

TRANSCRIPT OF PROCEEDINGS

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Ref. QB-2021-002969

**IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
[2022] EWHC 1779 (QB)**

Royal Courts of Justice  
Strand  
London

**Before THE HONOURABLE MR JUSTICE KERR**

**BETWEEN:**

**PROPERTY SERVICES LONDON LIMITED**

**Claimant**

**-v-**

**LAVERSTOCK MANAGEMENT CORPORATION LIMITED  
(in administration)**

**Defendant**

**MR MATTHEW FELDMAN, instructed by Astute Legal, appeared on behalf of the  
Claimant**

**MS CAMILLA WHITEHOUSE, instructed by Brightstone Law, appeared on behalf of  
non-parties, LendInvest BTL Limited and Allsop LLP**

**The Defendant did not appear and was not represented.**

**JUDGMENT  
(given extempore on 24 MAY 2022)**

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MR JUSTICE KERR:

1. The matter before me today is somewhat unusual. I will start with a brief account of the parties.
2. [pid:14151](#) The party described as the first interested party, which I will call LendInvest, is the mortgagee of certain London residential properties, four in number.
3. Allsop LLP, described as the second interested party, is the employer of two LPA receivers, appointed pursuant to mortgages [pid:14201](#) in favour of LendInvest, in respect of those same properties.
4. Mr Daniel Richardson and Mr Edward Avery-Gee are the joint administrators of the defendant.
5. Brightstone Law LLP, through Mr Jonathan Newman, solicitor, act for LendInvest and Allsop LLP, but [pid:14251](#) not for the joint administrators. The latter are not before the court and are not represented.
6. Ms Camilla Whitehouse, of counsel, represents LendInvest and Allsop LLP before me today, instructed by Brightstone Law LLP.
7. The claimant company is Property Services [pid:14301](#) London Limited. It is represented by Astute Legal solicitors and advocates, through Mr Gabriel Awosika, a solicitor.
8. Astute Legal also instructs Mr Matthew Feldman, of counsel, who appeared before me today. He was instructed only yesterday; so, he acts for the [pid:14351](#) claimant.
9. Another firm of solicitors, K and K Solicitors, are the former solicitors for the defendant, and they acted through a Mr Kiran Phull. They were acting for the defendant before it went into administration, as [pid:14401](#) I shall relate, and since the administration are no longer authorised to act for the defendant.
10. There is before me an application notice filed on behalf of LendInvest and Allsop LLP. They are not parties to the main action, nor do [pid:14451](#) they apply to become parties. As I have said they describe themselves as interested parties.
11. The application seeks relief under five headings, as follows.
12. First, the interested parties apply to discharge an injunction I granted on 3 August 2021, restraining the sale of the four mortgaged properties.
13. [pid:14501](#) Second, they seek a declaration that contracts for the sale of those properties purportedly entered into between the defendant and the claimant are void, or a declaration that those contracts are “rescinded”.

14. Third, they seek an order requiring officers of the defendant to deliver up certain [pid:14551](#) documents and deposit monies pertaining to the sale or the purported sale or those four properties.

15. Fourth, they seek an order preventing certain persons - a Mr Jef Banks, a Mr Charles Roberts, and K and K Solicitors – from [pid:14601](#) purporting to act on behalf of the defendant, or taking any step to part with possession of, market, sell or dispose of those same four properties.

16. Fifth, they seek an order for costs in their favour against the claimant.

17. The four properties are tenanted dwellings in south east London. In brief, and in much simplified form, the background is as follows.

18. LendInvest lent money to the defendant secured by a charge over the four properties. That was in 2018. The defendant owned the four properties subject [pid:14701](#) to LendInvest's charge.

19. LendInvest says that monies became owing to it pursuant to those charges from the defendant and wished to enforce its security. In about March 2021 sale contracts or purported sale contracts were entered into between the defendant and the [pid:14752](#) claimant.

20. At around the same time the LPA receivers were appointed. That was in about March or April 2021.

21. It is said that the sale contracts were varied thereafter at some point in about May or June 2021. I do not go into the [pid:14801](#) details of that here.

22. The LPA receivers set about their task of attempting to sell the four properties by auction. Various legal steps then ensued, the details of which I do not recite here, preventing that from happening.

23. On 21 July 2021, [pid:14851](#) the defendant went into administration, and the joint administrators were appointed. As a consequence, under the Insolvency Act 1986, schedule B1 paragraph 43(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.”.

24. On or about 26 July 2021, without the permission of either the court or the consent of the administrators, the claimant sought an injunction against the defendant prohibiting the defendant [pid:14951](#) from marketing the four properties or putting them up for sale by auction or otherwise.

25. That injunction application was issued by Astute Legal Services through Mr Awosika. His instructions to Mr Feldman, who appears today, are that he was unaware when he lodged [pid:15002](#) that application that the defendant was in administration.
26. At about the same time, a Part 8 claim was brought by the claimant seeking, among other things, the same relief as in the injunction application.
27. The injunction application came before me on 3 August 2021. I [pid:15051](#) granted the application, commenting in recitals to my order that it had been “issued on notice to the defendant on 2 August 2021”, and “upon ... the defendant not appearing and stating by email that it does not intend to defend the action”.
28. I also included a recital that it appeared to the court “that [pid:15101](#) an undertaking in damages is unnecessary in circumstances where the defendant has admitted that it sees no defence to the action”.
29. I was not told that the defendant was in administration.
30. I was shown what was said to be a certificate of service on the defendant, which persuaded me that the defendant was on notice [pid:15151](#) of the application, and I was shown an email appearing to emanate from the defendant, indicating that it did not intend to defend the action.
31. On that basis, and in ignorance of the administration, I granted that order.
32. The next day, 4 August 2021, Mr [pid:15201](#) Awosika wrote to Allsop LLP, enclosing a copy of the injunction, and seeking assurances that in obedience to the injunction the properties would not be sold by auction.
33. The next day, 5 August 2021, the joint [pid:15251](#) administrators of the defendant wrote to Astute Legal a letter, also apparently sent by email to Mr Awosika’s email address, at his firm, informing that Mr Richardson and his colleague, Mr Avery-Gee, had been appointed as administrators of the defendant on [pid:15301](#) 21 July 2021.
34. The letter went on to spell out certain consequences of the administration, including obligations to deliver up documents and not to pursue legal process in view of the moratorium under the Insolvency Act 1986.
35. The properties were not sold as the injunction was in place. [Opid:15351](#) n 7 September 2021 Master Sullivan granted an order (though it was not sealed until 4 November 2021) acknowledging the receivership of Allsop LLP, and ordering disclosure to Brightstone Law LLP, their solicitors, of relevant documents on the court file.
36. On 30 March 2022 Brightstone L [pid:15401](#) aw LLP, on behalf of Allsop LLP and LendInvest, filed what they described as a without notice application for referral to a Judge. It was envisaged, as appears from correspondence with the court, that the matter would come

on an ex parte basis before a judge of this [pid:15451](#) division, probably in the interim applications court.

37. However Ellenbogen J directed that it was not sufficiently urgent for that. Thereafter, the matter remained in court awaiting listing, until it was eventually listed to come before me, as [pid:15501](#) I discovered late last week.

38. No doubt in anticipation of the listing of the application, on 11 May 2022 Mr Newman, at Brightstone Law LLP, emailed Mr Awosika, asking whether his firm remained instructed to accept service on behalf of the claimant. There was no response [pid:15551](#) to that email.

39. Accordingly, on 16 May Brightstone Law LLP took steps to serve the claimant directly and to serve Astute Legal. I have seen certificates of service to that effect, dated 18 May [pid:15601](#) in the case of the claimant and 19 May in the case of Astute Legal.

40. The application notice and witness statements were thereby served, although not the full bundle before the court today, which runs to 606 pages. It appears that Mr Newman took the view that it would be [pid:15651](#) a good idea to effect service after all, albeit rather late, and I understand that the certificates of service show that the necessary three clear days' notice was observed, although only just.

41. The bundle, on the other hand, did not reach Mr Awosika until late last week. He [pid:15702](#) immediately set about corresponding with Brightstone Law LLP, complaining that service had not been properly effected and seeking an adjournment. He questioned why the application and evidence in support had not been served at the outset.

42. A director of the claimant, a Ms Tanya Minhas, made a [pid:15751](#) witness statement yesterday denying receipt of the bundle.

43. Yesterday afternoon, as I have said, Mr Feldman was instructed by Mr Awosika on behalf of the claimant. Also yesterday, Mr Awosika [pid:15801](#) made a 21 paragraph witness statement with exhibits, explaining about the lateness of service on his firm.

44. That statement said nothing about his awareness or otherwise at the time the injunction was sought of the fact that the defendant had gone into administration by then, but I am [pid:15851](#) told by Mr Feldman that his instructions are, as I have said, that Mr Awosika did not know of the administration when he made that application.

45. For the claimant, Mr Feldman did his best on short notice, having been in the case only a short time. [pid:15902](#) I adjourned the matter this morning for about 45 minutes to enable him to speak by telephone as a matter of urgency to Mr Awosika. He was able to speak to him but only for a short time because, Mr Feldman explained, Mr Awosika was busy [pid:15951](#) seeing a client.

46. Mr Feldman applies to adjourn the matter today on all the heads of relief sought. He submits that the matter is very involved and the documents voluminous; and that it would be

unjust to proceed to deal with the matter to any extent today [pid:16001](#) because the claimant has not had enough time to prepare.

47. He submitted that it was necessary for a witness statement to be made about the circumstances in which the injunction was sought and that opportunity had not yet been had. He submitted that the claimant needs [pid:16051](#) advice from counsel and that service has not been properly effected because his instructing solicitor does not accept service by email.

48. He disputed that the necessary three clear days' notice had been observed; and commented that the bundle of documents was [pid:16101](#) very large. He pointed out that the two interested parties had not seen fit to contact Mr Awosika at all about the matter until 11 May, while the application was made as long ago as 30 March 2022.

49. [I pid:16151](#)n short, he submitted that his client had had insufficient time to meet the application, the allegations were serious, and that it should not be dealt with to any extent today.

50. Ms Whitehouse, for the two interested parties, LendInvest and Allsop [pid:16201](#), opposed the application to adjourn. She relied on the parts of the chronology I have already been through, in particular the certificates of service and the email correspondence that had begun on 11 May.

51. She submitted that Mr Awosika [pid:16251](#) had not responded to the email of 11 May, and had been on notice that some kind of application was to be made since then. She submitted that service had been effected in time both on the claimant direct and on Astute Solicitors. After that, the matter had been with the court for [pid:16301](#) listing before being listed before me today.

52. In my judgment, the right course is to adjourn the application in respect of the second, third, fourth and fifth heads of relief sought, but to deal with the first matter today. That is the application [pid:16351](#) to discharge the injunction which I granted on 3 August 2021. My reasons are briefly as follows.

53. First, Astute Legal has been on notice since 5 August 2021, on the evidence I have, of a blatant irregularity in the court's process. Mr [pid:16401](#) Awosika has had ample opportunity to deny receipt of the letter of 5 August 2021. He has not done so. He has had ample opportunity to deny knowledge of the administration before applying for the injunction in July 2021. His first denial of that knowledge, however, comes via Mr Feldman today, on instructions.

54. As an officer of the court, it was his duty on receipt of the letter of 5 August 2021 to [pid:16451](#) contact the court and inform it of his own volition that the injunction had been obtained in irregular circumstances. That did not happen.

55. Mr Awosika could have sought the court's permission to lift the moratorium under schedule B1 to the [pid:16501](#) Insolvency Act 1986, to the extent of permitting the injunction to continue. He did not do so either in August 2021 or at any time since.

56. In relation to the more recent procedural steps that have occurred, I agree with Mr Awosika that it was [pid:16551](#)unfortunate that the application was not served at the time it was made. Although it is said in a vague way by Mr Newman that there are good reasons for this, no convincing explanation is before me.

57. Nonetheless, Mr Awosika has been aware since 11 May 2022 that there was a need to consider litigious [pid:16602](#)steps in this matter, and has been aware since 4.20 pm on 19 May, if not earlier, of today's application, and that it included an application to discharge the injunction.

58. He has been active and energetic in pursuing emails and [pid:16651](#)correspondence and providing a witness statement stating all the reasons why he says today's hearing should not proceed to any extent, but those emails and witness statements say nothing about and do not address the irregularity in relation to the circumstances in which the injunction was obtained [pid:16701](#)in August 2021.

59. Mr Feldman was not apparently instructed to make any application to the court for the court now to lift the moratorium under the Insolvency Act 1986 to permit the injunction to continue, he did not invite me to do so.

60. In [pid:16751](#)those circumstances there are no submissions from the claimant to address the problem of the irregularity, indeed I would say illegality of the injunction continuing.

61. I assume for today's purposes that Mr Awosika did indeed know nothing about the administration when he applied for the injunction. [Tpid:16802](#)hat does not affect the fact that the injunction is and remains irregular.

62. I will therefore deal with that matter today. I am quite clear in my mind that it is not appropriate to deal with any of the other matters before the court today, and I will return to [pid:16851](#)those shortly for the purposes of giving directions.

63. As for the injunction that I granted last August, 2021, I did so under two misapprehensions. The first was that the defendant was not in administration, I knew nothing about the administration. Second, I thought the defendant was [pid:16901](#)aware of and effectively consenting to the injunction.

64. The second matter may need further investigation but on the evidence before me at the moment and last August, the documents appear to show that the defendant was not interested in defending the proceedings, and said so in an email. If I had thought that the defendant was interested in defending the [pid:16951](#)injunction I would have required an undertaking in damages to be given in the normal way.

65. Whatever the rights and wrongs of the circumstances in which the injunction was obtained, as to which I express no view and keep a completely open mind and make no findings, the fact remains that the injunction is irregular.

66. Unless this court or the appropriate court, whatever the appropriate court is, were to give permission for that legal process to continue, it would be a breach of paragraph 43([pid:170516](#)) of schedule B1 to the Insolvency Act 1986 for me to allow the injunction to be “continued”.

67. I am not prepared to condone that breach, as I am invited by Mr Feldman to do. He submitted that it need only be for a relatively short [tpid:17101](#)ime, perhaps a week or two, and that the matter could return on a return date then. I am not prepared to countenance the injunction continuing for even another day in the absence of any request for the court’s permission that it should. It would be contrary to [pid:17151](#)the provision I have mentioned for that to happen.

68. I would have expected Mr Awosika to be very concerned to address the court early on in response to the serious allegation that the court was misled. No doubt he will do so, but [pid:17201](#)for the purposes of today’s hearing, as I say, I assume in his favour that he did indeed know nothing about the irregularity. He does now.

69. I therefore refuse the adjournment. I will discharge the injunction which I granted on 3 August 2021, and I will proceed [pid:17251](#)to give directions in relation to the balance of the application.

70. As to that, the second item, which seeks a declaration that the sale contracts are void, is clearly not ready to be dealt with today. Indeed, the juridical basis of that application is as [pid:17301](#)yet unclear, and it needs to be dealt with on notice in the usual way.

71. My directions will include service of relevant documents on Mr Phull, both personally and in his capacity as a solicitor for K and K Solicitors. The directions [pid:17351](#)that I envisage will be subject to further observations from the bar.

72. I envisage that they will be along the following lines: that there will be a trial of the application, with a time estimate of three days in the period not before 3 October 2022 in the period leading up to Christmas, the last [pid:17402](#)day of term being 21 December 2022.

73. I envisage the claimant’s evidence in response to the application within about 21 days; the interested parties’ evidence in reply, if any, and any evidence from the defendant or administrators, if so advised, about 14 [pid:17451](#)days thereafter; and then the usual directions in relation to the bundle and skeleton argument.

74. As this is a Part 8 claim, I would not envisage cross-examination without the permission of the court separately given, pursuant to a separately made application, which I would not encourage.



