Neutral Citation Number: [2020] EWHC 2249 (Ch)

Case No: PT-2019-000695

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST

Rolls Building, Fetter Lane,
London EC4A 1NL

Date: 24/08/2020

Before:

CHIEF MASTER MARSH

- -

Between:

SILAS JONATHAN LEES	**Claimant**
- and -	
LLOYDS BANK PLC	**Defendant**

- -
- -

Mr Lees appeared in person
Neil Levy (instructed by **TLT LLP**) for the **Defendant**

Hearing date: 17 July 2020

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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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CHIEF MASTER MARSH

Chief Master Marsh:

1. This Part 8 claim came before the court on 17 July 2020 for a disposal hearing combined with the hearing of the defendant's application to strike out the claim under CPR 3.4(2)(a) and/or for judgment under CPR 24.2.

2. The claimant ("Mr Lees") appeared in person. Mr Neil Levy appeared of the defendant ("Lloyds").

3. This claim has some similarity with the claim Mr Lees pursued against Aldermore Bank PLC which was dismissed on 1 November 2019 on the basis that it was totally without merit. His application for permission to appeal was dismissed by Falk J on 23 March 2020 also on the basis that it was totally without merit. As in this claim, Mr Lees had conducted entirely unsuccessful associated litigation in the County Court before commencing a claim in the High Court.

Background

4. Between 2010 and 2015 Lloyds granted Mr Lees buy to let mortgages in respect of three properties ("the Properties"):

   (1) 66 and 67 High Street, Madeley, Telford TF7 5AU registered at HM Land Registry with title number SL11126.

   (2) 162 Burford, Telford TF3 1LW registered at HM Land Registry with title number SL216161.

   (3) 152 Southgate, Sutton Hill, Telford TF7 4HH registered with HM Land Registry with title number SL92312.

5. In the case of each of the Properties, Lloyds is shown in the Charges Register as the proprietor of a registered legal charge. The registration has pertained since the charges were originally granted. Section 58(1) of the Land Registration Act 2002 provides that:

   > "If, on the entry of a person in the register as the proprietor of a legal estate, the legal estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of the registration."

6. Mr Lees believes that Lloyds has assigned the benefit of the legal charges it holds over the Properties as part of a process of securitisation of a portfolio of loans with the consequence that it is not entitled to pursue possession claims against him. Regardless of whether securitisation has taken place, it is not in dispute that Lloyds is the registered proprietor of the legal charges. The decision of the Court of Appeal in *Paragon Finance plc v Pender* [2005] 1 WLR 3412 (Jonathan Parker LJ at [109]-[113]) to which I refer later in this judgment appears to create an insuperable obstacle for Mr Lees. Furthermore, orders for possession have been made against Mr Lees in respect of the Properties in the County Court and his rights of appeal have been exhausted.

7. There are three interrelated sets of events that have proceeded over a period commencing in 2017:

(1) A series of Data Subject Access Requests (DSARs) made by Mr Lees and directed to Lloyds;

(2) Claims for possession pursued by Lloyds in respect of the Properties; and

(3) This claim.

DSAR requests

8. The first DSAR was made on 23 November 2017. Mr Lees wrote to Mr Christopher Dillon of Lloyds on the basis, he said, that Mr Dillon was a or the trustee of a recent issue of trust documentation. Mr Lees asked to be given copies of his loan applications and:

> "2. Copies of information relating to the sale of the original loans including the following information:
>
> a. Who the loan was sold to;
>
> b. Copies of the service user agreements between Lloyds Bank PC and the entity/buyer/acquirer of the loan;
>
> c. The rights to the title and the interest they hold in the loan/associated property/title;
>
> d. Copies of the Memorandum of Satisfaction from each sale of the mortgage/loan or titles sold."

9. For reasons that are unclear, Lloyds did not reply to the DSAR until 24 July 2018. The reply came from the Commercial DSAR Team at Lloyds. Mr Lees was told that Lloyds could not locate any loan applications and that:

> "I have been advised that the loans have not been sold; therefore I do not have any information in relation to the sale of the loans."

10. On 13 March 2019, which was after the possession claims had been issued by Lloyds, Mr Lees sent out in the region of 70 DSARs to various parties. Four further DSAR's were directed to Lloyds each asking:

> "1. In what fiduciary capacity are Lloyds Bank LPC acting in this matter?
>
> 2. In what fiduciary capacity are Lloyds Bank PLC assessing, processing and sharing our data?
>
> 3. With which individual(s) or corporation(s) have Lloyds Bank PLC shared our data and for what purpose?"

11. Lloyds' response was provided by TLT on 2 April 2019. Mr Lees later objected to TLT replying on behalf of Lloyds but there is no substance in the complaint.

12. Mr Lees sent a further DSAR on 20 April 2019 again asking about the fiduciary capacity in which Lloyds was acting and TLT replied on 25 April 2019.

Possession claims

13. In early 2019 Lloyds issued claims for possession of the Properties in the County Court at Telford. Mr Lees filed defences which in substance alleged that Lloyds no longer had standing to bring the claims because it had transferred its interest as part of a securitisation of a portfolio of lending to Arkle Acquisitions Limited and alleged that Lloyds was committing fraud by pursuing the claims. The defence also complained about a failure by Lloyds to answer the Data Subject Access Requests (DSARs) made by Mr Lees. Mr Lees applied for disclosure of the assignment of the loans, or the benefit of them, and his application was listed for hearing at the same time as the hearing of the claim for possession. On 31 May 2019, Lloyds obtained an order for possession of each of the Properties. The order made by DJ Stanger also struck out Mr Lees' defence, granted a money judgment for the sum due under the charge, ordered Mr Lees to pay Lloyds' costs and refused permission to appeal. No order was made on the application for disclosure.

14. Mr Lees then applied on 25 June 2019 for an order to stay execution of the possession orders pending disclosure by Lloyds of a deed of assignment relating to the mortgages. The application was dismissed on 14 August 2019 as being totally without merit and directed that Mr Lees should obtain permission before issuing any further applications in the possession claims.

15. Two further applications were dismissed by a District Judge on 9 September 2019 as being totally without merit. The nature of the applications is not known.

16. On 25 September 2019 Mr Lees applied to set aside the orders made on 9 September 2019 on the basis that the District Judge had shown extreme bias. The applications were dismissed as being totally without merit on 21 October 2019.

17. Mr Lees applied for permission to appeal the orders dismissing his September applications and on 12 February 2020 his application was dismissed as being totally without merit.

This claim

18. This claim has had a less than straightforward history. The Part 8 claim form was issued on 23 August 2019. By that stage orders for possession had been made in the County Court and the application for a stay dismissed on 14 August 2019. However, the claim was not served until February 2020. Furthermore, no evidence was filed with the claim, contrary to the requirements of CPR 8.5(1). Mr Lees eventually produced a witness statement dated 20 January 2020. These defects might have placed substantial obstacles in Mr Lees' way had objection been taken but Lloyds has instead (and if I may say so, sensibly) opted to waive any such defects and invites the court to deal with the claim on its merits, such as they may be.

19. Mr Lees appears to have been prompted to pursue this claim, after it had lain dormant on the court file since issue, by the hearing on 1 November 2019 of the Aldermore Bank claim when reference to this claim was made by the court. On the same day, an email was sent to Mr Lees by my clerk asking Mr Lees to say whether he had served the claim and, if so, to file evidence of service following which the claim would be listed for hearing. Mr Lees' very prompt response the same day was to say he wished

to file a complaint of (unspecified) maladministration. He was duly provided with references to the complaints procedure although it seems no complaint was made. There were further exchanges in February 2020 but none are material

20. The claim form seeks relief under three main headings:

    (1) Disclosure is sought pursuant to CPR 31.12 (specific disclosure), CPR 31.14 (documents referred to in a statement of case etc) and CPR 31.16 (pre-action disclosure) in respect of data and information held by Arkle Funding (No1) Limited relating to the Properties.

    (2) It is said that Lloyds has failed to provide data, contrary to the Data Protection Act 2018 and the General Data Protection Regulations (EU) 2016/679 ("GDPR"), that a complaint has been made to the Information Commissioner's Office (RFA0831893) and that Lloyds has failed to respond to the Information Commissioner's Office. Mr Lees goes on to say "… we require the Court's assistance to determine the facts."

    (3) Information is sought pursuant to sections 136 and 196 of the Law of Property Act 1925.

21. In addition, Mr Lees draws attention in the Part 8 claim form to paragraph 13.3 of the Chancery Guide and requests a hearing in private before a High Court Judge on the basis that the claim relates to securitisation and sensitive personal data. He says a Master does not have jurisdiction to deal with the claim. This assertion is not accurate although it may be Mr Lees was intending to say that a Master ought to release the claim to a High Court Judge in view of its subject matter and complexity. In his second statement Mr Les went one stage further and requested that Marcus Smith J should deal with this claim because he 'wrote the book' on the subject of securitisation and related issues.

22. Objection to a Master dealing with the claim was also made by Mr Lees in the claim against Aldermore Bank PLC and I note that Falk J. in dismissing Mr Lees' application for permission to appeal stated that the claim did not need to be determined by a High Court Judge. This claim is not on all fours with the Aldermore Bank claim because it also concerns Data Protection issues. However, there is no reason why this claim may not be dealt with by a second-tier judge of the High Court rather than a High Court judge. In any event, this claim is not about securitisation in the sense that it involves analysis of issues arising from a securitisation; rather it is, on Mr Lees' analysis, about whether the loans made to Mr Lees have been included in a securitisation. It also concerns the extent to which the High Court should intervene, if at all, in light of the orders that have been made in the County Court.

23. Mr Lees' first statement makes a series of allegations about Lloyds that broadly arise out of the claims set out in the claim form and he corrects some errors in the claim form due to Mr Lees having overlooked Practice Direction 51U. He principally alleges that:

    (1) Lloyds has failed to show any locus standi to bring the possession proceedings "… in their fiduciary capacity as agent, the agent Bank having

assigned all their Legal rights in the Legal Title by Deed ("Service Agreement") to the Security Trustee."

(2) Lloyds is in breach of section 173(3) of the Data Protection Act 2018, the GDPR and section 3 of the Fraud Act 2006 as a result of its failure to disclose information he has requested and having conspired with its legal representatives to withhold this information.

24. The court is asked to order specific disclosure pursuant to CPR 31.16 and Practice Direction 51U of documents between Lloyds and the Security Trustee which he now identifies as being The Bank of New York Mellon.

25. Mr Lees' second statement exhibits a copy of the "Permanent Master Issuer PLC Base Prospectus" and in addition to repeating points made previously he:

(1) Says the balances on his accounts have been reducing since late 2018 and this is only consistent with Lloyds having entered into a credit default swap agreement which itself points to the loans made to Mr Lees having been securitised.

(2) Relies upon the decision of Marcus Smith J. in *Promontoria (Oak) Ltd v Emanuel* [2020] EWHC 563 (Ch) at [46(3)] where Marcus Smith J remarked that if there is a failure to produce primary documentary evidence without a coherent explanation, the natural inference is that there is a reason for this and that the primary evidence does not tell the same story as the secondary evidence.

26. Lloyds relies upon evidence in a witness statement made by Lauren Morris who is a solicitor with TLT. She provides helpful background information and repeats, on instructions that as far as Lloyds has been able to ascertain it has neither agreed to transfer nor transferred any interest conferred on it in the three mortgages to any third party.

27. Mr Lees exhibited to his first statement a report from an entity named Certified Forensic Loan Auditors LLC that is based in Texas and California. The report is entitled "CFLA Bloomberg Property Securitisation Analysis Report" and says it relates to Mr Lees' property at 66/67 High Street Madeley. The report is made by Mr Andrew Lehman and carries with it an affidavit from him. He says he is an expert analyst on Residential Mortgage Backed Securities Data and has the skills to undertake research using a Bloomberg terminal. The report summarises information supplied by Mr Lees and information Mr Lehman obtained from public search. Mr Lees does not have permission to rely on evidence from an expert although that point was not taken by Lloyds.

28. Although the report appears at first sight to be detailed, it is in reality of little substance. The report summary concludes that, based on information supplied by Mr Lees, he provided security (described as a "note") to Lloyds on about 3 February 2015, which was registered at the Land Registry, and:

> "The legal and equitable interests in the note may have been assigned and securitised into the PERMANENT MASTER ISSUER PLC 2015-1 with an Issue Date of 20th October 2015." [emphasis added]

29. The report provides information about the Permanent Master Issuer securitisation, including structural diagrams purporting to provide details of the transaction. It is apparent, however, that Mr Lehman was unable to find a link between the legal charge held by Lloyds in respect of 66/67 High Street Madeley and the transaction. The only link is based on information supplied by Mr Lees to Mr Lehman and it is, of course, Mr Lees' case that Lloyds has told him that the loan was not assigned as part of a securitisation.

30. Even disregarding the lack of substance in the report, there are doubts about Mr Lehman's suitability to act as an independent expert. The Consumer Financial Protection Bureau has filed a complaint with the United States District Court, Central District of California against Certified Forensic Loan Auditors LLC and Mr Lehman (and one of his partners) citing amongst other things reports of the type obtained by Mr Lees as being "garbage".

31. The Permanent Master Issuer prospectus that Mr Lees exhibits to his second statement takes matters no further. Although the document runs to 448 pages, Mr Lees has not been able to point to any part of it that supports his view that the loan obligations relating the Properties, or the charges, legal or equitable, are part of that securitisation. In fact, as Mr Levy points out, the prospectus indicates otherwise because it describes the underlying assets as "a portfolio of first ranking residential mortgage loans originated and/or acquired by Halifax or (after the reorganisation date) by Bank of Scotland under the "Halifax" brand which have been sold by Halifax or Bank of Scotland to the mortgages trustee." There is no suggestion by Mr Lees that the three charges in question were Halifax or Bank of Scotland branded. Lloyds is referred to in the prospectus as the ultimate holding company but not as the legal or owner of the charges that are the subject matter of the securitisation.

Disposal

32. I will deal with the issues relating to Data Protection after having dealt with the other issues in the claim.

33. The first ground of relief pursued by Mr Lees is based upon the grounds of the CPR he mentions in his claim (updated to refer to Practice Direction 51U which applies to claims in the Business and Property Courts). There is no basis for granting relief under any of the rules he mentions because:

    (1) CPR 31.12 or paragraphs 17 and 19 of Practice Direction 51U only apply to disclosure within an existing claim. They do not permit the court to make an order on a freestanding basis.

    (2) CPR 31.14 has been superseded by paragraph 21 of Practice Direction 51U. Both powers are irrelevant.

    (3) Although CPR 31.16 has potential applicability, Mr Lees has not identified any of the requirements of CPR 31.16(3) or complied with its provisions.

34. Sections 136 and 196 of the Law of Property Act 1925 do not provide any basis for granting the relief set out in paragraph 3 of the claim form. They are irrelevant.

35. The observations of Marcus Smith J. in *Promontoria (Oak) Ltd v Emanuel* do not assist Mr Lees. They were made in the context of a claim brought by the assignee of a mortgage. In that case, it was not in doubt that the claimant was an assignee and Promontoria claimed in that capacity. However, only a redacted copy of the assignment was produced to prove the claimant's title and the judge's remarks are directed to the difficulties that the failure to produce a complete version created for the claimant. This claim is quite different. The principal issue in this case is whether there has been as assignment of the legal estate or of an equitable interest in it.

36. I have already referred to the decision of the Court of Appeal in *Paragon Finance plc v Pender*. It is not in doubt that, regardless of whether the charges were included within a package of loans that were the subject of securitisation, the only party with title to bring possession proceedings is Lloyds. It is therefore strictly unnecessary to determine as an issue of fact whether securitisation has taken place but for completeness:

    (1) Mr Lees has come nowhere near to showing on the balance of probabilities that Lloyds assigned an interest in the loans or the charges that relate to the Properties.

    (2) Put another way, if it were necessary to make a determination under CPR rule 24, Mr Lees has no real prospect of establishing that Lloyds has divested itself of any interest in the loans or the charges. The second limb of CPR 24.2 is of limited relevance in a Part 8 claim where it would be exceptional for there to be a trial but plainly it does not assist Mr Lees in the circumstances of this case.

37. Mr Lees' belief based upon the entries in his bank statements that Lloyds has entered into a credit default swap has no foundation in the evidence and, in any event, does not assist him. I observe that the entries in the statements of account would appear to show payments made by Mr Lees. If payments have been made by a third party, it is not a cause for complaint by Mr Lees.

38. Before turning to deal with Data Protection, the assertion that Lloyds does not have title to bring possession proceedings in respect of the Properties is a clear abuse of the process of the court. Mr Lees is asking the High Court to determine the same issue that was decided against him in the County Court. He pursued all the avenues that were open to him to oppose the making of the orders for possession and subsequently challenged the orders for possession unsuccessfully. It is improper for him to mount a collateral attack on the orders made in the County Court by issuing this claim.

Data Protection

39. Mr Lees alleges that Lloyds has failed to provide data contrary to the Data Protection Act 2018 ("DPA 2018") and the GDPR. In fact, the three DSARs were made when the Data Protection Act 1998 ("DPA 1998") was in force. The DPA 2018 only came into effect for most purposes on 25 May 2018 and otherwise from 23 July 2018.

40. Section 7(1) of the DPA 1998 confers an entitlement on an individual with rights of access:

> "(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,
> (b) if that is the case, to be given by the data controller a description of—
> (i) the personal data of which that individual is the data subject,
> (ii) the purposes for which they are being or are to be processed, and
> (iii) the recipients or classes of recipients to whom they are or may be disclosed,
> (c) to have communicated to him in an intelligible form—
> (i) the information constituting any personal data of which that individual is the data subject, and
> (ii) any information available to the data controller as to the source of those data, and
> (d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking."

41. Section 7(9) of the DPA 1998 provides:

> "If a court is satisfied on the application of any person who has made a request under the foregoing provisions of this section that the data controller in question has failed to comply with the request in contravention of those provisions, the court may order him to comply with the request."

42. Section 13 of the DPA 1998 gave an individual a right to compensation for damage and distress caused by a contravention of the requirements of the Act. Section 15 of the DPA 1998 conferred jurisdiction under s.7 on the High Court and County Court, including a right to require the information constituting any data to be made available for its inspection.

43. Section 213 and Part 2 of Schedule of the DPA 2018 preserve the effect of the above provisions after the repeal of the DPA 1998 in cases where the DSAR was received before 25 May 2018.

44. The operation of the DPA 1998 was subject to detailed consideration in *Ittihadieh v 5–11 Cheyne Gardens RTM Co Ltd* [2018] QB 256 (CA) (Lewison LJ with whom Lloyd-Jones and McCombe LJJ agreed), including as to:

(1) the meaning of "personal data" [61]-[69];

(2) who is a "data controller" [70]-[71];

(3) the form of a DSAR [78]-[81];

(4) the purpose of a DSAR [82]-[90];

(5) the form of a DSAR response [91-94];

(6) proportionality of search [95]-[103] (confirming that what is required is a "reasonable and proportionate search"); and

(7) the exercise of the court's discretion [104] – [110].

45. Section 2(1)(b) of the DPA 2018 confirms that the General Data Protection Regulation (EU) 2016/679 (**GDPR**) confers rights on the data subject "to obtain information about the processing of personal data." The GDPR provides data subjects with rights of access to personal data similar to those under the DPA 1998.

46. Article 79(1) of the GDPR provides that data subjects shall have "the right to an effective judicial remedy where he or she considers that his or her rights under this Regulation have been infringed as a result of the processing of his or her personal data in non-compliance with this Regulation."

47. It is right to see the Data Protection element of the claim as being separate from the elements of the claim that relate to the orders for possession or, indeed, the suggestion that the loans made to Mr Lees had been subject to securitisation. That said, there is nothing in this element of the claim. The evidence, far from showing that Lloyds is in breach of an obligation to comply with section 7(1) of the DPA 1998, shows that Lloyds has provided Mr Lees with an answer to each of the DSARs. In each case the answer was an adequate response to Mr Lees' quest to uncover evidence that the benefit of loans made to him had been the subject of securitisation.

48. Even if that conclusion were to be wrong, and Mr Lees could show there was a failure to provide a proper request to one or more of the DSARs, the court has a discretion whether or not to make an order. It is clear from the judgment of Lewison LJ in *Ittihadieh* that the discretion is not, as was thought at one time, "general and untrammelled". Some of the factors that may be relevant for the court to take into account are discussed at [110]. It seems to me that there would be good reasons in this case for declining to exercise the discretion in favour of Mr Lees in light of:

(1) The issue of numerous and repetitive DSAR's which is abusive;

(2) The real purpose of the DSARs being to obtain documents rather than personal data; and

(3) There being a collateral purpose that lay behind the requests which was to obtain assistance in preventing Lloyds bringing claims for possession. As Lewison LJ points out in *Ittihadieh* a collateral purpose of assisting in litigation is not an absolute answer to there being an obligation to answer a DSAR, but it is a relevant factor in the exercise of the court's discretion. In this case Mr Lees has formed, so it appears, a fixed view that the benefit of loans made to him have been the subject of securitisation without having any evidence to support that belief.

(4) The fact that the data sought will be of no benefit to Mr Lees. The decision of the Court of Appeal in *Paragon Finance plc v Pender* provides a complete answer to the defence he wished to pursue.

(5) The claims for possession have been the subject of final determinations in the County Court from which all available avenues of appeal have been exhausted.

49. In the course of the hearing, Mr Lees invited the court to have regard to press reports about the fraudulent activity of former employees of Lloyds and HBOS. They have no bearing on the issues for determination in this claim.

50. This claim is totally without merit and will be dismissed.

51. The judgment will be handed down remotely without the need for the parties to attend court or for there to be a remote hearing.

52. The hearing on 17 July 2020 took place as a physical hearing in court with Mr Lees and Mr Levy attending the Rolls Building. This was because Mr Lees said he had both limited internet and telephone connectivity. I do not consider it would be proportionate for consequential issues arising from this judgment to be dealt with in a similar way. On handing down this judgment I will make an order directing each party to file and serve within 14 days written submissions about the orders that should be made, including any application for permission to appeal and orders for costs. Each party will have a further seven days in which to serve and file counter-submissions. The order will provide that any application for permission to appeal will be adjourned until the date of my determination following consideration of the written submissions. Mr Levy is invited to provide the court with a draft order on this basis.