there have been loans to these debtors. There is no information in relation to the amount that is currently outstanding, or the amount of interest, or other arrangement fees that may be due from the debtor. Thus, the compliance with para.4(a) is partial, incomplete, and inadequate.
- 30 As regards para.4(b), bank statements have been provided in respect of the defendants at Santander and at NatWest. However, there is a further named account where bank statements have not yet been provided and where it is said that attempts have been made to obtain the bank accounts and that that is expected within the next three working days. There is another company, of which the first defendant is a director, that was identified but subject to any point of the claimants, that does not appear to be a relevant company for the purpose of this order.
- 31 As regards para.4(c), there have not been provided any outstanding loan agreements under which the defendants are still owed funds. There have been provided numerous agreements under which other parties are lenders apparently lending money to the defendants. There is no explanation as to how the provision of that information in any way comprises loan agreements under which the defendants are the lenders to customers. It may be that the defendants are borrowing money from parties over and above the claimants. It may be that

this is in some way connected with the factoring arrangements that are being made but in no sense are these agreements copies of outstanding loan agreements under which the defendants are still owed funds. It was suggested on behalf of the defendants that when in the second part of para.4(c) it referred to providing “copies of all loan agreements entered into from September 2020 to present”, and that those other agreements might fall within that, in my judgment, it was clear from the context of that order that this was referring to agreements by which the defendants were lending money to others. It was in the context of the orders that had been made by Mr Pittaway KC and Bourne J. It was particularly in the context of the requirement under the freezing orders to provide information about assets in case there was any doubt as to whether these came within the definition of an asset. This was spelled out by the court so that the defendants must have well understood that the loan agreements that were required were loan agreements under which the defendants were lending money and under which they may be owed money by borrowers.

- 32 Returning to the order of 17 November, at para.6 the defendants were to take reasonable steps to obtain the property still in the possession of the Metropolitan Police. It appeared from the skeleton argument of the defendants acting on instructions that the information had all been returned from the police. When the court was expressing dissatisfaction about the compliance with para.4, Mr Timson, on instructions from his client, then said that not all of the documents had been obtained from the police. There is a clear contradiction, in my judgment, between those instructions that Mr Timson was given in the course of the hearing and the information which he had been provided in connection with his skeleton argument. In no sense is this a criticism of Mr Timson, but the inconsistency in the instructions is of significant concern. A mere instruction that documents had been retained by the police is inconsistent with that which has been submitted in writing on behalf of the defendants.
- 33 I now refer to para.7 of the order of 17 November 2022. That allowed a witness statement from the first defendant to the extent that it had not been possible, despite having taken all reasonable steps to comply, to provide the full details required by para.1 of the order of Bourne J. To that end, information as to the best particulars available was to be provided. To the extent that the information has not been provided, and I have set out the respects in which it has not been provided, there has been no attempt by the defendants to provide the best particulars available. This is unsatisfactory and there is no explanation that has been provided. As regards the witness statement in respect of the cloud provider, that has been provided. However, there is concern in relation to that witness statement because it is not made clear as to whether the information has been deleted or whether, in fact, the information is still available.
- 34 The claimants also drew attention to the fact that in an email dated 29 September 2022 from the defendants’ solicitors to Mr West of the Metropolitan Police, it was stated:

“I confirm that it is our clients’ position that the information is not backed up elsewhere.”

That appears at variance with the information between the cloud provider and the claimants and the defendants in November 2022. The claimants drew attention to the fact that there is no written communication exhibited from the cloud provider suggesting a different date from an actual date upon which the account was closed. Clearly, the information in relation to the cloud provider remains opaque and para.8 of the order, to the extent that it has been complied with, is, in my judgment, inadequate.

- 35 The position of the defendants was unsatisfactory. They ought to have provided information in relation to the monies owed to them when ordered to provide information about their assets. The claimants could have, at that stage, have proceeded in a different way but in fairness to the defendants, proceeded in a more minimalist way by the order of Mr Pittaway KC to which I have referred. It is regrettable that the defendants did not inform the court before it made that order about the difficulty in relation to the police having taken away the relevant records. A different order might have been made on that occasion in the light of that.
- 36 It is also regrettable that the defendants did not then proceed to make an application for an extension of time when it became apparent that they would not be able to get the documents from the police within the requisite time. The claimants were fully entitled, in those circumstances, to proceed with an application for an unless order. However, the question which now arises is whether that unless order should be set aside.
- 37 When Bourne J made the order, he knew that he had some information in relation to what the defendants were contending in relation to the police but it was in the form of some rather short emails. It is apparent from the terms of his order that he believed that the defendants were simply not complying with court orders and not cooperating with the claimants. That was why he said in the course of his reasons that if there was a wish to contest the factual basis on which the application had been made, there should be an appropriate application and ask for it to be placed before a judge before 16 August 2022.
- 38 The court in dealing with this matter is not in any way reviewing the order of Bourne J, or having to find that there is a change of circumstances, let alone dealing in any way as an appellate court. What it is doing is it is considering the matter afresh and exercising its discretion afresh. That arises from the fact that Bourne J's order was made on paper and in the usual way giving permission for an application for it to be set aside.
- 39 Considering the matter afresh, whilst I have considerable sympathy for the position of the claimants in relation to this for all the reasons set out above, in my judgment, the court ought to set aside the unless order. The primary reason for this is that the defendants may not have had the information required in order to comply with that order due to the seizure of the information by the police. If the full information had been provided to the court on 2 August 2022, the court would have appreciated that there would be a serious risk that the effect of an unless order at that stage would be to give rise to an order with which the defendants could not comply and that the claimants would obtain judgment in default.
- 40 In this regard, Mr Timson refers the court to the case of *Marcan Shipping (London) Ltd v Kefalas & Anor* [2007] 3 All ER 365. The judgment in that case of the Court of Appeal refers to particular caution that the court has to have in relation to making unless orders. It says, in particular, at [36]:

“The third consequence is that before making conditional orders, particularly orders for the striking out of statements of case or the dismissal of claims or counterclaims, the judge should consider carefully whether the sanction being imposed is appropriate in all the circumstances of the case. Of course, it is impossible to foresee the nature and effect of every possible breach and the party in default can always apply for relief, but a conditional order striking out a statement of case or dismissing the claim or counterclaim is one of the most powerful weapons in the court's case management armoury and

should not be deployed unless its consequences can be justified. I find it difficult to imagine circumstances in which such an order could properly be made for what were described in *Keen Phillips v Field* as ‘good housekeeping purposes’.”

- 41 In my judgment, in circumstances were the defendants’ ability to comply with that order was, as has only been made clear since the order of Bourne J, in some doubt, an unless order was too draconian in that it had with it the scenario that the defendants would be unable to defend the case in circumstances where they may not have been able to comply with the unless order. It is possible that by reference to the information on the cloud, the defendants might have been able to obtain the necessary information. However, in my judgment, it is speculation at this stage as to whether all of that information could have been obtained at that stage and it seems to me to be too dangerous to assume that it would have been possible.
- 42 In the alternative to the foregoing, if, in fact, it turns out that the defendants may have been able to reconstruct the information in the exercise of the court’s discretion, in the circumstances of this case it is more desirable for a more staged process in relation to this case and for there to be a further unless order rather than relying upon the existing unless order.
- 43 A further factor in relation to this is that on the basis of the unless order in its current form before Bourne J, the sanction for not obeying the order is that there be not only a striking out of the defence but that there be a default judgment for the claimants in the sum of £1,275,995.69 against the defendants. In the circumstances of this case, it has emerged that the claimants accept that there is a question as to against which defendant the order should be made and that it may be necessary to have a trial of an issue as to which of the defendants is the appropriate defendant as between the first defendant and the second defendant, or whether it could be both defendants but that is a matter which they regard in the skeleton argument, very fairly, as having some complexity as being not a straightforward issue and will require determination by the court: see para.57 of the judgment. It may be that the court would have power to amend the sanction at the same time as imposing it but neither counsel was able to assist the court in relation to that moot point.
- 44 I have considered whether, in fact, a different result could arise from the fact that the orders were extended by Sweeting J and by myself so that the unless order would be until the conclusion of the adjourned hearing of the defendants’ application to set aside the order. Further, in my order dated 17 November 2022, I determined that nothing in the order should affect the obligation of the defendants to comply with the order as varied. It could therefore be said that the defendants have had until now to provide the further information in so far as there were difficulties prior to 7 or 8 November 2022. They have had about three weeks since then to provide the necessary information. The information that has been provided has been inadequate and therefore it might be that the unless order, as varied, should take effect.
- 45 In my judgment, that is not a course that I should adopt. If it be the case that the defendants were unable to comply until 8 November 2022, then, in the exercise of my discretion, I am not prepared to assume that the failure to provide the information in the last three weeks should have the sanction of a debarring order. It is, in my judgment, not sufficiently clear that that was the case, or that the position was adequately reflected on the defendants, that they would have that sanction unless they provided that information before the time of the hearing. In any event, in the exercise of my discretion, it is more desirable that the matter

should be set out in a clear order at this stage with the defendants well understanding the consequences of not complying.

The way forward

- 46 In my judgment, the way forward is, at this stage, to make a clear marker that the failure of the defendants to comply with the terms of the order of 17 November 2022 lead to the consequence that there should be a debarring order at this stage. At this stage, on the information before the court, the defendants are able to provide the relevant information. This is very much a final chance for the defendants. It is against the background of all of the defaults up to now. It is also against a background not of an unless order that ought never to have been made but an unless order that had sufficient dangers for the court not to act upon it and to set it aside. In no sense does that show any particular sympathy to the defendants' predicament; rather, it simply shows the extreme caution that the court has about allowing an unless order to take effect. On the other hand, where there is protracted failure to provide information, the ultimate sanction of the unless order is one which is an important part of the armoury of the court in order to procure compliance.
- 47 It should be very clear to the defendants that the failure to provide this information is of a very serious nature. That is because in order for an interim freezing order to be supervised, it is important for the court to know the assets which the defendants have. Otherwise, assets may fall under the radar of the court and of the claimants. In this case, the information relating to the customers and debtors of the defendants is the lifeblood in relation to the interim freezing order. The claimants are seriously prejudiced for so long as they do not have this information.
- 48 Further, it is to be expected that the defendants would have information in relation to these agreements. A lender who has lent money to numerous customers must have ways of being able to obtain this information even if some of its information had been removed from it, or is, for some reason, no longer available. I am satisfied from the information that I have seen that the defendants ought to be able to provide the relevant information. It is therefore, at this stage, safe to make an unless order.
- 49 The precise terms of the unless order can be worked out between the parties, but by way of guidance, what I have in mind is as follows.
- 50 First, that the information shall include the information that identifies the name and address of each third-party debtor, the amounts of outstanding money owed to the defendants or anyone controlled by the defendants, setting out with particularity the amounts of the principal advanced, the amount of the principle repaid, and the interest due thereon.
- 51 Second, there should be provided all details of ledgers and loan sheets in which such information is contained and copies of the same should be provided.
- 52 Third, there should be provided the outstanding loan agreements under which the defendants are still owed the funds, and copies of all loan agreements under which the money was lent by the defendants entered into from September 2020 to the present. The document should be drafted in a way that does not allow for technical points as to which defendant we are talking about so that it is all encompassing in relation to these loans.
- 53 Further, the defendants should make and file a witness statement in relation to the matters relating to the cloud provider arising out of the matters to which I have referred in this

judgment in a form which I will consider and, if appropriate, approve. The information must be provided by Wednesday, 14 December 2022 at 4.30 p.m. to be filed and served on the claimants. In the event that the defendants seek any relief from sanctions, they must make their application at the same time by 14 December 2022. In saying that they may make an application for relief from sanctions, that is not intended in any way to revisit the orders made but as a fall-back position, the defendants must expect that if the application for relief from sanctions does not find favour with the court that the unless order will take effect without more. To that end, in case there is a further hearing in relation to this matter, that should be brought on a date to be fixed of either 19 or 20 December 2022. I hope that I will be able to deal with the matter, but I do not reserve it to myself; I simply direct that if I am available, I will deal with it.

- 54 It therefore follows from the foregoing that although the court has, with some reluctance, set aside the unless order, the court has replaced it with another unless order. If there were any other matters that the claimants wish to have in the new unless order that have not been dealt with in this judgment, I am willing to consider that prior to finalising any order.
- 55 I will not deal with the costs matters today. The costs will be reserved to the hearing of 19 or 20 December 2022, but I note that the defendants seek that the costs should follow the event. I will not comment on that other than to say that the fact that the order has been set aside does not necessarily entail that the defendants have been successful in this application. I will say no more at this stage.
- 56 That concludes the judgment of the court.
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