



SELBORNE CHAMBERS

What is the Effect of a Debarring Order?

Al Saud v Gibbs [2024] EWHC 123 (Comm)

© 2024, Nicholas Trompeter KC, Selborne Chambers. All rights reserved.

1. In *Al Saud v Gibbs* [2024] EWHC 123 (Comm), Mr Gibbs was the subject of an order providing that, unless he complied with certain earlier orders, “he would be debarred from defending the proceedings.” Mr Gibbs did not comply with earlier orders, so the sanction was engaged. Mr Gibbs nonetheless made an application “to defend both the merits and quantum of liability, if any” in the proceedings.
2. The resolution of Mr Gibbs’ application required the Court to consider the effect of a debarring order. Calver J helpfully distilled eight principles, as follows:
 - a. When determining the effect of a debarring order the court should first consider the terms of the order. What does the order state the relevant party is debarred from doing? The effect of the debarring order in this case was to debar Mr Gibbs from defending the proceedings at all.
 - b. If an order debars a defendant from defending the proceedings (like the one here), at the trial the defendant should not be permitted to adduce evidence, cross-examine the claimant’s witnesses, or make submissions in defence of the claim.

- c. Moreover, the defendant will usually be prevented not just from advancing a positive case, but also from making any submissions that challenge the claimant's case.
- d. The prohibition on making submissions (and cross-examining) applies to issues of quantum just as it does to issues of liability.
- e. There appears to be a narrow, residual discretion or trial management power to permit a debarred defendant to take some part in the relevant proceedings. For example, if a debarred defendant considers that a judge is proposing to grant excessive relief based on a misunderstanding of the scope of the claim, the defendant may seek and potentially be granted permission to make submissions on the limited issue of the extent of the pleaded claim; similarly a debarred defendant should normally be able to address the court on the form of order to be made after the substantive decision on the trial has been made, and on the costs of the proceedings.
- f. The court may also have regard to the nature of the pleaded defence of the debarred defendant for the purposes of understanding the nature and extent of the relevant claim.
- g. But in exercising this narrow power, the court should have regard to the importance of ensuring that a debarring order, which is an important sanction available to the court in the exercise of its case management powers, and an important method of ensuring that the court's case management orders are respected, means what it says and is not undermined by permitting the defendant to escape its effect by purporting to make supposedly “clarificatory” submissions.
- h. Of course, where a defendant is not permitted to participate in the trial, by reason of an order debarring him from defending a claim, the claimant does not automatically win by default. At the trial, the claimant must satisfy the court that he is entitled to the relief sought.

3. Calver J dismissed Mr Gibbs’ application on the basis that he had “not sought the court’s permission to address it at trial in relation to narrow, discrete points. Instead he has sought permission to defend the claim on the merits, both as to liability and quantum.” He explained: “That is impermissible by reason of the debarring order.”
4. So, subject of course to its precise terms, a debarring order will extinguish a defendant’s right or ability to participate in the determination of the issues which fall for determination at trial. This means that, for most (if not all) practical purposes, a debarred defendant cannot take part in the relevant proceedings. Whilst the Court does retain a “narrow, residual discretion or trial management power” to permit a debarred defendant some limited role in a trial, this power will not be exercised so as to permit the defendant from arguing the meat of the claim.

29.01.2024



Nicholas Trompeter KC
CALL: 2006 | KC: 2021

Key Contacts:

Paul Bunting

Senior Clerk

paul.bunting@selbornechambers.co.uk

Darren Madle

Senior Clerk

darren.madle@selbornechambers.co.uk