IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURT
**[2018] EWHC 3113 (Ch)**

No. BL-2018-001546

Rolls Building
Fetter Lane
London EC4A 1NL

Wednesday, 18 July 2018

Before:

MR JUSTICE HILDYARD
(Sitting as a Judge of the County Court in all Districts of England and Wales)

B E T W E E N :

HOIST PORTFOLIO HOLDING 2 LTD — Claimant/Applicant

- and -

MUTLIPLE DEFENDANTS (2018) — Defendants/Respondents

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MR N. LESLIE (instructed by Blake Morgan) appeared on behalf of the Claimant/Applicant.

THE DEFENDANTS did not appear and were not represented.

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**J U D G M E N T**

MR JUSTICE HILDYARD:

1 This application is made in relation to seven Global Substitution Orders previously made by this court on 18 December 2015, 27 January 2016, 2 March 2016, 7 April 2016, two on 19 July 2016 and one on 24 May 2017. I shall refer to these together as the GSOs. The application is made in the absence of any of the multiple defendants, for reasons which will become obvious.

2 As has been explained in the evidence and the very helpful skeleton argument produced to me by Mr Nico Leslie of counsel on behalf of the applicant, the background to the GSOs was the acquisition of a substantial debt purchasing company by Hoist Finance UK Limited (Hoist UK) in July 2015 for approximately £100 million. Further to the acquisition, arrangements were made to transfer the underlying debt to a company within the Hoist UK Group. The company concerned is the Applicant ("HPH 2"), a Jersey company. The sum paid of £100 million was a discounted amount. The total nominal amounts of debt thus acquired, or the benefit of the debt thus acquired, was in the region of £1.5 billion.

3 Unfortunately, there have emerged, broadly in two chronological stages, legal issues as regards the legal effectiveness of the assignments by reference to which the GSOs were made. These are somewhat technical in nature.

4 Dealing with those in the chronological sequence in which they emerged, the first potential error as regards the legal integrity of what had occurred was identified in 2016. To put it very shortly, the defect apparently identified was that there was no actual Deed of Assignment, only an oral agreement and subsequent written agreement to assign. At that stage, however, this was thought to have been cured by the execution of a confirmatory Deed of Assignment with purported retrospective effect. There, subject to a point which I will return to, the matter rested with both the assignor of the debts ("MKDP") and the person treated now as the assignee of the debts, HPH 2, believing that there was therefore in place a legal assignment of which notice could be, or had been, given so that there was no remaining issue. At that stage the matter was not referred back to the court, presumably in the expectation that the cure was effective and the court would not be concerned.

5 At the second chronological stage, however, further doubts arose as regards the effectiveness both of what had originally been done and its purported cure in 2016. The reason for the doubt was this. Reading s.136 of the Law of Property Act 1925 strictly, which provides for the legal assignment of debts, it appears that its requirements are, first, that the assignment should be absolute. Second, that the assignment should be by writing under the hand of the assignor. Third, that express notice in writing of that written assignment should have been given to the debtor. Point two is of concern here, first because the original purported assignment was apparently simply oral which would not be effective in law; and secondly, and more esoterically perhaps, the notice of assignment must (or arguably must) refer to the same document as effected the assignment itself (which also engages point three).

6 Though according to the researches of Mr Leslie, who I note is one of the editors of a standard book on the law of assignment, there is no authority on the point, Mr Leslie acknowledges that the words suggest that formal observance of this last requirement is a precondition of the effectiveness in law of what has occurred. Here, the concern being that though notice of assignment had been given such notice referred to an oral agreement

incapable itself of amounting to a legal assignment. Mr Leslie explained to me that when the Law of Property Act provision came in it had originally been envisaged that a deed would be required. In the event none is, but that does not detract from - if anything it confirms - the need for strict compliance with the terms of the section.

7 In those circumstances, when the concerns emerged - the second stage after the instruction of new solicitors in October 2017 and assiduous review by new responsible persons - it was considered that the basis on which the court had proceeded in granting the GSOs was, at the very least, technically incorrect and that at least two consequences flowed from that assessment. First, that it was plainly right for the court to be told about the problems that had emerged, and secondly, that if the court was agreeable to this that its assistance should be obtained to put right, or to confirm the correctness, of all that had been done.

8 Those then are the circumstances in which the application has come before me as the judge presently assigned to deal with GSOs in succession to Henderson J, as he then was, being one of the two judges who had approved one or more of the seven GSOs to which I have referred.

9 In point of legal analysis, Mr Leslie has submitted to me that whilst there is a real risk, in fact, he suggests, a probability, that the previous cures were ineffective for the reasons implicit in what I have said, that nevertheless the GSOs were regular in that they were obtained by the applicants for them as undoubted equitable assignees of the relevant debts or claims. He submitted that whilst in days gone by, at any rate, it was considered to be necessary in such circumstances that the assignor should also be joined, modern practices characterised that requirement as procedural, and that in consequence the procedural requirement could in appropriate circumstances be waived to enable the equitable assignee to proceed alone.

10 In that context Mr Leslie helpfully referred me to the case of *Charnesh Kapoor v National Westminster Bank Plc & Anor* [2011] EWCA Civ. 1083. That case appears to confirm, at the level of the Court of Appeal, that it is possible for an equitable assignee to maintain a claim without joinder of the equitable assignor where the court dispenses with the requirement of joinder as a procedural matter.

11 Of course, that does not breathe life into the notice of assignment but it would signify that the GSOs, although granted on an incorrect basis, were right in their result if the court can be satisfied that the equitable assignor has no interest or likely avenue for raising a claim which would unsettle the process. In that regard, and after useful discussion with Mr Leslie, I think it is appropriate that as a condition of waiving any requirement for the joinder of the equitable assignor, the assignor should, by letter shared with the court, confirm formally its acceptance that it accepts that since the agreement to assign it has had no interest, either economically or so far as it is concerned in any other respect, in the relevant debt claims and will not seek to assert any in the future; either as regards claims the subjects already of GSOs or in respect of other claims assigned which have not yet been made the subject of any court GSO. That matter should both be recited and conveyed to the court by counsel for the applicant, being the equitable assignor's counsel also for that limited purpose, and the order should, in suitable terms which Mr Leslie has agreed to construct, and which I shall in due course review, give expression to it in the body of the order itself.

12 As it seems to me, that in effect takes much of the sting out of any theoretical reservation as to the eventual result. The GSO would then have a regular effect and the only blight, as it

were, would have been removed by the equitable assignor's confirmation as I have indicated.

13 In those circumstances, whilst unusual and I would hope not to become a repeat in these or any other proceedings, it seems to me that although the logic of the position is that the court could say that its previous orders had effect and decline to be involved further, as a practical matter, it is important that the County Courts in the various locations in which the debts are being enforced should have the security of knowing not only that the matter has been reviewed by a judge of the High Court (albeit sitting for the purpose of the Order made as a judge of the unified County Court), but also that an order has been granted confirming that review.

14 Accordingly, subject to the amendments which I have proposed, I consider that it is right and appropriate to grant an order approving and confirming the effectiveness of the seven Global Substitution Orders, once the preconditions to which I have referred have been satisfied.

15 Mr Leslie lightly pressed also a further order ratifying and affirming all steps taken by the claimant in reliance on those GSOs, and in particular the steps taken to litigate and/or enforce the debts forming the subject of the GSOs. Whilst I can understand the reasons for seeking such an order, I would not feel comfortable or indeed able to grant it given that I cannot know what steps I would thereby be ratifying and affirming. Any proper steps taken pursuant to the GSOs hereby confirmed do not need, as I see it, ratification or affirmation. Any steps which are not proper, pursuant to those orders, should not receive ratification or affirmation. Accordingly, I decline to make that part of the order.

16 I have already touched on para.3 of the proposed order, which will require drafting to ensure that the equitable assignor can assert no further right. I am content with a further aspect of the proposed order that I should waive the requirement to join the assignor to any future litigation, given the terms of the confirmation that I am requiring for it.

17 Then the question arises as to what notice should be given, or service effected, in respect of the application and the order which I am prepared to make. Ordinarily, applications for GSOs are not required to be notified to all and sundry if the court so directs, and I am proposing to adopt that by analogy. Conversely, the ordinary provision in a GSO is for the GSO to be served on all those debtors and defendants to claims which it covers. As it seems to me, in the case of those who have already been served, it follows from my confirmation of the effectiveness of the order that I should not require them to be re-served and I am fortified in that conclusion by the practical consideration that the arrival through the post, or otherwise, of a further order would do no good and would be likely to confuse all such recipients. In the case of persons who have not yet been served, I consider that both the original GSO and this order should be served upon them, and in the case of future GSOs I would expect such service to be required also. The Order must contain suitable provision accordingly.

18 I note in that context that notwithstanding that the very last of the GSOs (GSO 7) was made in 2017, the fact that there remain orders to be served is an indication of systemic failure and I should not be taken as indicating other than disapproval in that respect. However, I am assured, as I take it, by counsel on instructions that every best endeavour will now be made to effect the service that I have required as soon as ever practical.

19 The final aspect of the order is that it is to provide that there be no order for costs of the application. Since the application is unopposed I propose to make that order. But I should indicate that if there were to be any application in any relevant County Court location by an applicant, claiming on grounds I cannot presently envisage or foresee, that they had incurred costs, then this order does not cover that. I should also indicate, as discussed with counsel, that a copy of this order is to be sent by the Claimant to the offices of every County Court in England and Wales where proceedings have been issued in respect of the Assigned Debts and that my reference to the file would obviously include any electronic filing system in existence at the relevant court.

20 I indicated at the outset that I would return to one final matter, which has concerned me, and which I mentioned at the inception of the hearing. This is that in the case of one of the GSOs a great deal of trouble had been caused by the refusal of the applicant, or its then solicitors, to disclose the very documents which were already the subject of concern. That engaged the relevant defendant and his solicitor in extensive correspondence, both with the County Courts and with this court, in which he expressed not a little dissatisfaction both with the process and with the High Court's own processes in answering it. I can record that I have been assured that the relevant defendant has had the claim against him struck out in consequence of the failure to provide the relevant documentation, and he has been paid his agreed costs. I hope therefore that his concerns, which in the event have been established to have been well-founded, have nevertheless been met. But I should like insofar as necessary to record my regret that the solicitor and client should have been thus discomforted.

21 Lastly, I wish to say this more generally. Applications for a GSO are a valuable procedural expedient to avoid numerous, potentially very numerous, applications in various County Court locations. But in making them, the court is wholly reliant on a proper and entirely accurate representation of the true state of things in a context in which the law, and in particular s.136 of the Law of Property Act, is strict in its requirements.

22 In this case both Henderson J, as he then was, and I raised questions on the very matters which have eventually caused concern and were given assurances, which to put it as lightly as I can, were plainly incorrect. This must not happen again; and I reiterate that this valuable process can only be undermined and the facility be at risk of being withdrawn if the court is abused, as it has been in this case, on future occasions. It is not a merely ministerial matter since it affects substantive rights, and both applicants and solicitors should be well aware that on future occasions if any costs have been incurred they will be required to meet them on an indemnity basis, and they can expect the renewed ire of the court if its resources have been committed on a false basis.

23 I would in conclusion, however, like to thank Mr Leslie of counsel and those instructing him, and the individual deponent, Mr Thompson, who has taken on this matter to seek to remedy a chaotic situation. It should not be taken that I am unsympathetic to those endeavours nor ungrateful for them: on the contrary, I am most grateful for the assistance they have provided in an unusual situation.

**CERTIFICATE**

Opus 2 International Ltd. hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge