

Neutral Citation Number: [2023] EWHC 675 (Ch)

Case No: PT-2021-LDS-000076

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 17 March 2023

Before :

Deputy Judge Andrew Sutcliffe KC

Between :

Julie Amanda Mate

Claimant

- and -

(1) Shirley Clare Mate

Defendant

(2) Andrew David Mate and

(3) Robert Christopher Mate

Tim Sherwin (instructed by **Charles Russell Speechlys LLP**) for the **Claimant**
Caroline Shea QC and **Michael Ranson** (instructed by **Chadwick Lawrence LLP**) for the
Second and Third Defendants

Hearing dates: **17th March 2023**

JUDGMENT

Deputy Judge Andrew Sutcliffe KC
(16:26 pm)

Friday, 17 March 2023

Judgment by **DEPUTY JUDGE ANDREW SUTCLIFFE KC**

1. The relevant defendants, who are the second and third defendants, Robert and Andrew, seek permission to appeal on two grounds.
2. First, it is said that my decision to assess the value of Julie's services on the basis that she was a land promoter was wrong as a mixed question of law and in respect of subordinate factual findings and the application of expert opinion. It is said that there is considerable public interest in clarifying the position in relation to the correct basis on which to make an award to compensate a claimant in respect of unjust enrichment in this regard.
3. My conclusion that Julie performed a role akin to that of a land promoter was based on a detailed analysis of the facts and the expert evidence. I held that although she did not perform all the services of a land promoter, it was appropriate that the services which she did perform should be valued on that basis. Subject to one point, the second and third defendants have not explained why the findings of fact that I made or my evaluation of the expert evidence were not open to me on the evidence. The one point that was made by Mr Ranson orally was that I had not taken account of the second and third defendants' schedule pointing out the anomalies in Julie's activity log, which was compiled in 2022 and sought to estimate her time spent on the project going back to at least 2004. I should make clear that even though I did not expressly refer to this schedule in my judgment when referring to Julie's activity log, it was fully considered when I assessed the reliability of that log.
4. Given that the second and third defendants have failed to identify any error of law or finding of fact that was not open to me, I do not consider that there is a reasonable prospect of success on this ground of appeal, so I refuse permission. The second and third defendants may of course seek permission to appeal from the Court of Appeal.

5. The second ground of appeal concerns my findings of fact, as it is put, in relation to Shirley's understanding of the effect of the declaration of trust. I was referred by Mr Ranson to paragraphs 23 and 30.1 of the judgment where it is submitted I made findings about Shirley's state of mind at the time she executed the declaration of trust which the second and third defendants wish to challenge because they have concerns as to their potential impact in relation to subsequent litigation.
6. I have been referred by Mr Sherwin to the note at 52.0.6 of the White Book in which it is stated under the heading "Appeals are against orders, not reasoned judgments": *"In a number of cases it has been stated that the function of an Appeal Court, in particular the Court of Appeal, is to deal with 'judgments, orders or determinations', that is to say to deal with the result or outcome (to use non-technical terms) of the hearing in the lower court and not with 'findings or reasons' given in the judgment."* There are various authorities cited in support of that proposition to which I have not been referred.
7. The validity of the declaration of trust - to which these findings relate - was not an issue in these proceedings, although the relevant witnesses were cross-examined at trial on the subject of the declaration of trust. Since Mr Ranson has not elaborated on the potential consequences of my findings for any subsequent litigation, I am not in a position to assess now what impact, if any, those findings may have in that litigation. Nevertheless, I am confident that the findings that I may be said to have made in the challenged paragraphs were proper findings to have made taking account of the written and oral evidence, such as it was, at trial and I do not consider there is a realistic prospect of the second and third defendants overturning those findings on appeal. So for those reasons I refuse permission to appeal on that ground also.
8. The second and third defendants are of course at liberty to renew their application for permission to appeal to the Court of Appeal and I give them until 4 pm on 11 April 2023 in which to do that.