



Neutral Citation Number: [2025] EWHC 546 (Ch)

Case No: CH-2024-000105

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 11 March 2025

Before:

MR JUSTICE MARCUS SMITH

Between:

MBS RECOVERY LIMITED

Appellant
(Respondent to the Set-Aside
Application)

-and-

KENNETH GEORGE
QUINNEY

Respondent
(Applicant in the Set-Aside
Application)

Heard on 7 March 2025

Adam Richardson (instructed by **Wordley Partnership** for the **Appellant**)
Alexander Kingston-Splatt (instructed by **Freeths LLP**) for the **Respondent**

APPROVED JUDGMENT

This judgment was handed down remotely at 10:45 am on 11 March 2025 by circulation to the parties or their representative by e-mail and by release to the National Archives

MR JUSTICE MARCUS SMITH:

1. This appeal concerns two statutory demands, one issued on 25 August 2023 and the other on 4 September 2023, together the **Statutory Demands** and individually the **First Statutory Demand** and the **Second Statutory Demand**. The Statutory Demands are in fact different computations of the same debt, and to that extent therefore are duplicative albeit inconsistent in the amounts that they demand.
2. Although the amounts stated in the Statutory Demands differ, the rest of the Statutory Demands are in materially the same terms. The Statutory Demands were made by the **Appellant** of the **Respondent**. The details of the debt provided are (to quote from the First Statutory Demand) as follows:
 1. The [Respondent] asserts in a draft Defence to the Claim of the [Appellant] that the [Respondent] appropriated monies coming under the control of the [Respondent] pursuant to a Contract.
 2. The [Respondent] so asserts that the said alleged Contract entitled the Debtor to 50% of the said monies.
 3. Between May 2018 and April 2020, the [Respondent] appropriated monies in excess of the said 50%, being monies totalling £251,664 (the “Extra Sum”).
 4. Interest at 8% on the Extra Sum since 30 April 2020 totals £65,433.
 5. Accordingly, the total immediately due and payable by the [Respondent] to the [Appellant] at the date of this demand is £317,097.
3. It is thus clear that the Statutory Demands, and each of them, are parasitic upon proceedings brought in the Business and Property Courts by the Appellant against the Respondent. More specifically:
 - i) Those proceedings were commenced by a Claim Form sealed on 13 April 2023 issued by the Appellant and supported by fully pleaded Particulars of Claim (the **B+PC Proceedings**).
 - ii) A Defence by the Respondent (and Additional Claim brought against a Mr Baxendale-Walker) has been filed in the B+PC Proceedings. At the time of the Statutory Demands, it was in draft form, but nothing turns on this.
 - iii) The Statutory Demands, in a manner that is unclear to me and which does not emerge from the face of the documents, extract two (completely different) figures from the pleadings in the B+PC Proceedings, one informing the First Statutory Demand and the other informing the Second Statutory Demand.

4. By an application dated 15 September 2023, the Respondent applied to set aside the Statutory Demands issued by the Appellant (the **Set-Aside Application**). By an **Order** dated 18 March 2024, ICC Judge Burton (the **Judge**) set aside the Statutory Demands. The basis upon which she did so is controversial before me. The Appellant contends that the Judge illegitimately used the court’s case management powers under the Civil Procedure Rules (the **CPR**) and not (as it is contended she should have done) under the insolvency regime promulgated by the Insolvency Act 1986, specifically rules 10.4 and 10.5 of the Insolvency Rules 2016 (respectively **IA 1986** and **IR 2016**). The Order, I should be clear, makes no reference to the CPR, but it does refer (in the recitals) to provisions in both IA 1986 and IR 2016. Paragraph 1 of the Order simply provides that the Statutory Demands “are set aside”, without referencing the jurisdiction applied. The Order also directed that the Respondent pay the Appellant’s costs of the Set-Aside Application, summarily assessed in the amount of £18,000 plus VAT.
5. The Appellant seeks to appeal the order of the Judge on five grounds pleaded in **Grounds of Appeal** dated 22 April 2024. By an order dated 26 April 2024, Joanna Smith J stayed the Judge’s Order so far as costs were concerned. By an order dated 9 August 2024, Mellor J gave permission to appeal on all grounds. The appeal came before me on 7 March 2025. This judgment determines the appeal.
6. The grounds of appeal are as follows:
 - i) **Ground 1.** The Judge erred in concluding that the statutory demands issued by the Appellant were capable of being set aside on the basis that they did not relate to a demand for a certain and ascertained sum of money.
 - ii) **Ground 2.** The Judge erred in using case management powers under the CPR to determine the Set-Aside Application instead of listing and hearing and determining that application under the IR 2016.
 - iii) **Ground 3.** The Judge erred in holding that the statutory demands fell to be set aside because they were insufficiently clear.
 - iv) **Ground 4.** This ground is a variant of Ground 1, and I will deal with these two grounds together.
 - v) **Ground 5.** The Judge erred in summarily assessing costs.
7. Apart from Ground 5, which both parties accepted should follow the outcome of this appeal, the other grounds of appeal are interconnected, and I deal with them accordingly. The nature of the connection is that (as I have described) the Statutory Demands are parasitic on the pleadings in the B+PC Proceedings; and yet are not made in those proceedings. Indeed, as is well-known, a statutory demand is not of itself initiating of anything: it is merely a step on the way to the issuing of a bankruptcy petition. Thus, it is right to say both that (i) the Statutory Demands are wholly separate from the B+PC Proceedings and (ii) that the link between the B+PC Proceedings and the Statutory Demands is extraordinarily close.

8. In these circumstances, the Judge’s concern about the Statutory Demands is readily understood. The **Judgment** upon which the Judge’s Order is consequential makes clear that the hearing before the Judge was initially intended as a 30 minute directions hearing to get the case “back on track” (Judgment at [3]), but that the Judge raised concerns about the defensibility of the Statutory Demands in an email to both parties before that hearing, making it clear that the hearing would or might deal with the Statutory Demands and (inferentially) the Set-Aside Application substantively (Judgment at [5] to [7]).
9. At the hearing, the Judge considered the Statutory Demands and (as I have described) ordered that they be set aside. It seems to me that in so doing, the Judge was exercising her insolvency jurisdiction under IA 1986 and IR 2016 and not any jurisdiction that she might have under the CPR. It therefore seems to me that Ground 2 fails because its premiss – namely, that the Judge was acting under the wrong jurisdiction – is wrong.
10. Accordingly, Ground 2 is dismissed. In the reasons for his order granting permission to appeal, Mellor J gave specific permission to appeal in relation to Ground 2, noting that “the Appellant raises a point of law on the jurisdiction to set aside a statutory demand which should be resolved. Although some of the grounds of appeal (if standing on their own) might not merit the grant of permission, it does not seem sensible to divide up the grounds”. I should make clear that I am not deciding any jurisdictional question as regards the borderline between the IR 2016 and the CPR. The Judge was not acting under the CPR and it seems to me that this interesting jurisdictional question should be left to a case where it actually arises and can be properly considered.
11. The Judge was doing no more than accelerate consideration of the statutory demands under or pursuant to the Set-Aside Application. She did so on notice to the parties, and she did so for good reason. The use of a statutory demand in these circumstances is highly questionable. In my judgment, the Appellant should have issued some form of application for summary judgment in the B+PC Proceedings, rather than making the Statutory Demands.
12. I infer that this was not done because the issues arising out of the pleadings in the B+PC Proceedings were not amenable to summary jurisdiction. The statement of Ms Jessica Lees made in support of the Set-Aside Application shows just how tenuous (indeed, both incomprehensible and controversial) the link between the “debts” in the Statutory Demands and terms of the pleadings in the B+PC Proceedings actually is. Given this tenuous relationship, the Judge was right to conclude that the Statutory Demands fell out with section 267 IA 1986 and that they were insufficiently clear for the reasons that the Judge gave. It follows that Grounds 1, 3 and 4 must also be dismissed.
13. Accordingly, the appeal must be dismissed. The Judge’s costs order in the Order stands and the costs of this appeal should follow the event. I will leave it to the parties to draw up the appropriate order.