Neutral Citation Number: [2024] EWHC 3089 (Ch)

Claim No. PT-2024-000275

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
PROPERTY, TRUSTS & PROBATE LIST (ChD)

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

19/11/2024

Before:

THE HONOURABLE MR JUSTICE MILES

BETWEEN:

MARTIN RICHARD WALSH

Claimant

- v -

(1) MELANIE TRUDY RICHARDSON
(2) CHRISTOPHER GEOGHEGAN

Defendants

THE CLAIMANT appeared as a litigant in person
THE FIRST DEFENDANT did not attend and was not represented
NASTASHA HAUSDORFF (instructed by **Law Lane Solicitors)** appeared on behalf of **the Second Defendant**

APPROVED TRANSCRIPT

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Mr Justice Miles:

1. There is an application that I recuse myself from dealing with an application made by Mr Walsh on 1 July 2024. That application was made in proceedings concerning a property at 35 Timber Pond Road, Rotherhithe, London SE16 1AG ("**the property**"). The application of 1 July 2024 in essence was for an interim declaration that the second defendant has no defence to the claims brought by Mr Walsh and that there should be an order for sale of the property.

2. The proceedings concern the property. Mr Walsh relies on a charging order made in 2013 in the Lambeth County Court and an assignment which was made to him by the party in whose favour that charging order was granted, the assignment being in 2017. Mr Walsh says that, on the basis of the charging order, the property should be sold.

3. The second defendant has been in possession of the property for more than 12 years. He has been joined by the claimant as a party to the proceedings. Mr Walsh has explained that that is in order to ensure that there be vacant possession for the purposes of the sale. The second defendant alleges that he has an interest in the property. The reasons for which the second defendant says he has an interest are disputed by Mr Walsh.

4. This is the first hearing in relation to this case which I have been involved with. On 15 November 2024 Mr Walsh issued an application that I should recuse myself. The order he seeks is as follows:

> "To recuse Miles J as he is evidenced as being conflicted and has, on the balance of probabilities, acted corruptly in the originating case acquired by Dueda Limited (the claimant's company) so he is excused from hearing the remote application on 19 November 2024 with due obvious conflict (sic)."

5. In box 10 of the application notice Mr Walsh says this:

> "I allege the court is infiltrated by a parasitical corruption element which this application first seeks to address on the interim basis: the heads of the judiciary are compromised and there is a genuine risk of third party influence and coercion in this case and the others I am involved in."

6. In support of the application Mr Walsh has relied on a witness statement of Paul Millinder dated 25 September 2023 (which I have read with care) and the exhibit to that statement.

7. In the body of the application notice Mr Walsh refers to the proceedings brought by Dueda Limited which has acquired rights to sue Middlesbrough FC and others. Those rights were assigned to Dueda by Mr Millender.

8. One of the matters relied upon in support of the recusal application is that in September 2023 I made an order concerning three applications made by Dueda concerning the trial of fraud allegations. By the order of 20 September 2023 I ordered that the matter should be heard in person. I did not think that the grounds which were given for the application that it be heard remotely were justified. I also noted that the allegations of

political interference and that the claimant could not rely on the courts in the UK to act fairly were wholly without merit.

9. In the course of his submissions today Mr Walsh relied on the witness statement of Mr Millender, which I have read in full. I explained that it is not the practice of the courts on applications of this kind either to allow the witness to give oral evidence or for a party to read out a witness statement in full. I note that the witness statement of Mr Millender is some 21 pages in length and it would probably have taken a great part of the time allotted to this hearing for it to be read out. I assured Mr Walsh that I had read the statement carefully, as is the case.

10. Mr Walsh said in his submissions that some 23 UK judges have been covering up a massive fraud case and those 23 judges, he said, include me. He complained that in the Dueda proceedings there had been no mention by any of those judges of the rules of insolvency set-off. He said that it was because of his involvement in that case that he had been targeted and in particular that he had been targeted because he had, as he put it, "stood up to you lot." He said that the reason he had not so far obtained judgment in his favour in the present case concerning the property was because he had been targeted in that way.

11. What Mr Walsh did not mention was that Mr Millender is the subject of an order under section 42 of the Senior Courts Act 1981 which enables orders to be made in relation to vexatious legal proceedings.

12. There is a very long and complex history to the proceedings brought by Mr Millender against Middlesbrough Football Club, which are the proceedings which have been, according to Mr Walsh, assigned to Dueda.

13. I turn to the recusal application. The first question is whether the court has any actual conflict. Mr Millinder's witness statement and the evidence in this application made by Mr Walsh appears at times to suggest that I (and various other judges) have some interest in the defendants to the Dueda proceedings. There is absolutely no evidence advanced for that suggestion and it is frankly ridiculous.

14. The next question is whether a fair-minded, properly informed observer would suppose that I am incapable of fairly and properly hearing the case concerning the property. I am firmly of the view that a fair-minded observer would not think that I was incapable of hearing the case properly. The allegations of corruption or cover-up of a massive fraud by 23 UK judges are wholly without evidential basis. Much the same allegation was made by Mr Millender when the Attorney General obtained a section 42 order against him.

15. Mr Millender, and indeed Mr Walsh, appear to be convinced that they are the victims of a cover-up but there is, as I say, not a scintilla of evidence to support that assertion. Moreover, Mr Walsh did not articulate any real basis on which it would be suggested that I could not fairly hear this present case. This case has nothing to do with the other proceedings. The closest he came is (as explained already) to say that he has been targeted because he has "stood up to the UK judiciary." There is absolutely nothing in that allegation.

16. I have had no previous dealings with the present case and I am in a position to consider the application of 1 July 2024 fairly and properly and that is what I propose to do.

17. I add that this application for my recusal is totally without merit. It is completely inappropriate for litigants to seek to select their judges by making applications of this kind, and include in them wholly unsubstantiated allegations of bias and corruption. It is of course right, in a proper case where there is some evidential basis for it, that a litigant should be able to raise a recusal application against a judge. But this is a case in which there is absolutely no evidential basis for what has been alleged. I therefore certify the application to be totally without merit and dismiss it.

(Following further submissions)

18. There are two applications before the court by the claimant seeking relief against the second defendant. The first is dated 1 July 2024 and the second 10 October 2024.

19. Before turning to the details of the applications it is helpful to say something about the dispute.

20. It concerns the property. The first defendant is shown on the register of title at the Land Registry as the owner of the property. The claimant's case is that the first defendant sold the property to a Ms Cohen in 1989 for some £200,000.

21. The claimant says that on 6 November 2006 there was an assignment from Ms Cohen to a company called Fieldgold of Ms Cohen's claims against the first defendant, including the right to have the property transferred (in other words, his case is that under that assignment Fieldgold became entitled to the property).

22. In June 2009 a bankruptcy petition was presented against Ms Cohen and on 21 August 2009 Ms Cohen was adjudged bankrupt.

23. On 11 August 2010 a default judgment was entered in favour of Fieldgold against the first defendant in the Northampton County Court.

24. On 5 March 2013 an interim charging order was made by Lambeth County Court in respect of the first defendant's interest in the property in favour of Fieldgold.

25. On 6 March 2013 there was a letter from the second defendant's former solicitors saying that the second defendant had a prior interest in the property. However, the second defendant did not take part in the charging order proceedings themselves.

26. On 20 May 2013 a final charging order was made in Lambeth County Court in favour of Fieldgold in respect of the first defendant's interest in the property.

27. In 2017 there was (on its face) an assignment from Fieldgold to the claimant.

28. In 2024 the claimant commenced proceedings against the first defendant and the second defendant seeking an order for the sale of the property. The claimant also sought a money judgment for an amount of money which he claimed was due from the

first defendant by reason of her failure at an earlier stage to transfer the property to him. The claim joined the second defendant as it was said that his family had been in occupation of the property since 2011 and the claimant wanted an order for vacant possession of the property. He has claimed throughout that the second defendant is effectively a mere squatter in the property, with no right or interest in it.

29. The second defendant served an acknowledgement of service in May 2024 and a witness statement on 31 May 2024.

30. The proceedings were brought under Part 8 of the CPR.

31. The witness statement of the second defendant was served late. There was also a dispute about whether the acknowledgement of service had been within time.

32. The second defendant made an application for relief from sanctions. There was a hearing before Master Marsh on 25 June 2024, where the second defendant was represented by counsel and the claimant represented himself. Master Marsh considered the test in the *Denton v White* case and concluded that there should be relief from sanctions. In the course of reaching that decision he also considered an argument advanced by the claimant that even if the second defendant might have been able to assert any interest in the property his claims were plainly statute-barred, so that there was no point in giving relief from sanctions.

33. In order to understand that decision, I should say something at this stage about the basis on which the second defendant has claimed an interest in the property.

34. He has alleged that he historically had commercial dealings with Ms Cohen over a number of years concerning an investment in a property venture and that Ms Cohen effectively defrauded him by persuading him to provide funding for an investment and then not paying on her own commitment into the investment. He says that Ms Cohen profited from the investment opportunity at his expense.

35. The second defendant says that he brought proceedings against Ms Cohen and that he obtained a judgment from her in 2009. He says that in July 2011 he entered an arrangement with Ms Cohen for the transfer of the property to him as a way of settling his claims against Ms Cohen. He says that he has had no dealings with the first defendant and that it is indeed possible that the first defendant is in fact just an alias used by Ms Cohen. He says that he and his family have occupied the property for more than 12 years undisturbed, and that they have made substantial investments in maintaining and, indeed, improving the property and he opposes an order for sale of the property.

36. At the hearing before Master Marsh on 25 June 2024 there was a discussion, as I have said, about the Limitation Act and it is possible application. The position taken by the second defendant was that he was claiming an interest in the property, that this was not a claim under contract or anything of that kind, and that there was no applicable limitation period. The Master agreed with that submission.

37. The Master then went on to consider whether the proceedings should proceed under Part 7. He decided not to make that order but did give directions for the service of

points of claim and defence by the parties in order to identify the points in dispute and for the matter to proceed to a CMC with a view ultimately to a trial.

38. Shortly after that, on 1 July 2024, the claimant issued the first of the two applications before me. This was for: "An interim declaration pursuant to CPR Part 25.1(1)(b) that the second defendant's purported claim is beyond the statute of limitations, that he has no interest in the property." The claimant sought an interim declaration that: "The second defendant had no interest in the property and that an order for sale of the property should therefore take place."

39. After that application was issued and evidence was served in support of it, the second defendant served the points of claim which had been ordered by Master Marsh. That happened on 23 July 2024.

40. The claimant served a witness statement taking issue with the points made in the points of claim and, in September 2024, the second defendant served a document called "points of reply" responding to the points made in the witness statement of the claimant. The claimant served another witness statement on 11 September 2024.

41. There was a CMC before Master Kaye on 7 October 2024. The Master gave directions for a two-day trial to take place from 31 January 2025-13 April 2025. She gave directions for the service of witness statements for the purposes of that trial and made other directions.

42. One of the issues which has emerged from the process ordered by Master Marsh in June 2024 concerns the fact that Ms Cohen was made bankrupt on 21 August 2009. As I have mentioned, the second defendant's case is that the arrangement he made with Ms Cohen was in July 2011 (that is after Ms Cohen was made bankrupt). The trustee-in-bankruptcy was not, it appears, appointed until March 2012. The claimant contends that, by reason of the provisions of section 284 of the Insolvency Act 1986, any arrangement between Ms Cohen and the second defendant after the date of the bankruptcy order is automatically void.

43. In relation to that contention, the second defendant says that under the provisions of the Insolvency Act as they then stood, where there is a disposition of property made for valuable consideration in the period between a bankruptcy order investing in the trustee in bankruptcy where the recipient does not know of the bankruptcy, the avoidance provisions of section 284 do not apply. The claimant says that it remains necessary to show the valuable consideration was given. The second defendant accepts that but says that in the period covered by the proviso to section 284 the valuable consideration that was given by him was the agreement to settle the existing claims that he had.

44. In the second application, dated 10 October 2024, the claimant seeks "declaratory relief pursuant to CPR Part 25.1(1)(b) for a declaration on the terms sought in the claimant's draft order and for the reasons given within it and in the continuation sheet of this application pursuant to CPR 3.1(7) to set aside/vary and replace the CMC order with the directions sought by the claimant and on the terms of and for the reasons given." The continuation sheet explains that the claimant is seeking an interim declaration in following terms: "[the second defendant's] purported interest in the [property] said by him to have occurred by way of a settlement agreement with [Ms Cohen] in July of 2011 is a void disposition under section 284(1) of the Insolvency Act 1986 and that the

transaction is therefore considered automatically void from the date it was said to have effect. Consequentially, it is established with a high degree of assurance that the second defendant cannot have any interest in the property arising from an alleged judgment or claim at any time prior to making an order for bankruptcy against [Ms Cohen]."

45. As I have explained, both of the applications before the court are brought under rule 25.1(1)(b) of the CPR. The claimant relies on a statement of principles given by Richards J in *Lenovo Group Limited v InterDigital Technology Corporation* [2024] EWHC 596 (Ch) at paragraph 35. I will not set out that paragraph in my judgment but I have had regard to it.

46. I also note that in that judgment Richards J referred to two other decisions. The first was the decision of the Court of Appeal in *N v Royal Bank of Scotland Plc* [2017] EWCA 253 ("*RBS*"); the second was *The British Airline Pilots' Association v British Airways CityFlyer Limited* [2018] EWHC 1889 (QB).

47. In the *RBS* decision Hamblen LJ reviewed the authorities and came to the conclusion that it would not be appropriate to grant an interim declaration on the facts of that case. At paragraph he said 88 that: "The declarations sought were in determinative rather than advisory terms and that they only permitted of a final, rather than a temporary, answer." That was a ground for refusing relief. He went on in [89] to say that: "If [he] was wrong about that and an answer could be given, it could only happen if there was a 'high degree of assurance.'"

48. Mr Justice Butcher considered the question in the *British Airline Pilots' Association* case.

    a. He made the point at [29] that: "Where the issue is one of substantive law, which only permits the final, rather than a temporary answer, it was very difficult to see how it would be appropriate for the court to give an interim declaration."

    b. He went on to say that: "The test of 'high degree of assurance' referred to by Hamblen LJ could hardly be different, or not markedly different, from the question of whether there should be summary judgment." He also made the point [25] that: "An interim declaration in relation to the contractual rights of parties to a private law contract must be a 'very exceptional remedy.'"

    c. At [24] he made the point that: "There were real difficulties in the idea of granting an interim declaration where the effect is to circumvent the requirements of a summary judgment application without all the safeguards and requirements that would be part of an application for summary judgment."

49. I agree. An interim declaration is provisional by nature. In none of the cases which have been referred to has the court actually made an interim declaration in relation to the private rights of the parties.

50. In my judgment it is not appropriate for the court to make an interim declaration where what is in sought is essentially a final determination of rights. The proper procedure for seeking a summary determination of the rights of a party without a trial is the summary judgment jurisdiction under Part 24.

51. In the case of a summary judgment application the applicant is required to show that the opposing party has no realistic prospect of success. That is a high threshold for an applicant to surpass. It is well-established that such a procedure is not appropriate in a case where there are disputes of facts which require a trial for their determination.

52. In my view, it is clear that the relief being sought by the claimant in these two applications would be final and determinative of the rights of the parties. There is no real sense in which what is sought is only interim or provisional in nature. It seems to me plain that there are substantial questions of disputes of fact and law which require a trial in this case.

53. Among the disputed questions are likely to be the status of the purported assignment from Ms Cohen to Fieldgold in November 2006. The claimant exhibited a copy of an assignment to one of his witness statements and said that it was the basis on which Fieldgold was able to seek the default judgment and charging order in its favour. The issue with this is that the company number that appears on the document for Fieldgold is a UK Companies House number that was the same as the number first used in relation to a company with the same name in 2013. Indeed the claimant accepted during submissions that the document could not have been produced in 2006. He said that the document had come into his possession later (in other words later that 2013) and that Ms Cohen must, somehow, have provided it to him and that she had deliberately used the wrong number. That is a matter that will have to be examined in evidence in the usual way with the benefit of cross-examination.

54. The claimant says that it does not matter. He says that there is a judgment in favour of Fieldgold and that the question of its title is therefore res judicata. But at the moment there is no evidence about what documents were put before the court in 2010 or 2013 in order to justify the judgments in favour of Fieldgold. Indeed I note that the order of 11 August 2010 in favour of Fieldgold was a default judgment.

55. It seems to me that that is a matter that requires investigation at trial.

56. A second question which will have to be examined at the trial is the impact of Ms Cohen's bankruptcy (see above). I do not think that it is possible to reach a determined view on that to the summary judgment standard on this application.

57. A third question which will require examination is the second defendant's assertion that he entered into an arrangement in July 2011 with Ms Cohen. As the claimant fairly says, it would be an unusual case where an arrangement of the alleged kind is entered into with such informality and where no steps were then taken to perfect the title. There is force in those points but they need to be determined at a trial. The only fair way of deciding the disputes between the parties is through a trial process where all of these matters can properly be examined by a court with the benefit of evidence and cross-examination. It is not possible to determine them to the summary judgment standard at this stage.

58. The court has given directions for a trial to take place between January 2025-April 2025 over two days, and has given directions to the parties with that in mind. Sensible directions have been made by Master Marsh and Master Kaye. There has been no change in circumstances since Master Kaye's order. Master Kaye was not misled into

making the order that she did and there is no proper foundation for the application to seek to set aside the directions that she gave on 7 October 2024.

59. The parties should now devote their energies and attention to preparing for the trial, where this matter will be properly adjudicated. I have no doubt that the claimant will pursue the claims with the same vigour he has shown thus far. It may well turn out at the end of the day that he has a good claim to the property, but that is something which must be determined after trial and cannot be determined on the basis of interim declarations.

60. I am firmly of the view that the procedure which has been adopted by the claimant of seeking so-called "interim declarations" but what is in reality a final determination of the claims is inappropriate and is not a proper use of the jurisdiction under rule 25.1(1)(b) of the CPR.

(Following further submissions)

1. I now come to the question of costs.

2. The second defendant seeks his costs on the indemnity basis. He says that he is the successful party. He says that the applications have failed and that they were entirely misconceived, which takes the matter outside the norm for litigation of this kind. He also observes that Mr Walsh has made a series of allegations of dishonesty against the second defendant and his instructing solicitors.

3. Mr Walsh contends that costs should be in the case. He says that he disagrees with the decision that the second defendant's case is indeed fraudulent and that the conduct of the second defendant is outrageous.

4. I will make an order for costs in favour of the second defendant.

5. The general rule is that the unsuccessful party on applications must pay the costs of the successful party. There is no reason to displace that rule in the present case. I have decided that the applications have failed and that the procedure used by the second defendant of seeking interim declarations was misconceived.

6. I am not however going to order the costs on the indemnity basis. This is a case in which the claimant is representing himself. I am not convinced that he would have appreciated merely by reading terms of rule 25.1(1)(b) on its own that this was a wholly inappropriate procedure.

7. The temperature is high in this case and unjustified allegations of dishonesty have been made but I am not persuaded that it has reached such the point where indemnity costs would be appropriate.

8. I am asked summarily to assess the costs. The total amount sought by the second defendant is £8,125.20. Mr Walsh has not made any specific comments on the schedule of costs. It appears to me that the solicitors for the second defendant have properly delegated the work to the junior fee earner and that almost all the work has been done

by him. It also appears to me that the rates claimed are reasonable, as is the fee for counsel. I will make an order for summary assessment of the costs of £8,000 in favour of the second defendant.

This transcript has been approved by the Judge