Neutral Citation Number: [2024] EWHC 1118 (Ch)

Case No: BL-2024-BRS-000005

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

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 13 May 2024

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

JOHN O'DRISCOLL	**Claimant/ Applicant**
- and -	
VINCENT RAYMOND CLAYTON (JUNIOR)	**Defendant/ Respondent**

- -
- -

Michael Clarke (instructed by **Berry Redmond Gordon & Penney**) for the **Applicant**
Christopher Jones (instructed by **Horwich Farrelly Ltd**) for the **Respondent**

Hearing dates: 9 May 2024

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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 revised version as handed down may be treated as authentic.

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This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 am on 13 May 2024.

HHJ Paul Matthews :

Introduction

1. On 9 May 2024 I heard an application by notice dated 1 May 2024 by the claimant in this action. The applicant sought (1) a declaration that he had complied with paragraph 11 of the order made on 18 April 2024 by HHJ Berkley, "save the service of the certified copy of the Deed Poll", and (2) either (a) an extension of time for compliance with, or (b) discharge of, paragraph 11 of that order so far as related to the deed poll referred to.

2. The application was supported by the affidavit of Steven Mackie, the claimant's solicitor, made on 1 May 2024, that of Gavin Wall, a solicitor not acting for the claimant, made on 2 May 2024, that of the claimant made on 3 May 2024, that of Liviu Cosmin Bostan, a friend of the claimant, made on 3 May 2024, and the second affidavit of Steven Mackie, made on 7 May 2024. At the end of the hearing, because of shortness of time, I announced that I would vary paragraph 11 of that order so as to delete the reference to the deed poll referred to. But I said I would give my reasons in writing subsequently. This judgment contains those reasons.

Background

3. The application arose in the context of a claim begun by claim form issued on 21 March 2024. The claim seeks declaratory and other relief in relation to, and specific performance of, a contract for the sale and transfer of shares in a company called Caddicks Limited. However, on 18 March 2024 (so before the claim form was issued), the claimant without notice to the defendant sought an interim freezing injunction and other interim relief against him. On 20 March 2024, I granted the relief sought over until 28 March 2024. On 27 March 2024 HHJ Berkley by consent adjourned the hearing listed for 28 March 2024, and extended the order to a hearing to be fixed on the first available date after 11 April 2024. In the event that hearing took place on 18 April 2024, again before HHJ Berkley. On that occasion the judge by paragraph 3 of his order continued the freezing and other injunctions.

The order of 18 April 2024

4. In addition, however, paragraph 11 of the order of 18 April 2024 (sealed 24 April 2024) provided as follows:

> "By 4 PM on 9 May 2024, the Claimant shall serve on the Defendant's solicitors certified (by name, address and occupation) copies of his passport (with part of the passport number redacted if the Claimant desires), drivers licence (with part of the number redacted if the Claimant desires), a recent (within the last three months) utility bill or bank statement (containing the Claimant's address given in these proceedings) and the deed poll pursuant to which he changed his name to the name he has used in these proceedings and, in the event that he fails to do so, the relief granted under paragraph 3 above shall be discharged."

It will be seen that the order contained a significant sanction for non-compliance, namely the discharge of the interim injunctive relief already granted.

5. In an affidavit made on 10 April 2024, the defendant gave evidence that he met the claimant for the first time in February 2023 in Warrington. He said that on that occasion the claimant told him that his name was John Connors, and that he was visiting from the USA. He further stated that, after the present proceedings were served upon him, his solicitors made enquiries regarding the claimant's identity and address.

6. The results of these enquiries were put in evidence in an affidavit of Adam Marriott also dated 10 April 2024. According to Mr Marriott, the claimant went "by the names of John O'Driscoll, John O'Connor and John Connors". The defendant's affidavit also said that on 5 April 2024 the claimant's solicitors confirmed that the claimant's previous name was "O'Connor" but did not address the name of "Connors". The defendant said that he found it "shocking" that the claimant had brought legal proceedings, seeking injunctive relief, "without informing the Court of such facts regarding his correct address and identity".

7. The claimant responded to that evidence in an affidavit of 16 April 2024. In that affidavit he said that he was born John O'Connor, but it was often anglicised to Connors, and he was happy to use that name. However, he had changed his name to O'Driscoll by deed poll. He said he was "currently in the US on business". Later in his affidavit he said that he "most certainly [did] not permanently reside in the USA although [he was] currently working in the USA". He also said that he had "no permanent right to reside in the USA … and the UK [was his] home…"

8. No transcript or note of the judge's reasons for including paragraph 11 of the order exists, and neither of the counsel then representing the parties was before me on this application. However, the claimant's solicitor, Mr Mackie, was present on both occasions, and on instructions Mr Clarke, for the claimant, told me that it was Mr Mackie's recollection that the then counsel for the defendant had asked for evidence of the claimant's identity, on the basis of the defendant's expressed concerns. Apparently, there was no objection by the claimant to providing that evidence, and so the judge made the order at paragraph 11 which is set out above.

9. By letter and email dated 23 April 2024, the claimant's solicitor sent to the defendant's solicitor copies of the claimant's passport, driving licence and bank statement (dated 4 February 2024). The copies attached to the email were of course scanned, whereas the letter enclosed the certified copies required by the order of 18 April 2024. Before me, Mr Jones for the defendant accepted that the obligation imposed upon the claimant by paragraph 11 of the order had been satisfied in relation to all but the deed poll. Indeed, he said that no useful purpose would be served by the court's granting a declaration to that effect, as sought by the first limb of the application notice. I agree. No declaration is necessary. This is a matter as between the claimant and the defendant, and it was not suggested to me (for example) that any third party

needed a declaration in order to satisfy itself that the order had been complied with in relation to three of the four items required.

10. The question of the deed poll is another matter. It appears from the claimant's affidavit made on 3 May 2024 that, before leaving for the USA, he had tried to find the deed poll, but had been unable to locate it. It was not with his passport, and neither was it in his house or his garage "lock up" in Gloucester. Having received the order of 18 April 2024, he asked his friend Mr Bostan to go to both his house and his garage, and to carry out a thorough search for the deed. Mr Bostan made an affidavit dated 3 May 2024, deposing to the fact that on 24 April 2024 he went to both the house and the "lock up" and "checked every single paper at each location for the Deed Poll made by him and I certain it is not at either location" [sic].

11. In addition, the claimant says that his ex-partner recently sold her house and moved out. Mindful of the possibility that the deed poll could have been left at her house, along with other papers belonging to him, he asked his ex-partner to look at the papers she took away from her house. He said that his ex-partner (who he said was unwilling to get involved in this litigation) told him that the deed poll was not with those papers. The claimant said he further arranged with Mr Bostan that the latter should collect what remained of his belongings left at his ex-partner's house and take them to his garage lock up.

12. It was in these circumstances that the claimant then applied for an order varying paragraph 11 of the order of 18 April 2024 by removing the reference to supply to the defendant of a certified copy of the deed poll. Alternatively, the claimant sought an extension of time within which further searches could be made for the missing document, the claimant returning from the USA for this purpose. The defendant (as respondent to this application) was prepared to agree to the latter, but not to the former.

Written evidence

13. I have referred to a number of witnesses who have made affidavits in this case. made an affidavit on 10 April 2024. None of the witnesses was cross-examined at the hearing. Indeed, there was no suggestion by either side that there should be any cross-examination. Accordingly, although I am not obliged to accept all the evidence presented (because the witnesses may for example be mistaken), and I can weigh it up, for present purposes I am not at liberty to *disbelieve* the evidence contained in the affidavits, unless I consider that it was manifestly incredible in light of all the circumstances: see *Long v Farrer & Co* [2004] BPIR 1218, [57], which was applied in *Coyne v DRC Distribution Limited* [2008] EWCA Civ 488, [58]. No-one suggested that I should do so here. The evidence I have referred to is believable, and I see no reason here not to believe it. I may say in particular that Mr Jones submitted that the claimant's own written evidence in his second and third affidavits was inconsistent, but I do not agree. To my mind, it is quite coherent.

The deed poll

14. I should say something about the circumstances in which the deed poll came to be made. It appears from the claimant's affidavit made on 3 May 2024 that, on 17 February 2021, he went with his former partner (then Bridget O'Connor) to the offices of a solicitor, Gavin Wall, so that she could make a deed poll on changing her surname to O'Driscoll. The claimant's evidence was that, having seen his then partner make her deed poll, he asked if he could make one too. Mr Wall, the solicitor, in his affidavit dated 7 May 2024, confirmed the evidence of the claimant.

15. Mr Wall said that, since all that would need to be changed was the first name ("Bridget" to "John"), he made the change, printed out the amended document, and the claimant executed it and took it away. Mr Wall did not charge the claimant for this. However, it appears that the amendment to the original deed poll was not saved to the computer, and that was why Mr Wall did not have even a "soft" copy of that relating to the claimant. Yet his express evidence is that the deed poll for the claimant's partner (which is exhibited to his affidavit) was otherwise exactly the same as that for the claimant.

16. That deed poll, so far as material, provided as follows:

> "I ABSOLUTELY give up and forswear the use of my former name of Bridget O'CONNOR and assume, adopt and determine to take and use the forename of Bridget and the surname of O'DRISCOLL in substitution for my former forename of Bridget and my former surname of O'CONNOR.
>
> I SHALL at all times hereafter and for all purposes use and sign only the said name of Bridget O'DRISCOLL as my name and not my former name of Bridget O'CONNOR.
>
> I AUTHORISE AND REQUIRE all persons at all times to designate, describe and address me by my adopted name of Bridget O'DRISCOLL."

17. There is no single draft form of deed poll used for evidencing a change of name. It is necessary only to observe that this version makes the necessary points for such a deed. They are, first of all, that the maker of the deed declares that she has given up the use of her old name, secondly that she has adopted, and in future will use only, the new name, and thirdly that she asks everyone else to call her by her new name.

18. A deed is the most formal document which an ordinary citizen may execute under English law. It now requires the formalities set out in the Law of Property (Miscellaneous Provisions) Act 1989, section 1. A deed *poll* is one which has a straight (or polled) edge, as opposed to a wavy or indented edge (and which is for that reason known as an "indenture"). An *indenture* is executed by two or more persons, and is made in two or more parts. Each party keeps one part. The indentures fit together to show that they come from the same single original document. By contrast, a deed poll is executed by one person alone. It is a unilateral document. It does not fit with any other document, and needs no indenture.

19. In addition to the evidence of the claimant and Mr Wall, the claimant's solicitor made enquiry of HM Passport Office, in relation to passports issued to the claimant between 2003 and 2021. He exhibited the resulting response (dated 2 May 2024, but attached to an email to the claimant's solicitor timed at 15:45 on 3 May 2024) to his affidavit of 7 May 2024. This confirmed that passports issued to the claimant in 2003, 2004, 2006 and 2018 were all issued in the name of "John O'Connor".

20. However, the passport issued to the claimant on 31 March 2021 was issued to him in the name of John O'Driscoll. The letter stated that the application for the 2021 passport contained the following:

> "Change of Name by deed poll dated 17/02/2021, deed confirms name change from John O'CONNOR to John O'DRISCOLL for all purposes. Evidence of name usage seen; all details agreed".

Unfortunately, it appears that no copy, or even scan, of the deed poll was retained by HM Passport Office. There is no direct evidence, but it appears that the 2021 passport was the basis of the application for an amendment to the name of the claimant's driving licence issued by DVLA on 16 December 2022. Unlike the passport, but like the bank statement, the driving licence shows the claimant's address as his Gloucester house.

21. On the evidence before me, I am entirely satisfied that in February 2021 the claimant executed a deed poll evidencing the fact that the claimant was formerly known as John O'Connor, or as John Connors, but was now known, and, since at least February 2021, had been known, as John O'Driscoll. I am further satisfied that that document has not up to this time been found. However, a number of other documents have been produced on the basis that there was such a deed. These include a new passport and a new driving licence (both official documents), as well as a bank statement in the new name for the claimant. The driving licence and the bank statement shows the same address as the claimant professed previously to have under his former name. In these circumstances, I am in no doubt that the person who commenced this legal action under the name of John O'Driscoll was formerly known as John O'Connor.

The law relating to a change of name

22. In English law, the role of a deed poll in the changing of a person's name is limited. At the hearing, I referred to the decision of the Court of Appeal in *D v B* [1979] Fam 38. In that case a woman had taken her husband's name on marriage, but subsequently left her husband (by whom she was already pregnant) to live with another man. She changed her surname to that of the latter, and recorded this by deed poll. When her child was born, the birth was registered under her new surname, although her former husband was registered as the child's father. (It appears that she later married the second man, having already assumed his name.)

23. There was subsequently a dispute between the father and the mother as to access to the child. The judge made an order which relevantly provided that

the mother should not allow the child to be known by any surname other than that of the father and should take all steps necessary to ensure that the deed poll and the register of births were amended. The mother appealed, and the Court of Appeal, consisting of Ormrod and Stamp LJJ, allowed the appeal.

24. Ormrod LJ (with whom Stamp LJ agreed) said, at 46 B-C:

> "Her [the mother's] present name is B., but in order to keep one's mind clear it is, perhaps, B worth observing that the name B. is hers purely by convention; she has married the co-respondent, Mr. B. and it is the normal convention in this country but it is no more than that, that she takes the name B. and is thereafter known as B, The deed poll had simply stated that that was how she wished to be known before her marriage. It is common ground that a surname in common law is simply the name by which a person is generally known, and the effect of a deed poll is merely evidential; it has no more effect than that. This part of the order is unenforceable and, therefore, should not have been made."

25. This decision is of course concerned only with the law relating to the changing of surnames, as indeed is the present case. The position concerning the change of a forename or given name (in the past, often referred to as a Christian name) may be different. In *Re Parrott* [1946] Ch 183, 185, Vaisey J said that "Nobody can alter or part with a Christian name by deed poll." However, according to the judge, this rule appears (at 186-87) to be the consequence of Christian baptism (also known as "christening") with a particular given name, and therefore cannot apply to a person who has not been baptised in the Christian faith. As to whether the statement of Vaisey J is still good law today, I leave to another case in which the point arises.

26. For the avoidance of doubt, I should also make clear some further limitations on this judgment. I am not concerned here to deal with the law on changing details of a birth, marriage or death registration. Each of these has its own rules in the applicable legislation. I also make clear that my discussion of the relevant English law is confined to adults. The changing of children's names usually raises additional child-law issues: see *eg Dawson v Wearmouth* [1999] 2 AC 309, HL. Finally, and simply in passing, I observe that, subject to exceptions and express ministerial exemption, there was a prohibition on name changes by aliens living in Britain from the First World War until 1971, and that there were special rules for everyone during the Second World War. But these have all now long since gone.

27. The important point to derive from the decision of the Court of Appeal in *D v B* is that the deed poll is merely *evidence* of the change of name. The change of name itself occurs because the person concerned wishes to be called by the new name and invites everyone else to do so. A deed poll is not the only kind of evidence that may serve to show that a change of name has occurred. It is common enough also to use a statutory declaration for this purpose. On the other hand, when two people are married, or enter a civil partnership, and one of them decides to change a previous surname to that of the other person, there is no deed poll or statutory declaration to evidence the change. In particular,

the marriage registration certificate is not *of itself* evidence of a change of name by anybody.

28. Instead, and as the Court of Appeal said in *D v B*, the convention at that time in England was for a woman on marriage to change her surname to that of her husband. But this was only a convention then, and not a legal requirement. That still often happens today, but it is certainly not a universal practice. There are cases where the husband has changed his surname to that of the wife, and cases where both parties have changed their surnames to a different name common to both of them. Civil partners commonly retain their existing surnames.

29. A deed poll evidencing a change of name can be made into a public document by "enrolling" it (for a fee) in the enforcement section of the King's Bench Division of the High Court, at the Royal Courts of Justice in London. Some commercial and other organisations will not accept a deed poll as sufficient evidence of a change of name unless it has been enrolled. In law, however, a deed poll that has not been enrolled in the High Court is still valid, and evidences a change of name just as much as one that has been enrolled. Enrolling the deed does not give it any further or better legal quality. It simply makes it easier for the public to find and to have access to it.

Discussion

30. In the present case, questions were raised by the defendant as to the correct *name* of the claimant. I emphasise that this was not a case where the parties had entered into a business relationship without ever meeting each other, and there was a question as to whether the person now bringing the legal action was indeed *the same person* as that with whom the defendant had entered into that business relationship. In the present case, the parties did physically meet and do business together. There is no doubt therefore as to the *identity* of the claimant with the person that the defendant did business with. The only question is, what shall he be called?

31. As I have summarised it, the evidence is all one way. The claimant formerly called himself O'Connor or Connors. He now calls himself O'Driscoll. The change of name is evidenced by his passport, his driving licence and his bank statement. It is also clear on the evidence that he did indeed make a deed poll to evidence the change of name. Apart from the claimant's own evidence, there is the evidence of the solicitor concerned, Mr Wall, confirming that he prepared the deed, and the letter from HM Passport Office confirming that the deed poll was seen at the time of the change of name on the claimant's passport. Unfortunately, the deed poll cannot now be found.

32. So the question is what should be done now. One possibility is to extend time for compliance with paragraph 11 in relation to the deed poll to allow for further searches. But searches have already been made, albeit not by the claimant pursuant to this order. Instead, the claimant looked before he left for America, and his friend Mr Bostan has looked in response to the order and at the claimant's request. Enquiries have also been made of the former partner.

33. In these circumstances, it does not seem to me that there is any great likelihood that the claimant, were he to return from America, would be able to find it. Then the question would simply come back to the court at that stage as to whether a variation of the order was appropriate. Given, as I say, that there is no doubt as to the identity of the claimant, it seems to me that this would simply incur expense and slow down the progress of this litigation.

34. In my judgment, the better course is to grasp the nettle and decide whether it is appropriate to delete the requirement for a certified copy of the deed poll altogether. The jurisdiction to do this arises under CPR rule 3.1 (7), which provides that

> "A power of the court under these Rules to make an order includes a power to vary or revoke the order".

35. In *Allsop v Banner Jones Solicitors* [2021] EWCA Civ 7, Marcus Smith J (with whom Lewison and Arnold LJJ agreed) said:

> "24. … It is very clear that this provision cannot generally be used to vary or revoke final orders (that is, orders that give rise to a *res judicata* estoppel) and equally clear that even interlocutory decisions will generally only be varied or revoked where either *(a)* there has been a material change of circumstance since the original order was made or *(b)* where the facts on which the original decision was made were (innocently or otherwise) misstated: *Tibbles v SIG plc*, [2012] EWCA Civ 518, [2012] 1 WLR 2591'."

36. Paragraph 11 of the order of 18 April 2024 is not a final order giving rise to a *res judicata* estoppel, but an interlocutory order. Since it was made, circumstances have indeed changed. First, a search has been carried out for the deed poll at the claimant's house and his "lock-up", and enquiries have been made of the claimant's former partner, in each case unsuccessfully. Secondly, Mr Wall has made an affidavit confirming that he prepared the deed poll of change of name which the claimant executed in February 2021. Thirdly, HM Passport Office has confirmed that the deed poll was produced to it at the time of the renewal of the claimant's passport, and the name changed to the claimant's current name. From an evidential point of view, the deed poll itself no longer serves a particularly useful purpose. The information it could give has in substance already been given. In my judgment, in the circumstances the court could exercise the power in rule 3.1(7) to delete the requirement for a certified copy of the deed poll.

37. Mr Jones, for the defendant, urged me not to do this. He pointed out that this was a case in which the claimant had sought and obtained a freezing injunction against the defendant, and that, as he put it, a freezing injunction "raises the temperature". He pointed out that the defendant's solicitor had raised the question of the claimant's name and place of residence at an early stage, but that it had taken some time to obtain confirmation of the claimant's change of name, and the circumstances in which it occurred. Mr Jones also complained that passages in the second and third affidavits of the claimant were inconsistent, although, as I have already said, I do not think they were.

38. Mr Jones said that the changes of name, the difficulty of establishing where the claimant was resident and the other matters complained of went to the question whether a freezing order would have been granted in the first place, and were also relevant to a possible application by the defendant for security for his costs. His submissions were clear, concise and to the point, and he said everything that could properly be said. But I am afraid that I do not accept them.

39. I accept that the question whether the claimant is resident in the USA or in this jurisdiction is important in relation to any application for security for costs. The defendant can make his application and that question can be determined. But the order to supply a certified copy of the deed poll is irrelevant to this. Whether such a copy is supplied or not cannot affect whether the defendant will be able to obtain an order for such security. The only point of the deed poll was to give evidence of the change of name of the claimant. But that has been achieved by the combination of the supply of copies of the passport, driving licence and bank statement, together with the evidence of HM Passport Office that they saw that the claimant had indeed changed his name.

40. If it mattered whether the deed poll ever was executed in the first place, then there is the evidence of Mr Wall as well as that of the claimant and the Passport Office. Moreover, I cannot accept that any question raised as to the correct *name* of the claimant (as opposed to whether he was the person having the alleged cause of action or not) would have made any, or any significant, difference in deciding whether to grant a freezing injunction in the first place. In fact I was the original judge, though I do not think that that in itself matters. In my judgment, there is no good reason here for the court not to exercise the power under rule 3.1(7), and every good reason to do so.

Conclusion

41. It was for these reasons that I announced at the end of the hearing on 9 May 2024 that I would make an order varying paragraph 11 so as to delete all reference to a certified copy of the deed poll.