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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION



No. QB-2021-002969

[2022] EWHC 3697 (KB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 23 June 2022

Before:

MR JUSTICE MARTIN SPENCER

B E T W E E N :

PROPERTY SERVICES LDN LIMITED

Claimant/Applicant

- and -

LAVERSTOCK MANAGEMENT
CORPORATION LIMITED

Defendant/Respondent

MR J. SIRIWARDENA (instructed by Astute Legal) appeared on behalf of the Claimant/Applicant.

THE DEFENDANT/RESPONDENT was not present and was not represented.

MS C WHITEHOUSE appeared on behalf of the Interested Parties.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1 By this application dated 7 June 2022 and stamped by the court on 13 June 2022, the applicant Property Services LDN Limited seeks an order in the following terms:

“For the defendant’s legal representatives Brightstone Law, application notice and bundle dated 30 March 2022, to be dismissed as they have acted dishonestly in not serving the application notice and bundle to myself as claimed. Brightstone Law failed to comply with CPR r.6.7 and 23.7(1)(a) -(b) and as a result of this, their application should not have proceeded at court.”

2 The background to this application is somewhat complicated and involved but it arises out of a loan provided by a company called LendInvest to the defendant Laverstock on 29 March 2018 secured by legal charges against four properties, those being: 307 Whitehorse Lane, South Norwood, London; 2 Westmoreland House, 249 Southlands Road, Bromley; 138 Benares Road, Plumstead, London; and 17 Bassant Road, Plumstead, London.

3 At that time, Laverstock was the creation of a Mr Charles Roberts who incorporated it in September 2016 and was the sole director. He signed the mortgage deeds on behalf of Laverstock and he also provided a personal guarantee in relation to the monies lent. Some three weeks later on 17 April 2018, Mr Roberts was, in fact, disqualified from acting as a director until 7 May 2025 as a result of his involvement with some fourteen connected companies whose liquidation had been ordered by the court on 17 April 2014. That is the date given at para.9(a) of Ms Whitehouse’s skeleton but at para.15 she gives a different date as 4 June 2014 which is the more likely date. In any event, Mr Roberts, as a result, could no longer act as the director of Laverstock and on 8 May 2018, Mr Banks became the sole director in his stead. The relationship between Mr Banks and Mr Roberts was unclear but Ms Whitehouse has told me she believes they may be brothers-in-law.

4 On 11 March 2021, LendInvest issued formal demands in respect of the loans against the properties, those demands being based on the defendant’s breach of mortgage conditions and that was followed by a telephone call from Mr Roberts to LendInvest stating that Laverstock was refinancing. The court was told that on 18 March 2021, Laverstock had entered into sales contracts for the sale of the properties with exchange of contracts on that day and a completion date of 11 June 2021.

5 On 22 March 2021, LendInvest appointed receivers in respect of three of the properties, namely Victoria Liddell and Annika Kisby and they were also appointed receivers of the fourth property shortly thereafter. The intention was to sell the properties by auction on 31 March 2021 so that LendInvest could recover their debt but on 29 March 2021, a Mr Kiran Phull of solicitors K&K Solicitors wrote requesting that the properties be removed from auction on the basis of the contracts for sale said to have been entered into nine days earlier.

6 At the same time, a letter came from Astute Legal claiming to represent Property Services LDN Limited, the claimant in this case, who were purportedly the purchasers of the properties pursuant to the contracts said to have been entered into and exchanged on 18 March. The properties were then withdrawn from auction but were to be re-entered for auction and sale by LendInvest. On 10 May, solicitors for Laverstock, K&K, informed Brightstone Law, the solicitors instructed on behalf of the lenders, that they would be issuing an injunction. Brightstone agreed on behalf of their clients to withdraw the properties from auction on the basis of certain strict conditions to be met by 12 May which were, in the event, not met and Mr Banks signed a witness statement on 10 May asserting

that the defendant had exchanged contracts on 18 March for sale of the properties in the total sum of £1,195,000 with completion due to take place on 7 June 2021.

- 7 The defendant in this case Laverstock, as claimant, issued an application against LendInvest seeking an injunction preventing the sale of the properties and that came before Moulder J on 12 May at which hearing Mr Roberts appeared for Laverstock purporting to be an officer of the company.
- 8 It was understood by Ms Whitehouse, who represented the lenders as she has throughout, that Mr Roberts was claiming to be a director of the company, and certainly that would be the natural meaning to be attached to somebody representing in court proceedings a company and claiming to be an officer of the company. He was not, in fact, a director because he had already been disqualified and it is wholly unclear to me in what capacity he represented the company, claiming before the court to be an officer of the company.
- 9 Searches of Companies House show him to be neither a director nor the company secretary. There is at least a suspicion, but I put it at no higher than that at this stage in the absence of further information, that Mr Roberts misled the court at that hearing when he claimed to be an officer of the company who was authorised to represent the company at that hearing. Moulder J did make the order sought but that came back before HHJ Lickley QC on 28 May 2021, that being the return date, when the learned judge discharged the injunction.
- 10 The next matter of significance is that on 21 July 2021, no completion apparently having occurred in accordance with the suggested sales contract, administrators were appointed in respect of Laverstock and the administrators informed Laverstock of the order the following day, 22 July. That letter is at p.218 of the bundle that was before the court on 24 May 2022, to which I will come, and was a letter sent by Mr Daniel Richardson, one of the joint administrators appointed as administrator the previous day, to Mr G Banks at Laverstock Management Corporation Limited. The joint administrators appointed by the court were Mr Richardson and Mr Edward Avery-Gee.
- 11 The following day, 23 July 2021, the claimant in this matter Property Services LDN Limited made an application for an injunction to prevent the sale of the property, that being an application made against Laverstock.
- 12 By s.43 of Schedule B1 to the Insolvency Act 1986, it is provided:
 - “(1) This paragraph applies to a company in administration. this paragraph applies to a company in administration.
 - ...
 - (6) No legal process (including legal proceedings, execution, distress, and diligence) may be instituted or continued against the company or property of the company except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the court.”
- 13 Thus, the application by the claimant for an injunction against Laverstock fell foul of those proceedings.

- 14 The hearing came before Kerr J on 3 August 2021, no notice of that hearing having been given to the administrators. Kerr J made an order prohibiting the defendant until trial or further order from marketing or putting for sale at auction or otherwise the properties. The recital to that order, which included a penal notice, referred to the court having heard from the claimant appearing by counsel, the defendant not appearing, and stating by email that it did not intend to defend the action.
- 15 By application dated 31 March 2022 – that is the date the application was sealed, the date of the application was 30 March 2022 – supported by witness statements from Mr Richardson, one of the joint administrators, and Mr Roy Armitage, and Ms Victoria Liddell, the Receivers appointed on behalf of both Laverstock and the lender LendInvest, applied for an order discharging the injunction made by Kerr J the previous August and for a declaration that the contracts for sale between Laverstock and Property Services Limited were void, or that they should be rescinded, or an order requiring the director or former director and solicitors of the defendant to deliver up documents and deposit monies, and an order prohibiting Mr Banks, Mr Roberts, K&K Solicitors, and any party instructed for or on behalf of Laverstock from taking any step to part with possession of market contract to sell or otherwise dispose of the properties.
- 16 That application then came before Kerr J on 24 May but there is a dispute between the parties as to whether the application and the documents in support, together in a bundle comprising over six-hundred pages, were properly served on Property Services LDN Limited. There was correspondence between Brightstone for the lenders (as I continue to refer to them for shorthand) and solicitors for Property Services about service but as there was some question of whether those solicitors, namely Astute Legal, were on the record as representing the claimant Property Services LDN Limited, the bundle and application were served on the claimant at their registered address. There is a dispute as to whether there was effective service by post and whether the certificate of service accurately reflects the service of the proceedings. However, in my judgment, that appears all to be overtaken by an email sent on 19 May 2022 by a Mr Gabriel Awosika, the principal solicitor at Astute Legal, to Mr Jonathan Newman, the solicitor representing the vendor’s at Brightstone Law, where he stated:
- “Dear Sirs, as already stated and confirmed and from your previous records you hold, it is obvious that we can accept service of the bundle on behalf of Property Services LDN. Please forward the link to download the bundle.”
- 17 Ms Whitehouse submitted to me that it has always been and remains obscure whether Astute Legal are on the record as representing the claimant, but certainly, at today’s hearing, the claimant has been represented by Mr Siriwardena of counsel instructed by Mr Awosika of Astute Legal. Therefore, those solicitors certainly purport to appear on behalf of the claimant in these proceedings and have clearly been involved as representing the claimant from an earlier stage, including in May 2022 as represented by that email from Mr Awosika to Mr Newman. The fact is that the link was sent and Astute Legal was able to download the bundle on 19 May.
- 18 On 20 May, which was a Friday, Mr Awosika wrote to Brightstone Law stating that they had only been made aware of the hearing due to take place on 24 May the previous day, 19 May, asking for an explanation as to why the 606-page bundle had not previously been served, and seeking an adjournment. Mr Newman, on behalf of Brightstone Law, replied the same day in the following terms:

“On 16 May 2022, we served your client at their registered office, your firm having failed to respond to our initial letter seeking confirmation that you were instructed and having failed to adequately respond to the plethora of correspondence sent to you by the defendant’s administrators. Once you engaged in correspondence and provided confirmation of your instruction, we served the relevant documents upon your firm. Our client is not willing to agree an adjournment and whether or not your client is strictly entitled to any notice at all, they will have had a reasonable notice period to instruct representation as envisaged by CPR 23.”

19 In those circumstances, the matter came before Kerr J on 24 May 2022 and he gave an *ex tempore* judgment as, indeed, I am doing now. I have not seen a copy of that judgment and I am not aware whether it has been transcribed. However, he made the following order:

- “(1) The claimant’s application for an adjournment of the interested parties’ application is:
- (a) granted in respect of the relief sought under paras.2 - 5 of the application; but
 - (b) refused in respect of the relief sought under para.1 of the application (discharge of the injunction granted on 3 August 2021);
- (2) The injunction granted in this matter on 3 August 2021 is discharged with immediate effect;
- (3) The defendant’s further participation in these proceedings is subject to the consent of the joint administrators or permission of the court under the Insolvency Act 1986 Schedule B1;
- (4) The balance of the application is adjourned to be heard before a judge of this court not before 3 October 2022 with a time estimate of three days;
- (5) The interested parties shall send a sealed copy of this order and the application bundle by email or post to:
- (a) Mr Kiran Phull on his own behalf and on behalf of K&K Solicitors; and
 - (b) The joint administrators of the defendant.
- (6) By 4.00 p.m. on 14 June, the joint administrators of the defendant, if so advised, Mr Phull and K&K Solicitors may, if so advised, serve written evidence;
- (7) By 4.00 p.m. on 21 June, the claimant will serve its written evidence in response to the application;
- (8) By 4.00 p.m. on 12 July, the interested parties will serve their evidence in reply to the claimant’s evidence;

- (9) The interested parties shall file and serve a bundle, if possible, in agreed form by fourteen days before the date fixed for the hearing of the application;
- (10) Skeleton arguments will be exchanged and filed not later than seven days before the date fixed;
- (11) Costs reserved; and
- (12) Permission to appeal against the refusal of the adjournment in respect of para.1 of the relief sought and against discharge of the injunction granted on 3 August 2021 is refused.”

- 20 It is in the above context that the claimant has now made this application issued on 7 June effectively to set aside the order of Kerr J in that the application is for the court to dismiss the defendant’s application dated 30 March, that being the application to set aside the injunction Kerr J made in August 2021 on the basis that there was a failure to serve the application notice and bundle, and a failure to comply with CPR provisions for service with three clear days.
- 21 In my judgment, the court has no jurisdiction to entertain this application. The question of adjournment by reason of late service or failure to serve was a question which had arisen in correspondence before the hearing before Kerr J and which therefore the claimant had every opportunity to raise before Kerr J, whether on the basis that they had had insufficient time to consider the application, or on the basis that there had not been proper service of the application on the claimant. As I have said, I have not seen a transcript of the *ex tempore* judgment of Carr J but I have no doubt that the claimant had every opportunity to raise the matters which it now tries to raise before me before Kerr J and either those matters were raised and were dismissed by him so far as the discharge of the injunction was concerned or they were not raised, in which case, that was a decision made by the claimant through its counsel.
- 22 This court is not a court of appeal from Kerr J. Any appeal from his refusal to adjourn the application in relation to the discharge of the injunction granted in August 2021 would properly be made to the Court of Appeal and as I have recited, in his notice Kerr J refused such permission. I am unaware that any application has been made renewing that application to the Court of Appeal itself. Instead, what the claimant has tried to do, in an expression I think may have been used by Ms Whitehouse, is get around the order through the back door by making this application. However, that is not a proper procedure and it may be of significance that the application was not made by solicitors but by the claimant acting in person through its director Ms Tanya Minhas.
- 23 In any event, I have no jurisdiction to revisit Kerr J’s refusal to adjourn that hearing or to set aside that order and reinstate the injunction. There was, in fact, an application to reinstate the injunction or to seek an injunction made yesterday which came before me acting for the purposes of that application as the interim applications judge and which I refused. The consequence has been that the properties have been auctioned through the joint administrators and I expect that they have either been sold or are in the process of sale today.
- 24 I therefore refuse the application and I certify the application to have been made totally without merit.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.
