



Neutral Citation Number: [2024] EWHC 522 (Ch)

IN THE HIGH COURT OF JUSTICE

Claim No: PT-2023-000143

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

ACTION COMPRISING A DERIVATIVE CLAIM

IN THE MATTER OF HRP COMPLETE SOLUTIONS LLP (CRN: OC389693)

AND IN THE MATTER OF THE COMPANIES ACT 2006

AND IN THE MATTER OF THE LIMITED LIABILITY PARTNERSHIPS ACT 2000

7 March 2024

Before :

Jonathan Hilliard KC sitting as Deputy Judge of the High Court

B E T W E E N:-

(1) HELEN MARY ROSS

Proceeding by way of derivative claim on behalf of

HRP COMPLETE SOLUTIONS LLP (CRN: OC389693) (“the Old LLP”)

Claimant

-and-

(1) ANDREW JOHN PHILLIPS

(2) HRP COMPLETE SOLUTIONS (KENT) LLP

(CRN: 0C399943)

(3) HRP COMPLETE SOLUTIONS LLP

(4) HRP TOTAL SOLUTIONS KENT LTD

(5) ZOE JAYNE PHILLIPS

Defendants

Application on paper

APPROVED JUDGMENT

This judgment was handed down remotely at 10:30am on 7 March 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

JONATHAN HILLIARD KC sitting as a Deputy Judge of the High Court:

1. This is my judgment on the 29 January 2024 application of the Claimant, Ms Ross, for an order substituting Bond 58 Homes Limited for the fifth defendant, Ms Phillips, granting permission for a derivative claim to be brought against Bond 58 Homes Limited, and making a number of related orders.
2. I make the order in the terms sought by the Claimant, Ms Ross, (a) with the gloss that the parts included in schedule A of the order should be brought up into the main body of the order, and (b) subject to my decision on costs below. A copy of the final order will be provided to the parties at the same time as this judgment.
3. This order is sought because Mr Phillips has explained through his solicitors by letter dated 17.10.23 that two of the properties relevant to the claim, namely those at 44 Albany Road, Chatham and 130 Castle Road, Chatham, were transferred on 15 June 2023 to Bond 58 Homes Limited. The claim in respect of 44 Albany Road is currently pleaded against Ms Phillips and the claim in respect of 130 Castle Road is one of the claims pleaded against Mr Phillips. I refer to the claims in respect of these two properties as the “Relevant Claims”. The witness statement supporting the application states that the properties were both previously owned by Ms Phillips ([5]). I think this is incorrect in respect of 130 Castle Road, because the relief in respect of it was previously sought against Mr Phillips and the claim against Ms Phillips is only made in respect of 44 Albany Road (see e.g. [90] of the amended particulars of claim), but I do not consider that this matters for the purpose of the present application.
4. The order is agreed by the Defendants, save for the appropriate costs order.
5. I consider that it is appropriate to allow the substitution of Bond 58 Homes Limited for Ms Phillips, so that the Relevant Claims can now be brought against Bond 58 Homes Limited. Given that it was appropriate to allow the Relevant Claims to be brought as derivative claims against Ms Phillips and Mr Phillips, it is equally appropriate to allow them to be brought as derivative claims against Bond 58 Homes Limited now that it has transpired that Bond 58 Homes Limited is the legal owner.
6. As for costs, the Claimant seeks an order that:

“The 1st Defendant [Mr Phillips] shall pay the Claimant’s costs of the amendment to the Particulars of Claim resulting from the order of Jonathan Hilliard KC dated 31.07.23, this application and the future amendments relating to the addition of Bond 58 Homes Ltd to these proceedings in any event on the standard basis if not agreed.”

She also seeks an order that Mr Phillips pays the costs of Ms Phillips.
7. Mr Phillips contends through his solicitor that the costs should be in the case, alternatively reserved, and is content for me to deal with the matter on paper.
8. The costs sought by the Claimant divide into four.

9. The first component is the costs of the amendment to the Particulars of Claim resulting from the amendment resulting from my 31 July 2023 order. I ordered in [7] of my 8 September 2023 order that the costs of the application for permission to continue the derivative action should be costs in the case, save that there was no order for costs in respect of the costs of complying with [2] of my 8 September 2023 order, namely the amendments to the particulars to make clear the claim against the Fifth Defendant, Zoe Phillips. Therefore, these costs have already been dealt with by previous order, and I reject any application to revisit that order. Further, these costs arose because the original claim was not properly particularised against the fifth defendant, and that remains the case irrespective of the recent events relied on in the present costs application.
10. The second is the costs of making the present application to obtain an order in the terms of the draft order. These are the costs referred to in the witness statement accompanying the application: see [18]-[19], and in the body of the application notice itself. I consider that Mr Phillips should pay the costs of the application, for the following reasons:
 1. It has taken him some time to agree to the order. He has been chased on a number of occasions by the Claimant's solicitor, and it is only through the launching of the application together with the Court asking him for a response on 7 February 2024 that one has been provided, on 12 February 2024. No explanation has been given for the delay and no objection has been taken to anything in the present application other than the costs provision.
 2. Mr Phillips signed the original consent order last summer without informing the parties that by the time of that consent order legal title to 130 Castle Road and 44 Albany Road had been transferred to another entity before the consent order was signed. No explanation has been provided by him of why this information was only provided in October and could not have been provided earlier.
11. The third is the Claimant's costs "of...the future amendments relating to the addition of Bond 58 Homes Ltd to these proceedings". I consider that the Claimant is right that I should not make an order today in the usual terms, which would be that the Claimant bears the costs of and occasioned by the amendment, as set out in PD17. Further, Mr Phillips could- as the Claimant points out- have explained before the consent order was signed in the summer that legal title to two of the properties had been transferred to Bond 58 Homes Limited, and Mr Phillips did sign before Christmas a consent order that provided for him to pay such costs. However, on the other hand, it could turn out that the Claimant's claims are firmly rejected at trial such that the claims against Bond 58 Homes Limited turn out to be unmeritorious ones. Accordingly, in my judgment I should reserve the Claimant's costs of such amendments so that these competing points can be balanced by the trial judge in a way that takes account of the ultimate result at trial.
12. The fourth element of costs is the costs of the fifth defendant, Zoe Phillips. For the same reason as in relation to the third element, the Claimant contends that these should be borne by Mr Phillips. The ordinary costs position on what amounts to discontinuing the claim against Ms Phillips would be that the Claimant should pay its costs: CPR r.38.6(1). For the same reasons as in relation to the third element, I do not consider that it would be appropriate to make an order in those terms today, but equally for the same

reasons as in relation to the third element I consider that the appropriate order is to reserve costs.

13. Following the reasons above having been circulated in draft to the parties, Ms Ross has submitted that I should reconsider the view reached above on the fourth element of costs because Mr Phillips agreed an earlier draft consent order provided to the Court, which provided, among other things, for him to pay Ms Phillips' costs. However, as is apparent from paragraphs 11 and 12 above I have taken the earlier draft consent order into account in deciding on the appropriate order. I did not make an order in the terms of that earlier consent order when it was submitted but rather raised queries in respect of it, and as I have indicated at paragraph 9 above, it included provisions in respect of costs that contradicted an earlier order. My queries resulted in the fresh order put to the Court as part of this Application, and Mr Phillips does not consent at present to pay Ms Phillips' costs. For the reason set out in the penultimate sentence of paragraph 11 above, I consider that it would be appropriate to reserve costs so that the trial judge can take into account all relevant factors available by the end of trial when deciding on the appropriate costs award. There are some serious allegations made in the case so far on both sides, in for example the Claimant's case in their particulars and in Mr Phillips' case in his 17 October 2023 letter, that the trial judge will be able to adjudicate on insofar as relevant to the case. I also consider that it makes sense to deal with the costs of the fifth defendant at the same time as the third element above, namely the costs "of...the future amendments relating to the addition of Bond 58 Homes Ltd to these proceedings", given that both are concerned with the substitution of Bond 58 Homes Ltd for Ms Phillips and the effective discontinuance of the claim against Ms Phillips as part of that. Any arguments as to the relevance and effect of the earlier draft consent order can be dealt with then, so Ms Ross is free to run such arguments, placing any legal arguments and authorities that she wishes to rely on before the Court, and it will be a matter for the trial judge as to whether to make the costs order that Ms Ross seeks with the benefit of any oral submissions that the Judge considers appropriate.