



Neutral Citation Number: [2020] EWHC 1910 (Ch)

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**Claim No: FL-2020-000010
Claim No: BL-2020-000659
Claim No: CL-2020-000302
Claim No: CL-2020-000403
Claim No: BL-2020-000995**

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 13/07/2020

Before :

MR JUSTICE BIRSS

BETWEEN:

IN THE FINANCIAL LIST (ChD)

Claim No: FL-2020-000010

ALFRED OLUTAYO OYEKOYA

Claimant

-and-

- (1) BUSINESS MORTGAGE FINANCE 4 PLC**
- (2) BUSINESS MORTGAGE FINANCE 5 PLC**
- (3) BUSINESS MORTGAGE FINANCE 6 PLC**
- (4) BUSINESS MORTGAGE FINANCE 7 PLC**

Defendants

AND BETWEEN:

**BUSINESS LIST (ChD)
and in the COMMERCIAL COURT**

**Claim No: BL-2020-000659
Claim No: CL-2020-000302**

ALFRED OLUTAYO OYEKOYA

Claimant

-and-

TARGET SERVICING LIMITED

Defendant

AND BETWEEN:

COMMERCIAL COURT

Claim No: CL-2020-000403

RAJNISH KALIA

Claimant

-and-
(1) BEEJADHURSINGH SURNAM
(2) CORAL SUZANNE BIDEL
(3) MARC SPEIGHT

Defendants

AND BETWEEN
BUSINESS LIST (Ch D)

Claim No: BL-2020-000995

ALFRED OLUTAYO OYEKOYA

Claimant

-and-

BEEJADHURSINGH SURNAM

Defendant

Tom Smith QC and **Alexander Riddiford** (instructed by **Simmons & Simmons**) for the
various **Defendants**

The claimants did not appear and were not represented

Hearing dates: 13th July 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this
Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE BIRSS

Mr Justice Birss :

1. I have before me today a number of applications in five actions.
2. The first action is a Part 8 claim in the Financial List FL-2020-000010. It has been described as the Issuers' claim. That claim is one in which the claim form was issued on 7 April 2020. The claimant is Mr Alfred Oyekoya and the four defendants are Business Mortgage Finance 4 Plc, and then three other equivalent companies numbered 5, 6 and 7.
3. The claim seeks a declaration that Mr Oyekoya, effective from 22 January 2020, assumed the position of trustee. I will quote the declaration:

"Effective as of 22 January 2020, Alfred Olutayo Oyekoya assumed the position of trustee in relation to the charge property as defined in the master definition schedule (for each note issuance by the defendants) for each of the defendants pursuant to the terms of the deed of charge for each of the defendants and that he has all the rights, powers and benefits which are invested in the trustee pursuant to the terms of the deed of charge for each of the defendants."

4. I will explain what these terms mean in a minute.
5. That's the first action I have in front of me.
6. The second action is another Part 8 claim. It is BL-2020-000659. It's been referred to as the Target 1 claim. It is also issued by Mr Oyekoya. It was issued on 27 April 2020. The defendant is Target Servicing Ltd. And in that claim he seeks an order that:

"... the defendant, within in three working days, do produce and release through Bloomberg, Reuters and as a public announcement on the Irish Stock Exchange a detailed breakdown of the 'total fees and expenses' outlined in the investor reports for Business Mortgage Finance 4 Plc ..."

[then the remaining three BMF companies I've just mentioned are listed and it continues:]

"... (each an Issuer, together the Issuers) from 15 February 2019 inclusive to the last interest payment date inclusive on each quarterly interest payment date for each Issuer."

7. That is the Target 1 claim.
8. Then third is the claim called the Target 2 claim. It is a Part 7 claim, number CL-2020-000302. That is a claim issued in the Commercial Court on 11 May 2020. Again the claimant is Mr Oyekoya and the defendant is Target Servicing Ltd, the same defendant as in the Target 1 claim.
9. In the Target 2 claim Mr Oyakoya seeks a declaration that:

“the defendant is and has been at all material times in breach of its obligations and/or duties under the cash/bond administration agreements and special servicer agreements between the defendant and inter alia each of Business Mortgage Finance 4 Plc...”

[then the remaining three BMF companies I've just mentioned are listed and it continues:]

"(b) the defendant is and has been at all material times in breach of its obligations and/or duties pursuant to condition 5(d)(ii) of the terms and conditions of the notes issued by each Issuer."

10. Then paragraph 2 of the Brief Details of Claim states:

"The claimant seeks an order that the defendant shall pay an aggregate of [*in round figures, £210 million*] of damages within 28 days of the date of this order allocated to each of the Issuer and for the benefit of the instrument holders."
11. After that percentages allocating proportions of the sum claimed as between each of the four Business Mortgage Finance companies are set out.
12. Then the fourth claim, which has been referred to as the Directors' Claim, was issued on 29 June 2020. It is also a Part 7 claim issued in the Commercial Court, as action number CL-2020-000403. This is issued by a claimant called Rajnish Kalia and the defendants are Mr Surnam, Ms Bidel and Mr Speight. It seeks declarations. I won't read them all out. The declarations amount to declarations that “after their removal as a director on ... 23 June 2020”, none of those three individuals is a "valid or effective director of ..." – any of the four Business Mortgage Finance companies. Other orders consistent with that essential assertion are also sought.
13. Then the fifth claim is a Part 8 claim issued in the Business List in the Chancery Division, BL-2020-000995. That is Part 8 claim in which the claimant is Mr Oyekoya. It is an application under CPR Part 81 seeking permission to issue a committal application against Mr Surnam. This is advanced on the ground that a witness statement which Mr Surnam gave, which was used in a recent bankruptcy petition against Mr Oyekoya, contains various allegedly false statements. The bankruptcy petition, I should explain, was successful and Mr Oyekoya was declared bankrupt at a hearing presided over by Deputy ICC Judge Frith on 1 July 2020. The judgment there is [2020] EWHC 1809 (Ch).
14. Essentially what is said to be false in Mr Surnam's witness statement are statements that he is or was a director of the four Business Mortgage Finance companies, and that Ms Bidel and Mr Speight were also directors. Also said to be false were statements that other individuals, Mr Rizwan Hussain, Jai Singh, Elizabeth Kirby and a company Callon Shared Equity Ltd, were not directors of those companies. There is also a reference to a change of solicitor.
15. That is the committal permission claim.

The background

16. The background is that the four Business Mortgage Finance companies are issuers of notes. Target is their administration and special service company relating to the note issues. The notes are issued as part of a securitisation of commercial mortgages. The holders of the notes have rights under a Deed of Charge over the commercial properties which the mortgages relate to.
17. This is the latest in a very long-running series of what are on the face of it entirely unmeritorious actions by Mr Oyekoya, Mr Kalia and Mr Hussain, whereby they purport to be involved with these securitisation companies, but in fact have no proper rights to be involved at all. I am quite satisfied that the people mentioned, that is Mr Kalia, Mr Oyekoya and Mr Hussain are involved with each other.
18. In terms of the history, the first thing in time to mention is that there was an attempt to put one of the companies, Business Mortgage Finance 6 Plc, into administration by Mr Hussain, or those associated with him. That failed in 2019.
19. Then there was an attempt to replace the trustees and appoint receivers purporting to sell the assets of Business Mortgage Finance. That was dealt with by Zacaroli J in a judgment in 2019, [2019] EWHC 2917 (Ch). The judge dismissed all those attempts and granted an injunction preventing further attempts of that sort in relation to Business Mortgage Finance 6.
20. Then what happened is that a BVI company connected to Mr Hussain called Roundstone Technologies Ltd claimed to have bought the assets as a result of the dealings which had been addressed by Zacaroli J. That came before Nugee J in the latter half of 2019. The judge restrained Roundstone (whether acting by Mr Hussain, Mr Oyekoya, Mr Kalia or otherwise) from holding itself out as if it had obtained good title to the assets of Business Mortgage Finance 6. One of the issues that Nugee J had to decide was whether certain companies associated with Mr Hussain had become a trustee or trustees under the Deed of Charge. The companies were Greencoat Holdings Limited and Portfolio Logistics Limited.
21. Nugee J deals with that point his judgment [2019] EWHC 2917 (Ch) at paragraphs 83 to 86. It relates to clause 21.2 of the Deed of Charge, which is as follows:

"Any person appointed as, or assuming the position of, trustee in relation to the Charged Property pursuant to the terms of this Deed shall have all the rights, powers and benefits which are vested in the Trustee pursuant to the terms of this Deed."
22. As can be seen the clause refers to someone "assuming" the position of the trustee. The suggestion was that that meant essentially that a stranger could purport unilaterally to take on the position of trustee, and that when they did this, they would then have all the rights and duties and powers of a trustee under the Deed of Charge. Nugee J decided that that was wrong.
23. It is important to bear in mind that Nugee J's decision is not *res judicata* in these proceedings. In the proceedings before me it is Mr Oyekoya himself who is alleged to have assumed the position of trustee, rather than either of the two companies.

Nevertheless as a matter of principle a judgment of the High Court on a point of law will be followed by another High Court judge unless it is plainly wrong. Construction of the Deed of Charge, and its legal effect, is a matter of law and construction. There is nothing at all in Nugee J's judgment on this topic which would lead me not to follow it in this case. Moreover I have seen the clause and have considered the arguments. My own view is that it is plainly the right construction of this clause. The clause does not give a stranger to these trusts the power to unilaterally declare themselves a trustee and thereby take on those powers and replace the existing trustees. That does not make any commercial sense at all.

24. Then after the proceedings dealt with by Nugee J, there was a claim brought by a company connected with Mr Hussain against Target for breach of duty. However that claim stopped when security for costs which had been ordered, was not provided.
25. After all this the five actions I have mentioned were commenced. The first of them was started in April, I think that was the Issuers' claim.
26. The defendants to these various claims instructed Simmons & Simmons and appear represented by Mr Smith QC before me. On 7 July of this year they applied to strike out and/or have summary judgment in their favour on all these claims, and seek an order that the four which are not in the Financial List be transferred to the Financial List, so that all five claims can be heard and dealt with together, since they plainly raise connected issues and it would be in accordance with the overriding objective to do so.

Transfers

27. It is clear, in my judgment, that all five of these claims raise connected questions which mean that it will make sense in case management terms they be dealt with together. But there are a couple of further aspects of that which I need to deal with.
28. Applications to transfer a case to or from the Financial List are to be made to a Financial List Judge (PD 63AA para 4.1). Therefore, sitting in the Financial List as I am, I have the power to transfer claims into the Financial List and that applies both to the Commercial Court claims and to the claims in the Chancery Business List. On one view, since the Financial List claim was issued in the Chancery Division, it could be said that the Commercial Court ought to be given notice (PD 63AA para 4.4). I will do that after this hearing [*Note added when the transcript was approved: that was done on the same day.*]
29. I am satisfied that, subject to the next point, I should transfer these claims to be dealt with together and the Financial List is the sensible place to bring them together.
30. A further detail is that notices of discontinuance have been produced, dated 7 July 2020. The first one to consider is a notice of discontinuance of the Target 1 claim, which is BL-2020-000659. That notice of discontinuance was served on the defendants. Accordingly is effective under CPR Part 38. Therefore no other relief relating to that claim is sought before me, save for a point on costs that I will come back to.
31. There is also a notice of discontinuance of the original Financial List claim FL-2020-000010 itself. However that notice has not been served on the defendants so far. Accordingly as of today it has not taken effect because a notice of discontinuance must

be served to be effective. That is CPR Rule 38.3(1)(b). Although that is a technical matter which the court might not otherwise be concerned with, it is important in this case that I am satisfied that, as of today, the claim FL-2020-000010 has not been discontinued. Therefore I am sitting in the Financial List and exercising the powers of a Financial List Judge to make the orders for transfer on that basis. That is what I will do.

Adjournments

32. The next issue I am going to deal with -- it may be I could have dealt with it earlier but I am going to deal with it now -- is the request from both Mr Oyekoya, who is the claimant in four of these claims, and Mr Kalia, who is the claimant in one of them, to not deal with these matters today but to adjourn these applications.
33. First of all, Mr Oyekoya wrote a letter to the defendants, and copied to the court, dated 12 July; that is Sunday. He made a point about the discontinuance, which I have dealt with, but he also said it would be impossible for him to attend the Monday hearing and made a point about the rules relating to summary judgment. As explained already the Application Notices in these claims seeking to strike them out also sought, in the alternative, summary judgment. Mr Oyekoya's letter is correct that under the CPR relating to applications for summary judgment, a respondent is entitled to at least 14 days' notice of that application. That has not been given. I indicated to counsel at the start of the hearing that I was not minded to hear the matter on the basis that it was advanced as an application for summary judgment, bearing that in mind. Counsel did not do so.
34. But Mr Oyekoya also contends that he has not had a fair opportunity to deal with the application to strike out and ask that this matter be adjourned. I am not satisfied that I should do that. First, I am satisfied that Mr Oyekoya had proper notice of this application. Second, having regard to the history of these disputes and the issues that are before the court, there is no good reason why Mr Oyekoya could not have attended this hearing and explained why these proceedings should not be struck out, or at least put in writing some basis for that. Accordingly, I am going to go ahead and deal with the application to strike out today in relation to the claims for which Mr Oyekoya is claimant.
35. I turn to the claim in which Mr Kalia is claimant, which is the directors' claim CL-2020-000403. Mr Kalia sent an email to the court this morning pointing out that the two Commercial List claims, or at least the one that he is concerned with, CL-2020-000403, has not been mentioned in the public cause list for this hearing. That is true. He then contended that he had not been given any notice of this application, but I am satisfied that that is not right. The material provided by the applicants shows that Mr Kalia did have proper notice of the applications on the 7th July, through the 8th July, and on to 9th July. He received emails from the solicitors providing all the material he needed in order to have notice of this application. Therefore Mr Kalia did have proper notice.
36. Again, as with Mr Oyekoya, Mr Kalia could, and if he wished to should, have put in some material to provide a reason why I should not strike out these claims. I am therefore going to go ahead and deal with that application.

The strike out applications

37. I turn to the underlying merits of the strike-out application. The first one is the Issuers' claim. That is FL-2020-000010. The claim is made on the basis that Mr Oyekoya is a trustee under the Deed of Charge.
38. This starts with a letter on 22 January 2020 from Mr Oyekoya to the four Business Mortgage Finance companies. At paragraph 2 Mr Oyekoya says:

"I hereby notify the issuers that pursuant to the Deed of Charge, assignment for each Issuer, I have with immediate effect assumed the position of trustee in relation to the charge property pursuant to the terms of the Deed of Charge for each Issuer and I am as a result deemed to have all the rights, powers, authorities, benefits and discretions which are vested in the trustee pursuant to the Deed of Charge for each Issuer as well as and such duties and obligations as conferred or imposed by the Deed of Charge and the trust deed for each Issuer."
39. He was asked in correspondence what basis that point was made. That was a letter of 28 January where Simmons & Simmons asked him which clauses of the trust deed he relied on. Then on 28 January, on the same day, Mr Oyekoya responded, and at paragraph 4(b) made it clear that he relies on clause 21.2 of the Deed of Charge. In other words, he is relying on exactly the point that I have just been referring to that was dealt with by Nugee J. As I think I have said already, the factual circumstances that Nugee J was considering were different because he was not considering the 22 January unsolicited appointment. Nevertheless I have already indicated that in my judgment this clause of the Deed of Charge does not mean that someone in the position of Mr Oyekoya, by writing a letter unilaterally declaring that they have assumed the position of trustee, is able to validly become a trustee in those circumstances.
40. I should also mention Mr Oyekoya's evidence in support of his Part 8 claim. This is in a witness statement served with the Part 8 claim form. At paragraph 39, under the heading "Summary Analysis" he confirms the point I have already made that the basis on which he claims to have become a trustee is clause 21.2.
41. I should also add that at paragraph 39 of the same witness statement Mr Oyekoya recognises Nugee J's judgment. At paragraph 40 he raises other matters which he says reinforce his view on the construction of the Deed of Charge. All I am going to say is that I do not accept that any of those amount to a good reason for reaching a different conclusion to the one I have already explained about the Deed of Charge. They do not show that the meaning contended for by Mr Oyekoya is right. This claim discloses no reasonable grounds for bringing it and should be struck out.
42. The next one to deal with is the Target 2 claim, the Target 1 claim having been discontinued. The Target 2 claim is the claim by Mr Oyekoya against Target Servicing. The problem with this claim is the lack of any standing that Mr Oyekoya has to bring it. The claim purports to be a claim which, if it was to be brought at all, really ought to have been brought by the Issuers against Target. But Mr Oyekoya purports to bring it in his capacity as trustee under the Deed of Charge and also as the attorney for the Issuers. That is explained in paragraph 1 of the Particulars of Claim.

43. The granting of a status of attorney is dealt with in the Deed of Charge at paragraph 15.2. It provides that the trustee is appointed as attorney for the Issuer. But since Mr Oyekoya, as I have already explained, is not a trustee, it follows that he has no authority to bring this Target 2 claim. Accordingly it has no real prospect of success either, and I will strike it out for the same reasons as I have struck out the other one. I should add that these strike outs are all being considered under CPR 3.4(2)(a).
44. The next claim is the Directors' claim. This is a claim brought by Mr Kalia against Mr Surnam, Ms Bidel and Mr Speight. This seeks declarations, as I have said, that those persons Messrs Bidel, Surnam and Speight are not directors of the Business Mortgage Finance companies. This is a different matter. The way to get into this case is to understand that the basis on which it is brought is that Mr Kalia claims that these people are not directors. That arises from a series of what purport to be Board Minutes of the Issuer companies, starting on 3rd June 2020, and explained in Ms Bidel's witness statement at paragraph 86 through to paragraph 107.
45. The critical one ultimately is a Board Minute of 23rd June 2020. This is the Board Minute referred to in the Directors' claim and purports to record a resolution to remove those individuals as directors. An example, for Business Mortgage Finance 4 Plc, is at page 792 of the electronic bundle of documents. According to the document, present at the meeting were Mr Hussain, Mr Kalia, Mr Oyekoya and Mr Jai Singh, Callon Shared Equity Ltd and Portfolio Logistics Ltd as directors of the company. Then at paragraph 6 the minute has the heading:
- "Removal of Coral Suzanne Bidel, Jai Singh, Surnam and Marc William Speight as directors and termination of all engagements with the Sanne parties."
46. Then at paragraph – it says 5.5 but I think it is probably a typo, it should be 6.5 – the minute purports to record the production of a duly executed ordinary resolution removing those individuals as directors.
47. That minute could only be conceivably effective if those individuals: Hussain, Kalia, Oyekoya and so on, really were directors of Business Mortgage Finance. The defendants contend firmly that they are not. The only basis that has been put forward for why those people might be directors of the company was material produced with a letter of 28 June 2020 from Mr Hussain. In it he produces what purports to be a resolution, in this case, of Business Mortgage Finance 6 Plc. I am told that in fact no examples at all have been produced for the other Business Mortgage Finance companies. But sticking with BMF 6, this is a resolution which purports to arise from a meeting of noteholders pursuant to Article 70 of the Articles of Association of the company. It appoints Mr Hussain as a director of the company, and it is executed by Mr Oyekoya purporting to be an authorised attorney of the noteholders.
48. I doubt Mr Oyekoya is an attorney of the noteholders, but what really matters is that, even on its face this document cannot do what it is purporting to do. Article 70 of the Articles of Association is as follows:

“70 POWER OF THE COMPANY TO APPOINT DIRECTORS

Subject to the articles, the Company may by ordinary resolution appoint a person who is willing to act to be a director, either to fill a vacancy or as an addition to the board, but the total number of directors may not exceed any maximum number fixed in accordance with the articles.”

49. This only permits directors to be appointed by an ordinary resolution, that is to say, of the shareholders. The majority shareholder of BMF6 is a company called BMF Holdings Ltd. It is clear, therefore, that even on its face the resolution this cannot appoint Mr Hussain as a director. The noteholders do not have power to act in this way.
50. The other directors associated with Mr Hussain purport to have been appointed on the same basis. Therefore since none of those individuals were truly directors of the Issuers, the purported Board Minutes cannot be effective. Therefore the Directors' claim has no real prospect of success and should be struck out. I will make that order.
51. That leaves the last claim, the Committal Permission claim. This was a claim issued by Mr Oyekoya seeking permission to bring committal proceedings against Mr Surnam. As I think I have already explained, the basis on which this claim is brought is the allegation that Mr Surnam's evidence in a witness statement was false. His evidence was that he and others (Messrs Bidel and Speight) were directors of the Business Mortgage Finance companies, and equally well that Mr Hussain, Jai Singh, Elizabeth Kirby and so on were not directors. This allegation of falsehood is plainly wrong. On any view, it cannot be said that Mr Surnam could not have given that evidence in good faith, but in fact it is perfectly obvious on the evidence that the evidence was true. Therefore this application has no real prospect of success and I will strike it out as well.
52. That means what I have decided to do is strike out the four non-discontinued claims now.

Totally without merit

53. Having decided to strike these out I will certify that all four of these actions were totally without merit. This is part of a long-running, absurd series of actions by Mr Hussain, Mr Oyekoya and their associates, relating to the Issuers. It appears to have no merit at all and to have caused an enormous amount of cost and trouble to the defendants. I gather that a very large amount of costs have been rung up dealing with these individuals, none of which has been paid.
54. I will certainly certify that these claims are totally without merit.
55. Having certified something is totally without merit, I should go on to consider whether to make civil restraint orders. In relation to Mr Oyekoya the court in fact already has made a general civil restraint order against Mr Oyekoya last week and so I do not need to consider that aspect further.
56. In relation to Mr Kalia himself, this will be only a single matter which was certified as being totally without merit. Having done that, I will not, at this stage make a civil restraint order against Mr Kalia. But obviously if Mr Kalia continues to make applications of this kind he will be running a grave risk of a civil restraint order.

The Target 1 action

57. In relation to the Target 1 action, which has been discontinued, I am asked to make an order that the costs to be paid should be assessed on an indemnity basis. There is no question the court can make an order of that kind under 38.5(3). It is right to say that the defendants to that action did not apply specifically under CPR 38 for that order. I was initially concerned as to whether it would be appropriate to do, so but I am satisfied that it would be appropriate, because on the same day that notice of discontinuance was filed before they had any notice of it, the defendants applied to strike out that claim as well, and sought their costs on an indemnity basis.
58. The Target 1 claim suffers from the same problem as the Target 2 claim, that it is based on Mr Oyekoya's claimed status in relation to the Issuers which he simply does not have. So it was totally without merit for the same reason as the other one. On that basis, in my judgment it is right that the costs should be assessed on an indemnity basis.
59. I have not made orders in relation to costs in relation to the other applications. I will hear Mr Smith about that.