Neutral Citation Number: [2023] EWHC 690 (Ch)

No. BL-2022-BRS-000033

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPRTY COURTS IN BRISTOL
BUSINESS LIST (ChD)

Bristol Civil and Family Justice Centre
2 Redcliff Street
Bristol
BS1 6GR

Wednesday, 15 February 2023

Before:

HIS HONOUR JUDGE PAUL MATTHEWS
(Sitting as a Judge of the High Court)

B E T W E E N :

ALISON MERYL JOHNSON — Claimant

- and -

(1) SHAUN SAWYER, CHIEF CONSTABLE OF DEVON AND CORNWALL POLICE
(2) SARAH CREW, CHIEF CONSTABLE OF AVON AND SOMERSET POLICE
(3) THE MANAGER, EXETER INSOLVENCY SERVICE
(4) THE COURT MANAGER, EXETER CROWN AND COUNTY COURTS
(5) MR ROBIN BUDENBERG

Defendants

THE CLAIMANT appeared In Person.

MS JENNIFER WRIGHT appeared on behalf of the First and Second Defendants.

MR JOSEPH EDWARDS (instructed by the Government Legal Department) appeared on behalf of the Third Defendant.

THE FOURTH DEFENDANT did not attend and was not represented.

MR JAMES POTTS (instructed by DLA Piper UK LLP) appeared on behalf of the Fifth Defendant.

J U D G M E N T

JUDGE PAUL MATTHEWS:

1 In these proceedings the third defendant, the Insolvency Service, has made an application to strike out the claim brought by Mrs Johnson against it under the name of "The Manager of the Exeter Insolvency Service". But there is a threshold question. The third defendant has not filed an acknowledgement of service. I was told that this is because the third defendant had not actually been served, in the sense of having notice of the claim, and only became aware of these proceedings when it was sent a copy of a bundle by another defendant in the claim, who was also making an application to strike out the proceedings. As a result, this application was mounted at relatively short notice.

2 It appears from the court file that what happened was that, when the claim form was issued, the claimant asked the court to serve the proceedings. This, of course, they did in the usual way, by posting them out with a response pack to each of the five defendants at the addresses given in the claim form. In the case of the third defendant, that was The Manager, Exeter Insolvency Service, Senate Court, Southernhay Gardens, Exeter, EX1 1UG. Unfortunately, those papers appear never to have been passed to anyone higher up in the Insolvency Service. Certainly they did not go to the Government Legal Department or, indeed, to any other solicitors who would have known, certainly if they were connected with the government service, that the service of legal proceedings on government institutions and departments is governed by the Crown Proceedings Act 1947, section 17(3) and 18 which read as follows.

3 "17(3): Civil proceedings against the Crown shall be instituted against the appropriate authorised Government department, or, if none of the authorised Government departments is appropriate or the person instituting the

proceedings has any reasonable doubt whether any and if so which of those departments is appropriate, against the Attorney General."

18. All documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall, if those proceedings are by or against an authorised Government department, be served on the solicitor, if any, for that department, or the person, if any, acting for the purposes of this Act as solicitor for that department, or if there is no such solicitor and no person so acting, or if the proceedings are brought by or against the Attorney General, on the Solicitor for the affairs of His Majesty's Treasury."

I should say that the Solicitor for the Affairs of His Majesty's Treasury, also known as the Treasury Solicitor, is now recognised as an entity called the Government Legal Department, of which the Treasury Solicitor is the head.

4 In the **White Book**, volume 1, 2022 Edition, p.2310, there is a list of authorised government departments and the names and addresses for service of the person who is or is acting for the purposes of the 1947 Act as solicitor for those departments. It is published by the Minister for the Civil Service. Amongst the list of the authorised government departments is the Department for Business, Energy and Industrial Strategy. That may or may not be the current name, but that department certainly appears in that list. The name of the solicitor given for service is the Treasury Solicitor at the Government Legal Department. In these circumstances, where there was primary legislation requiring that the Government Legal Department concerned, that is BEIS, has to be served in a particular way, the fact that the court staff unknowingly sent these documents to the manager of the Exeter Insolvency

Service by first class post at the office in Exeter was a mistake. Moreover, it is a mistake which the court in my judgment has no power to put right, because this is a requirement of primary legislation, and nothing in the CPR can override that.

5 In my judgment, the proceedings in this case were not properly served on the third defendant at any time. Of course, the life of the claim form is four months from issue. It has to be served within that period of four months. If it is not so served, then it expires. In these circumstances, there having been no application for an extension of time, there having been no other application in relation to it, the claim as against the third defendant is dead. Therefore, there is nothing to strike out, so far as the third defendant is concerned. In these circumstances, in my judgment, the application made on behalf of the third defendant simply falls away, and that is the end of the matter so far as the third defendant is concerned.

LATER

6 In this case, Mr Edwards on behalf of the third defendant asks for his costs. He says, "We have had to incur costs. We have instructed counsel. We have come along to make an application to strike out and we would like our costs please." The problem for the third defendant is that it has not won because it has struck out the claimant's claim (which is what it wanted to do). It has won simply because the claim form was never served on the defendant in the first place and, its shelf life having expired, there is no longer any claim. It did not know at any time - this is its point of view, of course - that there was any such claim. By the time they knew that there was such a claim, it had already expired so, at that stage, all they needed to do was fold their arms and say, "We have nothing to do with this. You cannot make any order against us, because there is no claim." But instead of that, they instructed counsel to make an application to strike out, even without filing an

acknowledgement of service. In my judgment, in this case, this does not engage the jurisdiction of the court at all to make an award of costs. It falls outside section 51 and Part 44 of the Civil Procedure Rules.

7 I should say that, even if I were wrong about that, of course, the rules give a discretion to the court as to whether to make a costs order at all and, if so, what costs order to make. In circumstances where the relevant lawyers have entirely failed to spot that there was no claim in the first place because it had expired before they even knew about it and have sought to make an application on a completely false basis for a strike-out which in fact could not be made and could not be dealt with, it seems to me that my discretion would be not to make a costs order in the first place. So I am afraid, Mr Edwards, you win but you do not get your costs.

LATER

8 Mr Potts makes an application on behalf of the fifth defendant to obtain a relief from sanction in relation to the filing of an acknowledgement of service form and to permit the service and filing of a defence in this matter. The fifth defendant is the chairman of Lloyds Bank whom Mrs Johnson blames in some respects for the position in which she now finds herself. Curiously, Mr Budenberg, the fifth defendant, is sued personally as chairman, and the bank itself is not made a defendant. That might make things tricky from Mrs Johnson's point of view later on in the course of the action but I am not concerned with that now.

9 The position is that the proceedings were regularly served on Mr Budenberg at his home address, and he gave instructions via his personal assistant for the necessary steps to be taken to respond to this claim. However, for reasons which are unknown, and are still being

considered, something within the bank no doubt, this did not happen. It was only when Mr Budenberg received notice of the application being made by another defendant to strike out the claim that he enquired as to what was happening and found that his own acknowledgement of service had never been filed and a defence had not been put in. Accordingly, he filed the acknowledgement of service out of time on 26 January this year.

10 He now seeks, effectively, a retrospective extension of time and permission to put in the defence. That is, in effect, an application for relief from sanction. Mr Potts has referred me to the well-known test in *Denton v TH White* [2014] 1 WLR 3926, a decision of the Court of Appeal. That authority and other authorities lay down a three-stage test to be followed. The first stage is to ask how serious and significant the breach is. The second is to ask why the breach or default occurred. Then the third is to stand back and look at the circumstances overall of the matter and ask whether it is in the interests of justice to grant relief from sanction.

11 So far as concerns the first stage, it is clear that the matter is serious. These time limits are important in order to enable litigation to be carried on. If people could simply pitch up at whatever point they wanted and do something, some step in the proceedings, without regard to time, matters would stretch out forever.

12 So far as the second question is concerned, how the default occurred, that is a bit of a mystery. It certainly appears that there was a miscommunication or communications inside Lloyds Bank. As I said during the argument, this is not impressive for an international bank, but there we are. Such things sometimes happen. At the moment, there is no good explanation being put forward for that.

13 The third is to look at all the circumstances of the case. Is it fair, just and proportionate for relief from sanction to be given? In this case, the acknowledgement of service has now been filed and this application has been made relatively promptly after discovering that there was a problem. The late filing in itself has not disrupted these proceedings because there are still strike-out applications to be dealt with on the part of other defendants.

14 If the fifth defendant were refused an extension retrospectively to 26 January to file an acknowledgement of service and refused permission to file a defence, this would be, it is said, a disproportionate sanction for the procedural default. Well, it all depends on the circumstances of the case. In the circumstances of this case, I think it *would* be disproportionate. There are questions going to the merits. I have already referred to the fact that it is difficult to see how an individual such as the fifth defendant may have responsibility for what the bank did or did not do in relation to its lending and other policies and that might be something which would have to be dealt with hereafter.

15 The position of the fifth defendant is there has been no other non-compliance. This relevant for the purposes of rule 3.9 of the Civil Procedure Rules, because that requires that the court take into account compliance with rules and Practice Directions and orders in considering whether to give relief from sanction.

16 Mrs Johnson for her part says that she opposes this application because of all the problems that she has had to suffer as a result of what she claims to be the fault of the bank and, in those circumstances, she says there should be no relief from sanction.

17 In my judgment, this is a case where there is no glory attached to the fifth defendant's circumstances but it would, indeed, be disproportionate for the court to refuse permission to

validate the acknowledgement of service filed on 26 January and to allow a short time for the fifth defendant to file and serve a defence in circumstances where not only the fifth defendant but also the first and second defendants wish to make an application to strike out the claim and have come here today for that purpose, so I will grant the relief from sanction sought and require that the fifth defendant file a defence if the claim is not otherwise dealt with in the meantime.

LATER

18 These are three applications brought by the first, second and fifth defendants respectively all seeking the same relief. That is to strike out the claim brought by the claimant against them; alternatively, for reverse summary judgment against the claimant.

19 The claim itself in which these applications are made was commenced by a claim form dated and issued 22 August 2022 against five named defendants. I have earlier this morning dealt with the case of the third defendant. It is no longer concerned in these proceedings. There is no attendance or representation on the part of the fourth defendant and so this judgment does not deal with the position of the fourth defendant. However, the first, second and fifth defendants have made the applications to which I have referred.

20 The claim is stated on its cover to be for:

> "Compensation required for grave miscarriage of justice, damages for consequential losses, loss of trading, unlawful conviction and subsequent impact on health and business. See attachments. Overturn of unlawful conviction as previously intended to follow.
>
> THIS APPLICATION IS TO REQUEST THAT THE COURT AND MOJ REMEDY AND INTERVENE BY NEGOTIATED SETTLEMENT PRIOR

TO ISSUING OF PROCEEDINGS AS HAS BEEN ATTEMPTED ON SEVERAL OCCASIONS PREVIOUSLY.

Sadly, every attempt made was prevented by third party interference."

Then, at the bottom of the page:

"Value: £100 million as of 2022 based on £93 million in 2021 as per letter of intent. Please see attachments. This represents the global total to be recovered from the several defendants as listed under particulars of claim on p.3 of this form."

21 The claimant gives her names at the top of the claim form and gives her dress as "Care of Kings Solicitors, 24 Fore Street, Ivybridge, Devon." On the second page of the claim form she is asked to state whether her claim includes any issues under the Human Rights Act 1998 and she has ticked "Yes". Then she has been asked to say whether the particulars of claim are attached or to follow and she has ticked "Attached". The statement of truth attached to the claim form is signed by Mrs Johnson as claimant dated 15 August 2022. Then underneath that the name of her legal representative's firm is stated to be Kings Solicitors, 24 Fore Street, Ivybridge, Devon, and the email and telephone numbers of that firm or individuals of that firm are then given.

22 There then follow some seventy-two pages of attachments. They do not constitute a recognisable form of particulars of claim under the rules. They do contain a number of interesting documents, including: a letter of intent which is four pages long; a witness statement by Mrs Johnson of about nine pages; a chronology of about twelve or thirteen pages; and some email correspondence; and there is also a document of about three pages which is headed "Precis of issues," prepared by Mrs Johnson's solicitors. Although she appears to have been represented when this claim was issued, on 2 September last year she filed and served a notice of change of solicitor whereby she was to act in person going

forward, although I have to say that curiously that document does not state her address for the purposes of the rules. It simply states that the address to which documents about this claim should be sent i.e. for the future is the same address, namely, Kings Solicitors in Fore Street in Ivybridge. That, of course, is not on the face of it compliant with the rules, which require that she give either the address of another firm of solicitors or, if she is acting in person (as she is), her own residential business address. But she has not done that.

23 More to the point, it is clear from the court file, as we discovered this morning, that this claim form was then served by the court staff posting it by first class post to the five defendants. Indeed, that is the reason why one of the defendants, the third defendant, is no longer involved in this claim, because service to the address to which it was sent did not constitute service for the purposes of the law and, therefore, that defendant had not been served.

24 At all events, therefore, we have this claim which sets out a brief summary as claim for compensation for various serious wrongs which have been alleged to have been done to the claimant. Then there are a number of documents which set out some of the background and some of the details on which the claimant relies. However, there is no document which can properly be regarded even remotely as a particulars of claim document in the ordinary, practical sense.

25 It is on that basis, therefore, that the three defendants, first, second and fifth, have made their application to strike out this claim. These are supported, as required by, evidence on the part of each of those three defendants. The claimant has not put in any evidence in reply, although I have seen a number of emails which the claimant has written to the court. I am

not sure whether the defendants have seen that email correspondence but I do not think, in the circumstances, it makes any difference.

26 The form of application made in each case is, in the alternative, either to strike out the claim or for reverse summary judgment. The statutory test for the first of those, to strike out a claim, is set out in CPR 3.4(2) which says:

> "The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order."

27 I might also mention that it is relevant that CPR Practice Direction 3A provides in para 1.4:

> "The following are examples of where the court may conclude the particulars of claim fall within rule 3.4(2)(a):
>
> (1) those which set out no facts indicating what the claim is about, for example, 'Money owed: £5,000';
>
> (2) those which are incoherent and make no sense;
>
> (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant."

As I say, those are simply examples given in the Practice Direction.

28 The test to be applied for summary judgment is set out in rule 24.2 which says:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
>
> (a) it considers that –
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

29 I only add that in relation to an application for summary judgment the burden of showing that the requirements are satisfied obviously lies on the applicant.

30 In the present case, the applicants say that the claimant has failed to set out any reasonable grounds for bringing or defending the claim, that the particulars of claim are an abuse of the court's process or are otherwise going to obstruct the just disposal of the proceedings and, thirdly, that there has been a failure to comply with rules, Practice Directions or court orders. So they claim a strike-out under all three limbs of rule 3.4(2). They refer to a number of rules under the CPR, and, in particular, to the requirement of pleading a particulars of claim under rule 16.4(1)(a). There is a need, as the rule puts it, for a concise statement of facts on which the claimant relies. In rule 22.1 there is a need for a statement of truth to verify the particulars of claim and the court may strike out a statement of case that is not verified by a statement of truth. I also note in passing, though I do not think it is as important as the other matters, that Practice Direction 16 requires that a claim form must include the address at which the claimant resides or carries on a business even if the claimant's address for service at that time is the solicitors' address and that is also this case. Strictly speaking, under para.2.5 of that Practice Direction the claim form should not have

been served until a residential or business address was supplied but the court staff did not know that and it went out anyway.

31 I also should mention, in passing at least, that para.8.2 of the Practice Direction to Part 16 sets out further requirements for specifically pleading certain facts including allegations of fraud, the fact of any illegality, details of any misrepresentation that is alleged and, where it is alleged that somebody knew something or had notice of it, exactly what it is. Those are very important, especially in a claim of this kind where the claimant says that she has suffered such grievous wrongs including fraud.

32 There is also a paragraph, para.14 in Practice Direction 16, which requires that when a claimant, as here, relies on infringements of the European Convention on Human Rights that those particular provisions or rights under the ECHR be identified specifically in the claim form.

33 I note again in passing - it is not very important but it is there - that in her notice of change of legal representative on 2 September she did not give going forward an address for service which was her residential or business address. This is again another non-compliance with the rules. Of course, I recognise that the claimant is a litigant in person but, as I explained during the course of the argument, there is no special system for litigants in person. We do not have two sets of rules, one for those with lawyers and one for those without. There is a recent decision of the Supreme Court, a case called *Barton v Wright Hassall* [2018] 1 WLR 1119, where the majority of the court (for whom Lord Sumption spoke) said in para.18:

> "At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often

> justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules... The rules do not in any relevant respect distinguish between represented and unrepresented parties."

34 Lord Briggs who spoke for himself and for Lady Hale, who were in the minority, said this at para.42:

> "If, as many believe, because they have been designed by lawyers for use by lawyers, the CPR do present an impediment to access to justice for unrepresented parties, the answer is to make very different new rules (as is now being planned) rather than to treat litigants in person as immune from their consequences."

So, in my judgment, there are no applicable special rules for litigants in person in relation to the matters to which I have referred about pleading your case and giving your address and so on.

35 I turn to consider the rules as applied to the facts of this case. First of all, under rule 3.4(2)(a), does this claim, or do these documents, disclose a reasonable basis for bringing the claim? First of all, these documents do not identify the particular causes of action. Secondly, they do not identify particular defendants as responsible for those particular causes of action. Thirdly, they do not provide a clear statement of the facts relied on in the case of each defendant which is said by the claimant to lead to liability, nor do they state which defendant, if any, caused the loss which is complained of. In my judgment, therefore, these particulars simply do not disclose a reasonable basis for bringing the claim.

36 Secondly, is the claim an abuse of the process or otherwise an impediment to the just disposal of the claim? First of all, because of the problems that I have referred to in the

particulars of claim, the defendants are literally unable to plead adequately to the particulars of claim. They could simply deny everything but that would assist no one because no one would know what was in issue but, more importantly, and I think I said this in the argument, the court would find itself therefore entirely unable to judge whether or not the claim is proved, because it does not know what is alleged, so there is a real impediment there to the just disposal of the claim.

37 It is not entirely clear whether the claimant in making this claim hoped to be able to demonstrate that the criminal conviction which she underwent was wrong and therefore to overturn it but. First of all, I think she is now aware that the civil court has no jurisdiction to overturn a criminal conviction. That can only be done by the relevant criminal court or Court of Appeal. However, in any event, to make a finding which was inconsistent with the criminal conviction would be a collateral attack on the prior decision of the criminal court and that is something that the civil court cannot do either.

38 Thirdly, there is another problem with these particulars of claim under this heading. That is that it is clear from the claim form that the claimant intends to pursue other defendants for the same allegations, and that makes it impossible at this stage to deal with the claim and justly to dispose of it.

39 Then there is the third head, rule 3.4(2)(c): has there been a failure to comply with rules and Practice Directions? Yes, there has. There has been no concise statement of facts as required by rule 16.1. There has been no compliance with the Practice Direction, para.8.2 dealing with specific kinds of allegations. The particulars of claim do not contain the statement of truth that is required by Part 22 and, for what it is worth, though it is a minor

detail, the claimant has also not complied with the rules on giving her address. There are therefore breaches which fall under all three of the heads.

40 Having tried to read the seventy-two pages more than once, I have to say that I am well aware that the claimant claims to have suffered enormously as a result of what has happened. But I am just completely in the dark as to which defendant did which bit and what each is supposed to be responsible for and how and when it happened. There are all sorts of other problems with this claim. There are also problems with particular defendants. I do not need to go into any of that. In my judgment, these particulars of claim cannot stand and must be struck out under rule 3.4(2) and, therefore, this claim is at an end.

41 In these circumstances, it is not necessary for me to go on and deal with the application in the alternative for summary judgment but I should say that had I not struck the claim out, it seems to me that the strength of the position of the defendants was such combined with the evidence which they have filed that it would have been an appropriate case in which to grant reverse summary judgment.

42 I end my judgment by saying this. As I have said to the claimant during the course of the argument, the court has no power to tell people to talk to each other and negotiate settlements. It does have the power to deal with complaints which are made to it which comply with the rules and enable the just disposal of a dispute between parties. However, in order for that to happen, there has to be a proper pleaded claim which the defendants can plead to, can say what their defence is and so that the judge hearing the case can decide whether or not the allegations have been proved but that is not this case. For all these reasons, therefore, this claim is struck out so far as concerns the first, second and fifth defendants.