



Neutral Citation Number: [2020] EWHC 1166 (QB)

Case No: QB-2019-002246

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/05/2020

Before :

Master Sullivan

Between :

(1) ASHFAQ AHMED SPAUL
(2) AA PROPERTY AND CONSTRUCTION
SERVICES LIMITED

Claimants

- and -

SOUTHFIELDS SOLICITORS LIMITED

Defendant

Mr Alexander Hill-Smith (instructed by **Edward Marshall Solicitors**) for the **Claimant**
Mr Robert Deacon (instructed by **Southfields Solicitors**) for the **Defendant**

Hearing date: 2 March 2020

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 version as handed down may be treated as authentic.

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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 16.00 on 14 May 2020.

Approved Judgment**Master Sullivan :**

1. Mr Spaul is the director of the second claimant. I will refer to Mr Spaul in this judgment as if referring to both claimants. Mr Spaul owns a large number of properties which he rents out as residential properties. In around 2012, Mr Spaul instructed the defendant to represent him in re-financing of loans on some of those properties. Mr Iqbal is the principal of the defendant firm of solicitors.
2. Mr Iqbal and his firm conducted work on re-financing the loans with Santander in around 2012. In fact the re-financing was eventually arranged by Mr Spaul independently but nonetheless work was done by the defendant in 2012. In March 2016, a costs assessment was heard before Master Rowley in the Senior Courts Costs Office which included assessment of work undertaken on the re-financing files as well as on a number of other unrelated matters.
3. Mr Spaul subsequently paid the costs assessed and on 29 April 2019 Mr Spaul wrote to Mr Iqbal asking for return of the re-financing files. He got no reply. He then issued this claim on 19 June 2019 for the delivery up of the re-financing files in relation to 41 properties (the exact number of properties has varied in the documents). The defendant's position is that the original files were loaned to Mr Spaul in 2012 and not returned and so it no longer has them. Mr Iqbal also says he provided copies of such documents as he still has (which include copies of the original documents, such copies having been made for and sent to Howard Kennedy, solicitors for Santander, for the re-financing) to Mr Spaul in October 2019 as part of a disclosure process in other proceedings between the parties.
4. This judgment follows the trial of the claim for delivery up which took place on 2nd March 2020 when I heard evidence from Mr Spaul and 2 witnesses on his behalf, and from Mr Iqbal. This judgment has taken longer than I had anticipated to produce, in part due to a delay in closing submissions reaching me and in part due to problems accessing the documents and levels of other judicial work due to the covid-19 pandemic.

The proceedings

5. The claim form was issued with a short particulars of claim running to 6 paragraphs. The defence was even shorter, admitting all of the facts pleaded but denying that any of the 41 conveyancing files were retained by the defendant and putting the claimant to strict proof that the files had not been returned to the claimants and/or that the claimants demanded delivery within 6 years of the refusal of refinancing.
6. An application for summary judgment was made by Mr Spaul on 22 July 2019. Mr Iqbal provided witness evidence in response dated 10 September 2019 which stated that the defendant had allowed Mr Spaul, soon after the final refusal of the loans in December 2012, to remove the re-financing files to submit to other lenders. The statement also raised the firm's document retention policy that copies of the files are retained for 6 years and then confidentially shredded.
7. The application was listed but the claimant did not proceed with it in the light of the evidence provided and Master Davison ordered that the defendant be given

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unconditional permission to defend the claim followed by directions for disclosure, witness statements and trial, listed for 1 day.

8. An order was also made that an agreed bundle be prepared in the usual way. By the morning of trial I had a “defendant’s core hearing bundle” which spanned 2 lever arch files, a separate lever arch hearing bundle from the claimant, a bundle containing the transcript of the hearing on 15 and 16 March 2016 before Master Rowley and a further small bundle of documents produced by the claimant taken from the documents which were prepared for the costs assessment before Master Rowley. The witnesses referred in their oral evidence to documents not in the bundles. The majority of the various documents in the bundles were not referred to.
9. With his closing submissions Mr Deacon produced a further small bundle of documents which it is said I should now consider and which were neither in any list of documents nor in any of the bundles for trial. It is said they were documents referred to by Mr Iqbal in his evidence. No explanation is given as to why they have only been produced at the stage of closing submissions. Perhaps unsurprisingly Mr Hill-Smith on behalf of Mr Spaul objects to me looking at them. I have looked at them to see what they are; they are letters from 2019 about disclosure in other litigation between the parties (it became clear through the hearing that there has been and is significant other litigation between Mr Spaul and Mr Iqbal). I will not take them into consideration. They should have been part of the evidence at trial if Mr Iqbal sought to rely on them in order that Mr Spaul and his representatives could deal with them in evidence.

The issues

10. The main issue I have to determine is whether Mr Iqbal returned the files to Mr Spaul in 2012. In coming to my conclusion I will have to consider whether correspondence relied upon by Mr Iqbal was fabricated for the purposes of the claim.
11. In his second witness statement, Mr Spaul questions the genuineness of attendance notes and letters provided by Mr Iqbal dated in December 2012. Mr Spaul’s case is that letters relied on dated in November and December 2012 are not in fact contemporaneous and that certainly in respect of one dated 12 December 2012 has been fabricated for the purpose of these proceedings.
12. Mr Hill-Smith points out that the defence does not plead a positive case and invites me to draw inferences from that in support of the claim that the correspondence has been fabricated.

The correspondence

13. There were three broad issues raised by the claimant about the correspondence which was challenged. The first is that some letters had the wrong postcode in the address (SW17 instead of SW9), secondly that they were not in the defendant’s list of documents and thirdly that there were significant inconsistencies in their contents including two similar but not identical letters of the same date and letters with two dates on them.

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14. At the time of the re-financing work in 2012, an assistant conveyancer, Aziza Begum, was conducting much of the work. She did not give evidence.
15. There is a letter from Mr Iqbal to Mr Spaul with an SW17 postcode dated 29 October 2012 which states “We also advised that you should nto (sic) give up on other lenders to agree to grant you loans as your previous lenders are threatening to withdraw the facility very soon. We had loaned you our Files of all 54 properties for your (sic) to show these to other lender and brokers so that you may get alternative funding if Santander applications are rejected. Please note that all of our files are by way of loan to you and we would need these when you have shown these to other lenders... Aziza tells me that you will collect the remaining files soon from our offices which include all our work, i.e. searches, Leases, Planning documents etc (in five large boxes). We ask that you keep these save (sic) as these belong to us and we will need these when preparing our Bills of costs.”
16. A letter dated 23 November 2012 from Aziza Begum to Mr Spaul at the correct postcode, states “Mr Iqbal has agreed that you can borrow our files (all 43 of them) to show to Nat West and other potential lenders as these files are ready made for their inspections. ...As agreed with Mr Iqbal you can ask your staff to attend our offices and take all files to show to Nat West or others. We have made copies for Santander Solicitors and can use these for any enquiry arising from them for the time being.” This letter did not appear on the defendant’s list of documents.
17. In a letter dated 8 December 2012 again from Aziza Begum with the correct address, the following is written, “However You (sic) must get on with all alternative lenders including Nat Wet and sue (sic) all our files (n (sic) over 43 complete with searched atc (sic)).” This letter is also not in the defendant’s disclosure list.
18. A letter dated 12th December 2012 found in the defendant’s core bundle to Mr Spaul from Southfields solicitors to the correct postcode is entitled “CONVEYANCING IN RESPEC T OF 41 PROPERTIES”. Within the letter, which sets out the bill for work done, the narrative says the work was done on 41 files but the fee is based on 43 files (the calculation set out is “43 files at 930.00 per property £39,975”; I note 43 x £930 is in fact £39,990). On the second page of the letter it states “You had collected all 60 files from our offices on loan in order to send these to your new lenders urgently as all paperwork is complete and there would be no additional costs to you. We hope we will not need these files back so long as you pay our costs.” There is no reference in this letter to Mr Spaul’s right to assessment of the costs. I shall refer to this letter as “letter A.”
19. In the costs proceedings a different version of the 12th December 2012 letter was produced. It has a “copy” stamp on it. The heading is “CONVEYANCING IN RESPEC T OF 43 PROPERTIES”. This heading has the same gap in the word “respect” but a different number of properties. The fees section is entirely differently worded although the calculation is the same, with the same mathematical error. The letter refers to Mr Spaul’s right to have the costs assessed. It does not anywhere refer to the fact the files had been loaned. I shall refer to this as “letter B”.
20. A letter dated 12 December 2012 was included in the disclosure list. I assume it was intended to refer to letter A above which was produced by Mr Iqbal in this action.

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21. A further letter dated 17 December 2012 from Aziza Begum (not on the disclosure list) states “We have a copy of the 43 files you borrowed and will be able to provide any queries they raise”.
22. A last letter dated 21 December 2012 to Mr Spaul from Southfields solicitors and with the wrong postcode states “Thank you for confirmation of the receipt of above files (43 and 21) collected by your staff from our office. Please note these files are given to you as a loan and we hold lien on these until you pay our costs agreed or assessed... We have another box containing copies of searches returned by Howard Kennedy for properties which they rejected as unsuitable (21). Please ask your staff to take these...”
23. A further two letters were discussed in evidence. Both are to Howard Kennedy. A letter dated 30 January 2013 from Mr Iqbal states “We ask you to hold copies of all of files in respect of 43 files which we had sent to you over the period. We will need you to return these should matter not proceed”.
24. A further letter is dated at the top left 30 January 2013 and at the top right 7 May 2013 from Aziza Begum is headed “refinancing: return of files” and states “We acknowledge receipt of 43 files”.
25. There were more letters in the bundle than those which I have quoted from. From a perusal of the other letters, spelling and grammar mistakes are common throughout.

The witness evidence

26. Mr Spaul produced two witness statements and also relied on the evidence of two other witnesses, Mr Wahab and Mr Heslop, both of whom work for him. Mr Iqbal produced two witness statements. All gave oral evidence.

Mr Spaul

27. After Mr Spaul had given evidence, Mr Heslop gave evidence that Mr Spaul is almost illiterate. He does not use a computer and has staff to type letters. Letters and emails are read for him by staff. In his closing, Mr Hill-Smith relies on this evidence to explain some of the vagueness of Mr Spaul’s evidence. I accept that Mr Spaul has difficulty reading English. That is consistent with the impression I gained during the hearing that he was having difficulty in following the documents. It does however, give rise to some issues in how I deal with his evidence given the stage at which his difficulty in reading was raised. By that point he had signed statements of truth two witness statements and had been cross examined with no reference to his difficulty reading.
28. In his witness statement Mr Spaul says he is seeking delivery up of the files and he has not been provided with the files. In his second witness statement he states that another lender would not have touched the refinancing files and they would have wanted fresh searches. This is a theme he returned to frequently in his oral evidence. He said in the statement he has found emails on his system which were produced on disclosure and there is no reference to the files having been collected. He says he had not seen the letters dated 17 October 2012, 29 October 2012, 12 December 2012 and 21 December 2012 before.

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29. In his evidence before me, he was asked why he was now seeking the original files some 6-7 years after the events. His answer was not clear save to say that the solicitor was incompetent.
30. He frequently failed to answer the question he was being asked and would repeat his evidence that NatWest did not need or want the searches so there would be no point in him having the files in 2012.
31. In respect of the correspondence, he said he never received the client care letter dated 15 September 2012. When he was told that he had produced it in disclosure he replied that maybe his staff got it, but he didn't see it.
32. In response to a question as to whether he had read the letter dated 23 November 2012, he replied that he must have received the letter. He again said that he had not seen the letter in his office but he must have received it and his staff had maybe seen it. He answered similarly about the 8 December 2012 letter and in response to a question about the 12 December letter referencing 60 files, he replied that he had seen the letter in a file in the office recently in the last couple of years and re-iterated this staff deal with letters. His stock response was that if there was anything important his staff would tell him about it. It was less clear whether he accepted issues in some of the letters were important.
33. The difficulty with his evidence is that whilst he accepts he probably did receive letters (some of which referred to the loan of files), and denies receipt of others, Mr Heslop's evidence is that he would not have read any letters and it is difficult to know if he was able to read the letters in the bundle sufficiently well to be able to take in the detail of their content. I therefore cannot accept his direct evidence on whether or not he received the letters.
34. He did give clear evidence that he himself did not collect any files.

Mr Wahab

35. Mr Wahab has been the financial controller for Mr Spaul since December 2014, after the date of the events in question. He stated in his witness statement that there were never any files relating to the Santander refinancing at Mr Spaul's offices. He is confident he would have seen them if they were there. He also says he attended the hearing before Master Rowley on the day Mr Iqbal was to give evidence and there were about 12 boxes of documents in court, all from Southfields solicitors. He says every now and then Mr Iqbal would refer to them. He stated he believes that the files included files relating to Santander although he didn't see them personally. He believed that Mr Iqbal was not being truthful claiming the files had been returned.
36. In cross examination, he accepted that the events were all over by the time he began in December 2014, he conceded he was not saying that the files had or hadn't been returned but that he hadn't seen the files in the office. Nonetheless he maintained Mr Iqbal was not being truthful. In his witness statement he said he did not see the court files in Master Rowley's room personally but in his evidence he said he did see the files. I don't accept he would have seen the contents of the files during the costs hearing with sufficient clarity to know whether the files contained the original

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documents or the Howard Kennedy copies. He maintained that Mr Iqbal was being untruthful about the return of the files. I do not accept his evidence. He was not there at the relevant time. It seems to me his evidence is based on assumptions and his support of Mr Spaul rather than direct knowledge.

Mr Heslop

37. Mr Heslop provided a 2 paragraph witness statement both of which paragraphs he very carefully clarified before confirming they were true. He works for Mr Spaul and visited his offices for about 30 mins to an hour most working days. He would have thought if they had received large bundles of files he would know about it and he wasn't aware of Santander files. He accepted it is possible he wouldn't. He said he has had very little to do with the Santander refinancing. He had looked at the bundles from the defendant at the end of last year and they didn't include Santander files. They did include searches but not related to Santander. Given his concession that it was possible he wouldn't know about the bundles and his limited involvement with the Santander re-financing I am of the view his evidence is not helpful to me one way or another.

Mr Iqbal

38. Mr Iqbal has provided 3 witness statements. In summary he says that the files were loaned to Mr Spaul in 2012/3. He also gave evidence before me. Like Mr Spaul, he also failed to answer the questions he was asked and often simply talked on a different topic. He would answer questions about documents in the bundle, properly identified by page number and date, even though he had a different document in front of him.
39. I formed the impression that, in respect of the correspondence and despite his evidence to the contrary, he had no actual recollection of what had happened but was retrospectively seeking to explain what happened. A number of the letters and the matters were dealt with by Ms Begum so, to an extent, that is not unexpected.
40. His explanation as to the discrepancies in the letters was difficult to understand and at times inconsistent but appeared to be based on a practice of using a previous document as a template for later documents with the same heading and address and even if it was wrong the letter would only be corrected just before it was sent out rather than correcting the template. He seemed to be suggesting those corrected letters were not saved before being sent but his evidence was unclear on that point. The use of previous documents as templates would explain some of the discrepancies in the letters.
41. His explanation in respect of the 21 December 2012 duplicate letters was that two separate teams provided him with two different letters, one was prepared by the accounts department (letter B) and the other by Aziza (letter A). He said he looked at them and decided which would be sent. He said that letter A was sent and not letter B. Letter B not Letter A was attached to the witness statement of a paralegal and relied upon as the invoice for the hearing in front of Master Rowely. He was unable to explain that but blamed it on the paralegal who provided the statement.

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42. In respect of the failure to list the letters in disclosure, he seemed to suggest that he did not have hardcopy letters and so it was because letters had been recovered from cloud storage. It is not clear why that did not happen properly for the disclosure list.
43. Mr Iqbal gave evidence that Mr Spaul did himself collect files as well as his staff.

Conclusions

44. Mr Hill-Smith argues that the fact the defendant did not plead a positive case in the defence demonstrated that the positive case advanced by the defendant at trial is an afterthought and is not true. I do not accept that is correct. It is right that the defence does not plead a positive case, but by the time of the witness statement in response to the summary judgment application that case was set out clearly – true there was no amended defence, but the issues were clear between the parties.
45. Mr Hill-Smith also argues, relying on references to requests for inspection and responses in the points of dispute and correspondence before the costs hearing, that the defendant in fact produced the original files to Master Rowley for the purpose of the costs assessment in 2015 and 2016 and they were not as the Defendant says, the Howard Kennedy copies. That was an issue disputed in evidence at that hearing. I note that when giving evidence before Master Rowley in March 2016, Mr Iqbal stated that the 43 files were given to Mr Spaul when Santander rejected the re-financing (pp51-52 of the transcript of the hearing) and that the papers in the hearing were returned from the bank (p54).
46. There is no reference in Master Rowley's judgment to the issue of who had the original documents. It seems to have been a side dispute in those proceedings and does not help me either way in coming to my judgment. The points of dispute and correspondence referred to are not clear enough to assist me in making any finding.
47. I formed a very clear view that administration is not a strength for Mr Iqbal. He had difficulty explaining the administrative practices of Southfields Solicitors and what he did explain was some distance from efficient management. The manner in which he gave evidence, looking at incorrect documents despite counsel's best efforts to ensure he had the correct ones and repeatedly taking pages out of the witness bundle and not putting them back in the right place, is consistent with that. I do not accept that the discrepancies in the letters, including the incorrect postcodes and letters having two dates are sufficient to infer that the letters were fabricated for this case.
48. I accept that Mr Iqbal produced and sent letters with the incorrect postcodes on them and I accept that those letters may well not have been received by Mr Spaul in 2012. I do not accept that the other letters such as 23 November and 8 December 2012 were fabricated later; I find they were sent and received in 2012.
49. The argument is stronger in respect of the two letters of 12 December 2012 and it may well be that one of these letters was not sent at the time and it is impossible for me to find which one was, if either. However, I do not need to make such a finding; the

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question is whether those letters and the manner in which they were produced by Mr Iqbal and Southfields solicitors in the two sets of proceedings are such that I should find that Mr Iqbal has fabricated Letter A. In my judgment I cannot.

50. In respect of the failings in disclosure, in addition to my views above, Mr Iqbal seems to have a rather loose understanding of disclosure in civil proceedings. For example he gave evidence that, even in a claim where the contents of an attendance note between solicitor and client were relevant to an issue in dispute between them, the attendance note would be privileged. I therefore do not accept that the disclosure failings are sufficient, even in combination with the other points about the letters to prove, on the balance of probabilities, that the documents were fabricated.
51. The contemporaneous correspondence in my view is the best evidence of what occurred in this case and it supports the files having been loaned to Mr Spaul in 2012. In conclusion I find that Mr Spaul or his staff did receive the original files in 2012 on loan and did not return them to the defendant. Insofar as it is necessary, I find that the files copied and returned to Mr Spaul's legal team in October 2019 were the Howard Kennedy files.
52. In the circumstances, the claim is dismissed.