

BEFORE LORD JUSTICE TUCKEY and LORD JUSTICE PITCHFORD. CA on appeal from HHJ Wilcox, QBD, TCC. 27th November 2001

1. **LORD JUSTICE TUCKEY:** This is an appeal against an order made by His Honour Judge Wilcox in the Technology and Construction Court on 12th October 2001 at a case management conference which he adjourned to 4th January 2002 and ordered the board of directors of the claimant company to appear at the adjourned hearing.
2. The claimant company is registered in the British Virgin Islands. It buys, refurbishes and then sells on properties in this country. On one such project it employed the defendant to fit out three flats in Walthamstow. The company claims that this work was badly carried out and will cost them at least £50,000 to rectify.
3. The defendant denies the claim and counterclaims for more than £20,000 which he says he is still owed for the work which he did. The defendant has also asked for the court fee, payable on the filing of his counterclaim, to be waived and has pleaded poverty in his dealings with the claimant.
4. The claimant, however, decided to proceed with its claim after the defendant failed to attend a site meeting when it was proposed to discuss the dispute with him, and after it had carried out investigations into his financial position which show that there is some prospect of recovering money from him.
5. There is no transcript of what happened before Judge Wilcox. Counsel's note shows that the defendant told him that he had no assets and was unable to work due to health problems and that the judge, after asking what was at stake in the proceedings, tried to discover whether there was any prospect of settlement. Counsel responded by saying that there had been attempts to settle the case but the defendant had not made any offer and, therefore, the claimant felt it had no choice but to proceed so that at least if they succeeded they would have a judgment in their favour even if the defendant was not able to satisfy it immediately.
6. The note then says that the judge ordered the case management conference to be adjourned and that the board of directors were to appear on that adjourned hearing. Counsel then said that he did not think that such an adjournment would achieve anything and his note concludes by saying:
"The learned judge said that the purpose of the adjournment was to make the claimants think about their position."
7. The respondent's notice served by Mr Kaye who appears now, as he did then, in person, suggests that the reason for the adjournment was that the judge was considering making an order for security for costs against the claimant overseas company. I do not think that can be the case since no such application was before the judge.
8. But since I gave permission to appeal in this case the judge has provided this court with a note which, in its material part, says:
"This is a modest claim and the costs compared with the sum in issue are disproportionate."
9. I should add that Counsel's note shows that the judge thought that this was a three day case and that the costs would be £20,000 a day. The judge then says:
"ADR should be considered by the parties and can only be sensibly considered if some responsible decision-makers are before the court."
10. On the hearing of this appeal we gave permission for the claimant to put in a statement from its solicitor. This explains that the sole director of the company is a Mr Peters from Sark in the Channel Islands. Mr Peters is no doubt a lawyer, or an accountant, providing services to offshore companies of the kind the claimant is. He will know nothing of the dispute with the defendant, as is borne out by the solicitor's statement which says that she has had no dealings at all with Mr Peters over this matter. Her instructions have come from the claimant's agents in this country, Spring Wood Properties Limited through a Miss Paula Horton and Mr Aidan Beckford who lives in Zimbabwe. Mr Beckford appears to be the beneficial owner of the company.

11. There is no doubt that the court, in exercising its case management powers, can order the attendance of a party: CPR 3.1.2(c). One good reason why this may be appropriate is to facilitate settlement if the court takes the view that the case before it is one which the parties should strive to settle. There would be nothing wrong either in requiring the attendance of a party with a view to making an ADR order which, of course, is not coercive but simply suspends the proceedings to enable the parties to explore (if they agree) the prospect of settlement with the assistance of an experienced mediator. Such an order is one which could be made however, and usually is made, without the attendance of any party.
12. What would be objectionable, however, is to make an order that a party should attend with a view to putting pressure on the party concerned to drop the proceedings altogether.
13. Fortunately in this case there is no need to say more than this since, as a result of the argument before us, it is clear that there is now a consensus, or near consensus, that there would be no point in requiring the director of the claimant company to attend the adjourned case management conference. However, there is a good reason for requiring the attendance of someone who knows something about this dispute with authority from the claimant company at that hearing. The order which we have discussed, in the course of argument, is that in substitution for the order which the judge made paragraph 2 should read:
"Paula Horton and/or Aidan Beckford to appear on the further application."
14. In this way the judge will have before him someone who knows about this dispute with authority and can consider what to do in the presence of that person. He will obviously be able to indicate his view of the case and make an order for ADR if he thinks that is appropriate.
15. Having listened to what the judge says, and having participated in the ADR, if that is what they decide to do, the claimant will be at liberty to proceed with its claim if they think it is worthwhile. For these reasons, and to this extent, this appeal is allowed.
16. MR JUSTICE PITCHFORD: I agree and would add only a feeling of sympathy for the learned judge who had to deal with this appearance attended by counsel without the assistance of a solicitor. I can only wonder whether had the learned judge had the assistance of the person who made the witness statement, which we have admitted, he would have been led to make the order which he in fact made in an endeavour to assist the parties.

Order: Appeal allowed. No order for costs.

MR G Halkerston (instructed by Sherrards Solicitors, St Albans, Hertfordshire AL1 3AW) appeared on behalf of the Appellant.

The Respondent appeared in person and was not represented.