If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

No. PT-2018-000862

IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST
[2019] EWHC 1031 (Ch)

Rolls Building
Fetter Lane
London, EC4A 1NL

Monday, 8 April 2019

Before:

CHIEF MASTER MARSH

IN THE ESTATE OF DAME ZAHA HADID

B E T W E E N :

PATRIK SCHUMACHER — Claimant

- and -

(1) BRIAN CLARKE
(2) RANA HADID
(3) RT HON THE LORD PALUMBO — Defendants

MR G. RICHARDSON and MISS A. PROFERES (instructed by Pennington Manches LLP) appeared on behalf of the Claimant.

MISS E. TALBOT-RICE QC and MR J. BRIGHTWELL (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) appeared on behalf of the Defendants.

JUDGMENT

CHIEF MASTER MARSH:

1 On Friday, 5 April 2019, the second directions hearing in this claim took place when determinations were made about the future of these proceedings. Unusually, it is appropriate to give a full judgment providing the reasons for the steps taken. That judgment was reserved until today.

2 I have directed that I will try this Part 7 claim in September 2019 over three days, with one day in addition pre-reading. Importantly, I will do so on the basis that there is no cross-examination of the witnesses.

3 There are two issues before me that were controversial: first, whether the trial should be dealt with by a judge in the High Court at the level of the Chief Master; and secondly, whether the claim should be tried with witness evidence proved in accordance with the general rule contained in CPR 32.2(1). This general rule is subject to the provisions of CPR 32.2(2) and (3). In parenthesis I remark that, unlike Part 7 claims, Part 8 claims are not generally tried. They are normally dealt with at a disposal hearing, and the default provision is that witnesses are not called to give evidence.

4 To put the decisions made on Friday in context, it is necessary to provide details the nature of the claim that is before the court. It concerns the estate of Dame Zaha Hadid, the world renowned architect, who died on 31 March 2016, just over three years ago. I am told that, despite the passage of three years, her estate has not yet been fully administered. Be that as it may, by her will dated 2 April 2015, Dame Zaha appointed the claimant, Mr Schumacher and the first and second defendants, Mr Clarke and Miss Hadid, as her executors. By a codicil dated 14 April 2015, she also appointed the third defendant, Lord Palumbo, to be an additional executor.

5 At the time of her death, Dame Zaha was the sole shareholder of Zara Hadid Holdings Limited (“ZHH”), Zara Hadid Design Limited (“ZHD”) and Zara Hadid (Services) Limited (ZHS”). ZHH was the sole shareholder in Zara Hadid Limited (“ZHL”) which traded as Zara Hadid Architects. Dame Zaha had also set up the Zaha Hadid Foundation.

6 Mr Schumacher was Dame Zaha’s business partner and he is a director of ZHL. ZHL currently has about 400 staff and an annual turnover of about £45 million. In addition to Mr Schumacher, there are a number of other directors of the practice.

7 Mr Clarke and Lord Palumbo were friends of Dame Zaha. Rana Hadid is her niece.

8 The net value of the estate is approximately £67.25 million. Probate under the will was obtained by all four executors on 14 December 2016.

9 By her will Dame Zaha left six legacies totalling £2.2 million, which included £500,000 each to Mr Schumacher and Rana Hadid. After directing that the residue was to be used to pay debts, and so on, the balance of her estate is left on the trusts created by her will. Income, which the trustees have power to accumulate, may be paid pursuant to a power contained in the will to beneficiaries of the trust as the trustees think fit. As to capital, the trustees have overriding powers of appointment, which permit them to appoint capital for the benefit of any of the beneficiaries, and also to create discretionary trusts for any of them.

10 The beneficiaries, as defined in the will, so far as material, are: (1) Mr Schumacher; (2) a broad class that includes all past, current and future employees and office holders of the companies; and (3) the Foundation is the default beneficiary. As will be apparent, the class of potential beneficiaries under the will trust is very large, running to several hundred persons.

11 Dame Zaha left a letter of wishes dated 2 April 2015, and it is relevant to refer to para.3 of the letter, which provides as follows:

> "In my will I have made substantial cash gifts to a number of named individuals. Save as provided below I would like the remainder of my assets to pass to the Zaha Hadid Foundation the details of which appear in my will. In carrying this wish into effect I would like as far as reasonably possible to ensure the following:
>
> (i) That the burden of taxation is minimised so as to allow the greatest possible benefit to the Foundation.
>
> (ii) That my business continues to trade adopting the same principles and business patterns as have been adopted in my lifetime.
>
> (iii) Patrik Schumacher should as far as practicable be in control of the business of Zaha Hadid Limited and Zaha Hadid Design Limited and should benefit from at least 50% (fifty percent) income of their income and capital and the balance to be held for the benefit of other employees.
>
> (iv) The house at 21 Compton Avenue will be gifted to Patrik Schumacher in the most tax efficient way."

12 On 13 November 2018 Mr Schumacher issued this Part 7 claim seeking an order that the three defendants, Mr Clarke, Miss Hadid and Lord Palumbo:

(i) be removed as executors and trustees of Dame Zaha's estate pursuant to s.50 of the Administration of Justice Act 1975 and the court's inherent jurisdiction;

(ii) the appointment of either one, two or three named solicitors to act as professional executors and trustees; and

(iii) that the defendants should resign as directors of ZHH.

The particulars of claim were filed on the same day as the claim was issued and run to some 19 pages.

13 Mr Schumacher's allegations in summary are:

(i) that the defendants have purported to act contrary to the requirements for them to act unanimously;

(ii) they have dealt improperly with the estate's underlying assets, in particular ZHL;

(iii) the defendants are hostile to Mr Schumacher and unwilling to work with him;

(iv) the defendants have ignored Dame Zaha's wishes as set out in her letter of wishes;

(v) the defendants' conduct in the administration of the estate has resulted in the breakdown of the relationship between Mr Schumacher as both co-executor and beneficiary and the defendants.

14 The defence and counterclaim is a lengthy document running to some 36 pages. In summary the contentions it contains are the following:

(i) The defendants are not hostile to Mr Schumacher. They are prepared to continue to work with him, but they do say that Mr Schumacher's actions have been detrimental to both ZHL and ZHH.

(ii) Any conflict has been caused by Mr Schumacher and results from conflicting interests as executor, beneficiary and director of ZHL.

(iii) The defendants' duties as trustees have not yet arisen. The will trust has not yet been constituted. It is said, therefore, that there is no need to have regard to the letter of wishes.

(iv) The defendants have conducted themselves properly and in accordance with their duties at all times.

(v) The defendants' counterclaim to remove Mr Schumacher.

15 The defendants also say that they are accused of acting in bad faith. If this is right, they say it is a feature of the claim to which the court must have regard when deciding on the appropriate method of disposal for the claim. Mr Schumacher denies that he is alleging bad faith. This is a subject to which I will return.

16 The jurisdiction under s.50 of the Administration of Justice Act 1975 is a straightforward one. The court is given a power to appoint a person as a substitute personal representative and a power to terminate the appointment of existing office holders. The section does not provide any criteria by which the power is to be operated. It is, however, a very convenient and widely used jurisdiction because it obviates the need before the section came in to force to appoint a judicial trustee where there were difficulties in the management of an estate or a trust.

17 So far as trusts are concerned, the court has always had inherent power to remove and appoint trustees, and the considerations that apply in relation to trusts are common to those that apply in the case of personal representatives. The jurisprudence is well settled, and it is unnecessary for me to make detailed reference to it. As a matter of convenience I refer, without citing it, to the summary set out in my recent judgment in *Long v Rodman* [2019] EWHC 753 Ch, paras.19 to 28.

18 It is critical for present purposes that the core concern of the court is what is in the best interests of the beneficiaries looking at their interests as a whole. The power of the court is not dependent on making adverse findings of fact, and it is not necessary for the claimant to prove wrongdoing. It will often suffice for the court to conclude that a party has made out a good arguable case about the issues that are raised. If there is a good arguable case about the conduct of one or more of the executors or trustees, that may well be sufficient to engage the court's discretionary power under s.50, or the inherent jurisdiction, and make some

change of administrator or trustee inevitable. The jurisdiction is quite unlike ordinary *inter partes* litigation in which one party, of necessity, seeks to prove the facts its cause of action against another party.

19 In this case the only party to the claim who is a beneficiary of the will trusts is Mr Schumacher. It is notable that the wishes Dame Zaha expressed in her letter of wishes are of particular significance for him. There are in addition some 400 current employees, who are potential beneficiaries, and there must be many more former and future members of the class who may benefit. None of those beneficiaries are parties to the claim. They are not represented and the court will not hear from them as the claim is currently constituted. Neither side has suggested that a representation order should be sought, and yet it is the interests of this class of beneficiaries that must be at the forefront of the court's attention.

20 So how does the court proceed in these circumstances? The answer is that the court proceeds in a pragmatic way. That approach can be seen from the decision of Lawrence Collins J (as he then was) in *Loftus Green & Others v Gaul & Others* [2005] WTLR 1325 at [199] and Evans-Lombe J in *Dobson v Hayman* [2010] WTLR 1151 at [26]. Plainly it will rarely suffice for the claimant, whether a beneficiary, executor or trustee, merely to say that they have fallen out with the personal representatives or trustees and or that some action or behaviour is unsatisfactory. The personal representatives or trustees should not be held hostage to allegations which may simply be mischievous. On the other hand, if, when the personal representative's or trustee's response is considered, the court has real concerns about the welfare of the beneficiaries, the court is likely to exercise its powers without determining disputed issues of fact. What it then does in the exercise of those powers will, of course, depend on the circumstances of the case.

21 In my judgment, the jurisdiction can be summarised in this way:

(i) The claim is between the executors and trustees and the beneficiaries, but it is only in part about them. It is primarily about the estate, or the trusts, seen separately from the persons who are its custodians and the beneficiaries. As I have said, the claim is not an ordinary in personam claim.

(ii) An application under s.50, or under the inherent jurisdiction invariably in the course of the administration of the estate or the trusts, and delay can be damaging. It would be wrong to characterise the procedure under s.50 or under the inherent jurisdiction as a summary one, but it needs to lead to a resolution as quickly as possible. Similarly, an application under s.116 of the Senior Courts Act 1981 made before a grant has been obtained needs to be resolved quickly.

(iii) The administration of an estate or a trust can often lead to tension and indeed feelings often run high. It is essential for the court to avoid as far as possible providing a forum for the parties merely to vent their complaints about each other. The core issue is whether the continuation in office of one or more of the parties is detrimental to the interests of the beneficiaries.

(iv) Often the application to remove an executor or administrator or a trustee is a precursor to a *devastavit* claim, or a claim for breach of trust. It is very important that when dealing with such an application, as in the claim before me, the court does not make findings of fact which, in another context, may be of influence.

22 The procedure in this claim, as I have indicated, was by the claimant issuing a Part 7 claim. This was of some concern to me when the claim was referred to me at an early stage. CPR 57.13 does not say that a claim under s.50 of the Administration of Justice Act 1975 must be brought as a Part 8 claim, but this is clearly, to my mind, what is intended by Practice Direction 57, para.13, which requires the claim form to be accompanied by written evidence containing the grounds of the claim as well as other specified particulars. It seems very likely that a claim made under the inherent jurisdiction to remove a trustee is a claim to determine a question arising in the administration of an estate of a deceased person or the execution of a trust. If that is right, as it seems to me it is, CPR 64.3 requires the claim to be brought under Part 8. This appears to be the view taken by the current editors of the White Book, and it is suggested by them as correct in the notes at CPR 8.0.1.

23 It is notable, however, that CPR 57.13 contrasts with CPR 57.16. The latter deals with Inheritance Act claims where the requirement to bring a Part 8 claim is an express requirement. This is a point, I suggest, the Civil Procedure Rules Committee may wish to consider. It is a point which has real practical significance in a number of ways. It is important as to normal approach to the disposal of the claim and it is important in light of the differences between the way in which statements of case and witness statements are treated for the purposes of CPR 5.4C(1)(a). The former are open to inspection as of right; the latter are not. No doubt the draftsman of CPR 64.3 had in mind this difference and it would be surprising if it was intended to treat s.50 claims in a different way to a claim under the inherent jurisdiction concerning a trust.

24 In any event, having seen that this claim had been brought by Part 7, I directed that there should be a hearing at an early stage before a defence was served, and that hearing took place on 11 February 2019. Following discussion with counsel, I gave an indication that I was unwilling to allow this claim to become, as I described it, a “battle royal”. Consideration was given at the hearing about whether the claim should be converted to Part 8, but in the event the claim was left as a Part 7 claim to avoid unnecessary delay and expense.

25 Following that hearing the defendants served a request under CPR Part 18, and it is of significance that in answer to a question concerning whether bad faith was alleged, Mr Schumacher stated in terms that the claimant does not allege that the defendants have acted dishonestly, fraudulently or in bad faith. He went on to say:

> “The claimant alleges that the defendants have improperly had regard to their personal animosity towards the claimant when making decisions as executors.”

26 It is a matter of regret that the defendants thought it necessary to serve a defence and counterclaim running to some 36 pages. However, at the hearing on 11 February 2019 the parties were directed to produce a list of issues before the second directions hearing with a view to focusing on the issues relevant to s.50 and the inherent jurisdiction rather than on the wider factual issues between them. They have not yet managed to agree a list of issues, but a good deal of progress has been made and the shape of the issues can be seen clearly.

27 The parties’ respective positions at the hearing on 5 April 2019 can be summarised in the following way: Mr Richardson, who appeared for the claimant, proposed that the claim should proceed to a trial without any cross-examination of witnesses. This is subject to a caveat that an application may be made for permission to cross-examine. He also proposed a trial time estimate of three days, and that the trial should be undertaken by me. It is the

claimant's case that the speed of determination is an important factor in view of the issues that arise.

28 Miss Talbot-Rice QC, who appeared for the defendants, submitted that Mr Schumacher has alleged bad faith by alleging a lack of good faith. She drew my attention to the analysis of Nugee J in *Barnsley v Noble* [2014] EWHC 2657 at [267]. She submitted that in light of Mr Schumacher alleging bad faith, it was essential for there to be a conventional trial with cross-examination. She made three further submissions: (1) the defendants are high profile individuals; (2) the estate has a substantial value; and (3) the claim has already attracted a good deal of media attention. Her contention was that the claim should be tried by a High Court Judge with a category A or category B listing. The meaning of those listing categories can be seen from para.17.29 of the Chancery Guide. Her trial time estimate is eight days. The indication is that there will be seven witness statements.

29 At one point Ms Talbot-Rice suggested that if the court was concerned about this case proceeding to trial as a conventional Part 7 claim, the court should, of its own volition, strike out the statement of case and require Mr Schumacher to start again as a Part 8 claim with sequential service of evidence. That, however, was not an application forecast in advance of the hearing and it was one I rejected as being wholly impractical.

30 In developing her submissions about bad faith, Miss Talbot-Rice referred to five passages in particular in the particulars of claim. It is, however, unnecessary for the purposes of this judgment to refer to them. It seems to me it is more productive to have regard to the list of issues, even though it is not in final form. In its current iteration, there are 14 issues. The only place at which there is a suggestion that good faith, and therefore possibly bad faith, may be a relevant consideration concerns whether the claimant and defendants were required to act unanimously when taking the decision to remove Mr Nigel Calvert from the board of ZHH and to appoint themselves and the claimant as directors. It seems to me that is an inadequate platform upon which the defendants are entitled to submit that this claim involves significant issues of bad faith. To the extent that there are issues of bad faith, which I doubt, they should not be permitted to skew the future progress of this claim.

31 Miss Talbot-Rice also submitted that the claim is not suitable for a trial by a Master, whether the Chief Master or otherwise by reference to the criteria set out at para.14.7 of the Chancery Guide. She developed her submissions setting out her reasons for submitting that that trial by a Master was not appropriate. These submissions are largely matters to which reference has been made one way or another in this judgment so far, but in summary they comprise the following points:

(i) that the claim involves allegations of bad faith, and that they are made against persons of standing who have high profiles, particularly in the art world;

(ii) there are factual and legal complexities which underlie the claim;

(iii) the trial is likely to attract media interest;

(iv) the deceased had a high profile;

(v) the value of the estate is substantial; and

(vi) on her analysis the trial was likely to take more than five days.

32 My conclusions on the two issues that were before me were that the case was a suitable one to proceed without cross-examination of witnesses, and that it was a suitable case to be dealt with by me. Those two determinations to some extent go together, and the relevant considerations overlap, but I will deal with them separately.

33 As to the mode of trial, it hardly needs to be emphasised that it is for the court to control the way in which claims are disposed of, whether at a trial or a more limited hearing. It is not open to the parties to demand a full trial, or to demand a certain number of days for a trial. The allocation of the court's resources is a matter for the court to determine. Similarly, it is for the court to allocate the appropriate level of judiciary to the claim. When dealing with such issues, the court firmly has in mind the provisions of the overriding objective. These include, of course, the importance of the case and its complexity. They also include, however, the desirability of expedition and the need for fairness.

34 It is, for the reasons I have already explained, exceptional for a s.50 application, or an application under inherent jurisdiction, to necessitate a full trial. I do not consider that a compelling case has been made out here making a full trial with cross-examination necessary. It is unfortunate that Mr Schumacher commenced this claim using the Part 7 procedure. I am not able to say that he was, by doing so, certainly in breach of the Civil Procedure Rules, but I consider that it was neither wise nor desirable. The use of the Part 7 procedure in relation to a s.50 application, or an application under the inherent jurisdiction, does not inevitably lead to a trial with cross-examination of the witnesses. It is for the court to decide what is appropriate. I do not accept the defendants' case that bad faith is part of the claimant's case to any significant degree. He denies it. It seems odd to me that, with the clearest possible statement by the claimant that he is not alleging bad faith, the defendants should seek to rely on what they say is an allegation of bad faith for the purposes of the progress of this claim. It also seems odd to me that the defendants should wish the disposal of this claim to involve a lengthy hearing with cross-examination. It is hard to see how that can be in the interests of either themselves or the beneficiaries of the trust.

35 I am satisfied that the exercise of the jurisdiction of the court at the trial does not necessitate the finding of a breach of duty of good faith. The powers of the court can be exercised based on many different circumstances, and it is unnecessary for the court to find wrongdoing. It is significant that this claim does not include a claim in *devastavit* or breach of trust. At the end of the day the issue for the court is whether the claim can be tried fairly and as a s.50 claim or under the inherent jurisdiction on the basis of the authorities to which I have referred. I am satisfied that a fair trial can take place without the witnesses being cross-examined.

36 Turning to deal with the appropriate allocation of the judiciary, I acknowledge of course that this is a sensitive issue. I am deciding here whether I should deal with this trial, and there is clearly a need to be cautious about the reasonable expectation of the parties. I am faced, however, with a very clear difference of approach by the parties. The claimant wishes the trial to proceed before me. The defendants consider that a trial before a High Court Judge is appropriate. The question I have to determine can, I think, be deconstructed, because this is not a category A case; it is not a case of the greatest substance or great difficulty or of public importance. It is not a case which warrants only a trial by a High Court Judge. It is, of course, important to the parties and to the beneficiaries, but I am satisfied that it is not a category A case.

37 Further to that, the determination about the level of judiciary who should try the case is not quite as simple as simply suggesting it should be a High Court Judge or a Master. In reality, the overwhelming likelihood if this case is referred by me for trial by a High Court Judge is that it will be heard by a Deputy High Court Judge. The jurisdiction that the court is called to exercise in this case is one which, in London, if not the preserve of the Chancery Masters, is exercised by the Chancery Masters in the vast majority of cases. It is an area in which the Chancery Masters have a considerable degree of experience. On the basis that the claim will proceed as a three day hearing without cross-examination, I can see no compelling reason why the claim should be referred to a High Court Judge for trial. The estate is not especially large. It is common for the Chancery Masters to deal with many estates and trusts which are of greater value than this estate, and it is not right to suggest that the case involves particularly complex issues.

38 It is suggested that because Dame Zaha was a well-known public figure and the parties have high profiles, particularly in the art world, trial by a more senior judge than me is appropriate. I can see that may be a factor pointing in favour of trial by a more senior member of the judiciary in some cases. It is, however, important to focus on the issues the court will have to determine. And the notion that fame or celebrity of itself brings with it an entitlement to trial by the senior judiciary is not one that I recognise.

39 This claim can be resolved in three days adequately. I do not agree with Miss Talbot-Rice's submission that the ability of a Chancery Master to hear the claim sooner than a High Court Judge should be ignored as a factor in favour of the claim remaining at my level of the judiciary. Clearly it would not be a consideration for retaining a claim that is only suitable for trial by a High Court Judge. However, where, as here, the jurisdiction is one that is regularly applied by the Chancery Masters, the ability to hear the case about six months sooner than would be the case if the trial were to be heard by a High Court Judge is, to my mind, a powerful factor. The difference is a material one, the difference being between a trial in September 2019 and a trial between February and April 2020. This is a claim which cries out for early resolution, and it is of particular practical importance in view of the trading position of ZHL and the expectations of the beneficiaries. It is highly unsatisfactory that the staff of the firm are left in a period of uncertainty, and of course it is highly unsatisfactory that the claimant and defendants, as executors and trustees, are also left in a position of uncertainty.

40 For the reasons I have given in this judgment the trial will take place before me in September 2019 without cross-examination. That, of course, does not rule out the possibility of a party applying for permission to cross-examine on a limited basis. That would not be an application I would encourage, but of course I can see that there is at least the possibility that issues arising from the witness statements might warrant cross-examination in a limited form.

CERTIFICATE

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

Transcribed by ***Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

This transcript has been approved by the Judge