Neutral Citation Number: [2024] EWHC 84 (Ch)

Case No: CH-2023-BRS-000013

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

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

Date: 23 January 2023

Before :

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

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Between :

(1) JOHN KENNETH GREENWOOD	**Appellants**
(2) JENNIFER JOY GREENWOOD	
- and -	
RONALD PATRICK PRINGLE	**Respondent**

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Application dealt with on the papers

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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 23 January 2024.

HHJ Paul Matthews :

Introduction

1. Mr and Mrs Greenwood filed an appellant's notice in Form N161 dated 2 January 2023 against the order of DDJ Piddington in the County Court at Southampton made on 13 September 2021. The notice actually was filed in the court at Southampton, but it should have been filed in the High Court District Registry here in Bristol, as the appeal centre for the Western Circuit. At all events the notice and the files are now here, and they were first referred to me on 16 January 2024.

2. The background to the proposed appeal is this. Mr and Mrs Greenwood owned a company called Rockstone Cherry Ltd, which owned a pub ("The Rockstone"), which they ran. They sold the company (together with the pub and the business) to a Mr Pringle in September 2019. The business was transferred to another company, Rockstone Public House Ltd. Mr and Mrs Greenwood worked for the company for some time after the sale, but eventually left, to go and live in France. They say that Mr Pringle has never paid them for the purchase of their companies and business, and has caused them other losses.

3. In particular, they claimed to be entitled to contractual redundancy payments on leaving Rockstone Public House Ltd's employment. They brought a claim in the Employment Tribunal under various heads against that company, but were successful only in relation to their claim for contractual redundancy pay. The Tribunal decided on 2 November 2020 that Rockstone Public House Ltd should pay each of Mr and Mrs Greenwood £24,000. They say that this has not been paid. The Tribunal's judgment makes some findings of fact about the negotiations and sale of the business, but reaches no conclusion on any contract of sale itself. Meanwhile, it appears that Rockstone Cherry Ltd was insolvent, and went into administration.

The statutory demands

4. Mr and Mrs Greenwood served a statutory demand dated 9 February 2021 in relation to the two sums of £24,000. However, this was addressed to "Mr Ronald Pringle - Rockstone Public House Ltd". Mr Pringle applied by notice dated 24 February 2021 to set it aside. In fact Mr and Mrs Greenwood accepted that it was defective and sought to withdraw it by email on 9 March 2021. They replaced it with another statutory demand of the same date, but this time in the sum of £1,421,500. This included not only the £48,000 redundancy entitlement, but also what they claimed to be the outstanding purchase money, the value of stock, loss of earnings, payments under a personal bank guarantee of a mortgage loan, and claims for loss of equity and goodwill and also for other alleged losses. This demand was addressed to Mr Pringle alone. He said that it was not validly served on him, but also disputed the alleged debts on various grounds.

5. Mr Pringle applied by notice dated 24 March 2021 to set that demand aside too. On 21 April 2021, DDJ Henry ordered that that application, together with

an application for costs against Mr and Mrs Greenwood in respect of the withdrawn earlier application, be listed for hearing on 13 September 2021, remotely by Teams, as Mr and Mrs Greenwood now live at least part of the year in mid-west France, and no longer have a residence in England. It also appears that, during the winter months they stay with friends further south (not necessarily in France) where it is warmer, and do not see ordinary post until they return to their French property when the weather improves. In the meantime they check their emails only about once a week.

6. On 13 September 2021, DDJ Piddington heard counsel for Mr Pringle, and Mr and Mrs Greenwood by video conference. The judge decided set aside the statutory demand for £1,421,500, on the basis that it was "disputed on grounds which appear substantial". The judge also ordered Mr and Mrs Greenwood to pay costs, assessed summarily at £4,680. In addition, the judge apparently suggested to the Greenwoods that their legal remedy was to sue Mr Pringle for breach of the contract which they alleged to exist. Mr and Mrs Greenwood say that they never received the sealed order, because it was served at the address of the pub. In law that does not matter, because CPR rule 40.7 provides that orders are effective when pronounced, not when served. And the Greenwoods were in the hearing, so they knew about the order.

The charging order

7. They certainly did not pay those costs, and on 7 April 2022 the successful applicant applied in the County Court Money Claims Centre for a charging order on a house in Melksham belonging to them. On 15 April 2022 that order was made as asked, on the usual interim basis. On 8 July 2022, because the interim order was challenged, the Claims Centre transferred the matter (under file reference J43YX843) to the County Court at Southampton.

8. On 12 July 2022 Mr and Mrs Greenwood made an application by notice in Form N244 for an order "to set aside Pringle's claim". On 15 July 2022 they paid the court fee of £275. It is not obvious on the face of the document what "Pringle's claim" refers to. It was after all the Greenwoods who were claiming money from Mr Pringle. He had applied to set aside their statutory demands, and had applied for a charging order to secure the costs he had been awarded when his applications succeeded. However, these are *applications*, not claims. It seems that, as laypeople, the Greenwoods did not understand the legal terminology. And, although they meant to refer to one or other of the two applications, unfortunately they did not say which. To judge from subsequent correspondence, however, they appear to have thought, though apparently without taking any advice, that this was the way to institute an appeal against the decision of DDJ Piddington of 13 September 2021. This was wrong. As it happens, the staff at the Southampton court appear to have thought that the application was to set aside the charging order. This caused confusion later on.

9. The further consideration of the charging order took place on 13 December 2022, when Mr Pringle attended in person, but the Greenwoods attended remotely by video conferencing. DJ Goodall ordered that the interim charging order be made final, but also that no enforcement action should be taken until after 31 January 2023, to allow for any appeal.

The appellant's notice

10. Mr and Mrs Greenwood insisted that they had appealed the decision of 13 September 2021 and that the court should not make the order final before their appeal was heard. They were told by DJ Goodall that the correct form was N161. Accordingly, they issued the appellant's notice in Form N161, in the Southampton court (instead of Bristol: see CPR PD 52B, paras 2.1, 2.2, and Table B), and paid the fee. The form is dated 2 January 2023, but it was issued only on 24 January 2023. It was sent out by post on 26 January 2023 to the Greenwoods at their address in France, where they say it was received only on 29 *July* 2023.

11. In the meantime, the file and the appellant's notice were referred to HHJ Glen (the Designated Civil Judge for Hampshire) in Winchester on 27 January 2023. On 30 January 2023 (order sealed 3 February) he ordered that Mr and Mrs Greenwood obtain and file a transcript of the *judgment* of DDJ Piddington (not the whole hearing), and also that they provide an address for service *within the UK*, in accordance with CPR rule 6.23. Subsequently, there was correspondence between Mr and Mrs Greenwood and the court. I will not burden this judgment with that, but it is summarised in the email from the Winchester Court Diary Manager, Sue Lowe, to Mr Greenwood dated 5 October 2023. It does not make happy reading.

12. However, no transcript has ever been lodged, because the Greenwoods say (in an email of 23 October 2023) that it is not necessary, and too expensive. The former point was one for the judge to decide, not the Greenwoods. The latter may have arisen because they appear to have asked for a transcript of *the whole hearing* before DDJ Piddington, instead of merely the judgment (which would be much shorter). Further, no address in the UK has ever been given as an address for service for the Greenwoods. They say that they do not have one, and "the ONLY contact method is by email that we pick up as and when we are able to."

13. Given this response, I add a few words on the need in particular for an address for service within the UK. This is not optional. It is required by CPR rule 6.23. The rule is not there for fun. It serves a serious purpose. In order for any legal process to be progressed efficiently and at the least cost, it is vital that each party and the party has an address to which communications about the case can be sent. The rule requires that this be a *physical* address within the UK, so as to minimise both the time taken and the cost of such communications. (An email address does not suffice for this purpose: *Axnoller Events Ltd v Brake* [2022] EWHC 1162 (Ch), [16]-[19]. Even Mr Greenwood himself complained in his email of 23 October 2023 of "terrible trouble with the internet here in the wilds of France".) This case itself demonstrates what happens when the rule is not observed. For example, the letter sent by the Southampton court on 26 January 2023 appears to have arrived at the Greenwoods' French property only in July, more than six months later.

14. The correspondence of 23 October was not passed to HHJ Glen until early December. On 5 December 2023, HHJ Glen again saw the file, realised that the appeal was against the decision of DDJ Piddington in relation to the

statutory demands, and directed that the matter be referred to me in Bristol, in accordance with the Insolvency Practice Direction. The files were subsequently transferred to Bristol, and, as I say, on 16 January 2024 they were passed to me.

Mr and Mrs Greenwood's appeal

15. I turn now to what Mr and Mrs Greenwood have to do in order to succeed on their intended appeal. The test for a successful appeal is set out in CPR rule 52.21, which provides (in part):

> "(3) The appeal court will allow an appeal where the decision of the lower court was—
>
> (a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."

16. But first, by virtue of CPR rule 52.3(1), they need permission to appeal. Under CPR rule 52.6, in a first appeal (such as this is) the court may not grant permission to appeal unless *either* there is a real prospect of a successful appeal *or* there is some other compelling reason why an appeal should be heard. The phrase 'real prospect' does not require a *probability* of success, but merely means 'not unreal': *Tanfern v Cameron-MacDonald* [2001] 1 WLR 1311, [21], CA. The burden is on the applicants for permission (*ie* Mr and Mrs Greenwood) to show that one limb or the other of the test is satisfied. If the application passes that threshold test, however, the court is not *obliged* to give permission to appeal; instead it has a *discretion* to exercise.

17. But, before the appeal court can decide whether or not to grant Mr and Mrs Greenwood permission to against the decision of DDJ Piddington of 13 September 2021, Mr and Mrs Greenwood need to make their application for such permission in accordance with the rules. CPR rule 52.12 provides:

> "52.12—(1) Where the appellant seeks permission [to appeal] from the appeal court, it must be requested in the appellant's notice.
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> (2) The appellant must file the appellant's notice at the appeal court within—
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> (a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing (which may be longer or shorter than the period referred to in sub-paragraph (b)); or
>
> (b) where the court makes no such direction, and subject to the specific provision about time limits in rules 52.8 to 52.11 and Practice Direction 52D, 21 days after the date of the decision of the lower court which the appellant wishes to appeal."

18. Here para 2(a) does not apply, so para 2(b) does. However, Mr and Mrs Greenwood did not file their appellant's notice within 21 days of 13 September 2021. In fact, that period expired well over two years ago now, and had expired more than a year before the form N161 was filed. Even if they had filed the correct notice at the time of filing the N244 in July 2022, they would still have been nine months out of time. The Greenwoods therefore not only need permission to appeal, but also an extension of time to file their appellants' notice out of time.

19. Section 10 of the appellants' notice asks for such an extension. But all it says by way of explanation for the delay is that Mr Greenwood was

> "under the impression that I had appealed with Form N244. Judge Goodall has told me to re-apply with this N161 as we have to apply to a higher court than hers."

Yet no-one told the Greenwoods to use form N244, and, as I say, the form itself was issued many months out of time. Mr and Mrs Greenwood do not explain this delay at all.

The Denton test

20. In *R* (*Hysaj*) *v Secretary of State for the Home Department* [2014] EWCA Civ 1633, the Court of Appeal said that an application for an extension of time to file an appellant's notice ought to be treated in the same way as laid down in the decision of this court in *Denton v TH White* [2014] 1 WLR 795 for applications for relief from sanction. This is a three-stage approach: (i) to assess the seriousness and significance of the breach, (ii) to consider why the default occurred, and (iii) to consider all the circumstances of the case.

21. In *Lakatamia Shipping Co Ltd v Su* [2019] EWCA Civ 1626, a would-be appellant, acting without lawyers, sought an extension of time to file his appellant's notice. It should have been filed by 19 April 2019, but was not filed until 27 August following, some four months later. The Court of Appeal followed *Hysaj*, and considered and applied the *Denton* test. At the first stage of the test, the appellant admitted that the breach was serious (see at [4]).

22. As to the second stage, two reasons were put forward for the late filing. One was that the appellant was a litigant in person, albeit with the assistance of a *McKenzie* friend. Lewison LJ (with whom Asplin LJ agreed) said that

> "4. … the absence of legal representation is not a good reason for a delay and … litigants in person, whether or not assisted by a McKenzie friend, are required to comply with the rules just as a legally represented party is."

23. The second reason given was that the appellant was unable to find the money for the court fee. As to that, Lewison LJ said:

> "5. … The judge was satisfied that there was money available, not so much for the purpose of paying a court fee but for purging Mr Su's

> contempt, which related to the dissipation of millions of euros. Mr Su has submitted in support of his appeal over 50 pages of manuscript, but nowhere in that material is there any explanation of what attempts, if any, he made to find the money with which to pay the court fee."

24. At the third stage, considering all the circumstances, Lewison LJ said (at [6]) that it is only where the court can see without much investigation that the grounds of appeal are either very strong or very weak that the merits will play a significant role. Here Mr and Mrs Greenwood wish to urge what they see as the merits of their claim. They say that they have been the victims of fraud, and have lost considerable sums of money. But they appear not have taken any legal advice. Instead, they have embarked on a number of wrong-headed legal processes, in which they have been rebuffed.

25. They claimed a number of heads of loss in proceedings in the Employment Tribunal, but succeeded only in relation to redundancy pay. They then sought to recover those sums by serving a statutory demand on the wrong person (Mr Pringle). He successfully applied to set aside the demand, and was awarded his costs of doing so. When the Greenwoods did not pay those costs, Mr Pringle obtained an interim charging order on the Greenwoods' UK property, which has now been made final by DJ Goodall.

26. In the meantime, the Greenwoods served a second statutory demand, this time seeking heads of loss which had not been the subject of any court or tribunal judgment. It is this second demand which was set aside by DDJ Piddington, apparently on the basis that the sums claimed was bona fide disputed on substantial grounds. It is clear in English law that a statutory demand is not an appropriate way to require payment of a debt disputed on apparently substantial grounds: Insolvency (England and Wales) Rules 2016, rule 10.5(5). DDJ Piddington seems to have suggested that the Greenwoods might bring an ordinary claim in the usual way, so that the matter could be fought out and decided by the court.

27. The Greenwoods say that they then sought to appeal this decision, albeit well out of time, by issuing an ordinary application notice in Form N244. As I have said, this was the wrong procedure. Later still, they corrected this mistake by seeking to issue an appellant's notice in Form N161, which they filed in Southampton instead of Bristol. The Greenwoods were ordered to obtain and lodge a transcript of the decision below (as in fact required by CPR PD 52B, para 6.2), and to give an address for service within the UK (as also required by CPR rule 6.23), but they have not complied with either. Instead, they have continued to send emails (and join video hearings) from France or elsewhere. All of this has consumed huge amounts of court and judicial time, with nothing so far to show for it, except unpaid costs orders. This is a textbook example of why litigants need to seek appropriate legal advice before embarking on legal procedures.

Litigants in person

28. The Greenwoods are litigants in person who have failed in a number of ways to comply with the rules. How far may they be excused by their ignorance of

the rules? The decision of the Supreme Court in *Barton v Wright Hassall* [2018] 1 WLR 1119 makes clear that lack of legal representation will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court.

29. Indeed, in a recent case involving litigants in person, *Mainline Pipelines Ltd v Phillips* [2023] EWHC 2146 (Ch), I said this:

> "10. … Litigants in person need to understand that, other than in trivial respects, the court is not going simply to ignore their failure to follow the appropriate procedures, or (worse) to treat them as though they had in fact complied. That is not fair on those who do comply. A failure to follow the rules is not without consequences. It imposes extra costs on other litigants (who, if they are commercial enterprises, may have to pass those costs on to their customers in higher prices) and makes litigation slower and more complicated, and thus more expensive for everyone. More court- and judge-time is needed to deal simply with putting things right, rather than advancing the resolution process. This generally not only makes things worse for the litigants themselves, but it also lengthens the time that must be spent by *other* litigants in waiting their turn to be heard."

This appeal

30. So, in considering whether to extend time for filing the appellant's notice (without which there can be no appeal), I first need to decide whether this case passes the three-stage *Denton* test. On any view, the breach of the time limit here was serious. I am not prepared to treat the form N244 as an appellant's form N161, because it simply does not give the court the information which it needs for an appeal, but instead puts the court (and the respondent) at a severe disadvantage from the outset. But, even were I to do so, this would still be a serious breach.

31. As to the second stage, no good reason has been shown for the breach. Being a litigant in person is not a good reason. Living abroad is not a good reason. Being elderly or impoverished are not in themselves good reasons. If there are good explanations for the enormous delay, the Greenwoods have not given them in the more than two years that have elapsed since the decision of DDJ Piddington in September 2021.

32. Turning to the third stage, a consideration of all the circumstances, I am currently hampered by the lack of any detail of the reasons for the decision of the judge below. All I know is what is in the order itself, which is that the judge evidently considered that the alleged debt was disputed on apparently substantial grounds. This is, as I have pointed out, a basis for setting aside a statutory demand. So the Greenwoods are on the back foot, and need to show that something has gone wrong. They were ordered to provide a transcript of the decision, but have failed to comply. I could simply say that they have had their opportunity to comply, and that I will make up my mind on the basis of the material available to me. But I make clear to them that, without that transcript, I cannot be satisfied, for example, that there is any real prospect of showing that the judge made a wrong or unjust decision within CPR rule

52.21(3). That in turn means that I cannot make even a rough estimate of where the merits might lie.

Ex turpi causa non oritur actio?

33. Mr and Mrs Greenwood in their correspondence refer constantly to the old Latin maxim *ex turpi causa non oritur actio* (meaning "civil causes of action cannot be founded on a claimant's own wrongdoing"). They seem to think that it represents some kind of unanswerable argument as to why they, making their claim against Mr Pringle, should win without the necessity of pleading their case in fraud, giving disclosure, preparing witness statements, calling witnesses and arguing it at trial, all of it being subject to opportunities to the other side to argue the opposite.

34. They need to understand that the maxim is nothing of the kind. First of all, it is not a *claimant's* argument at all, but that of a *defendant*. Yet the Greenwoods are the intended claimants, and Mr Pringle is the intended defendant. So, it is the wrong way round. Secondly, it does not do away with the need for a legal action and (in most cases) trial. Before the maxim can have any operation, the proponent of it needs to prove to the court that the other party has committed some wrongdoing, on which the latter now founds his or her own claim against the proponent. That proof normally comes at a trial. I have no doubt that that is why DDJ Piddington suggested an ordinary contractual claim against Mr Pringle.

Conclusion

35. As I say above, I could simply decide now whether or not to extend time for filing the appellant's notice. But I will give the Greenwoods one last chance to comply with the rules. I will therefore make what is called an "unless" order". If the Greenwoods by 4 pm on Friday 1 March 2024 both (a) obtain and file at court a transcript of the decision of the judge below (not the whole hearing, unless they wish to allege that there is something in the oral submissions that is a necessary part of their appeal), *and* (b) provide an address for service within the UK, I will consider all the material, including the transcript if so lodged.

36. It is only on that basis that I will decide whether an extension of time should be given for the filing of the appellant's notice, and then, if so, whether I should give permission to appeal. But, if Mr and Mrs Greenwood do not do both these things by that date, the applications will be struck out automatically, and that will be an end of the matter. I strongly urge the Greenwoods to obtain legal advice. The law is not a game, and it involves both emotional and financial costs. So far, it seems that the lack of legal advice has cost them dear. At the end of the day, of course, it is a matter for them. I cannot make them follow the rules. But, if they do not, they must accept the consequences.