



Neutral Citation Number: [2020] EWHC 739 (Ch)

Case No: CH-2019-000153

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

The Rolls Building
Fetter Lane
London EC4A 1NL

Date: 27/03/2020

Before :

Sir Alastair Norris

Between :

NOSNEHPETSJ LIMITED
(In Liquidation)

- and -

**(1) WATERSHEDS CAPITAL PARTNERS
LIMITED**
(2) RICHARD BUZZONI

**Claimant/
Respondent**

**Defendants/
Appellants**

David Lord QC (instructed by **Richard Slade & Co**) for the Appellants
Stephen Fennell (instructed by **Oury Clark**) for the Respondent

Hearing date: 5 December 2019

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.

This Judgment was handed down by circulation to the parties' representatives by email and by release to Bailii. It was not handed down in court due to the present COVID19/coronavirus pandemic. The deemed time for hand-down is 2.00pm on 27 March 2020.

Sir Alastair Norris:

1. It is not in dispute that Nosnehpetsj Ltd (it is “J Stephenson” written backwards) was incorporated in February 1998. In May 1998 it changed its name to Watersheds Limited: and in this judgment I will call it “Watersheds1”. Its business was that of a specialist corporate financial adviser, that business being conducted by its sole director and the beneficial owner of its shares, the Second Defendant, Mr Richard Buzzoni (“Mr Buzzoni”).
2. In April 2006 Mr Buzzoni incorporated a new company, Watersheds Capital Partners Limited (“WCP”). The share capital of WCP was 100 ordinary shares (“the Ordinary Shares”) and 220000 cumulative preference shares (“the Prefs”). Although he was still the sole director of Watersheds1 Mr Buzzoni began to channel all new business through WCP. Since he was the sole director and shareholder of Watersheds1 and of WCP this made little difference to him: but it did affect the creditors of Watersheds1.
3. In the Annual Return for WCP dated 19 April 2011 both the Ordinary Shares and the Prefs are shown as belonging to Watersheds1 i.e. WCP is shown as a wholly owned subsidiary of Watersheds1. Correspondingly, in the Annual Abbreviated Accounts of Watersheds1 for the year ending 31 March 2011 (signed by Mr Buzzoni on 24 June 2011) both the Ordinary Shares and the Prefs are shown as assets of Watersheds1 (valued at par). Thus, the Watersheds1 balance sheet shows that Watersheds1 had at the balance sheet date investments to the value of £220,100, and that this was the same as in 2010. The Notes to the accounts explain that these investments are the 100 Ordinary Shares and the 220000 Prefs in WCP, which were also held in 2010.
4. In the Annual Return for WCP dated 19 April 2012 Watersheds1 is again shown as the owner of the Ordinary Shares and the Prefs in WCP. Once again, this is also mirrored in Watersheds1’s Abbreviated Accounts for the year ending 3 March 2012.
5. So, for the financial years 2010, 2011 and 2012 WCP is shown as the wholly owned subsidiary of Watersheds1. This made it largely irrelevant whether the corporate financial advice work was actually done by Watersheds1 or WCP since the economic benefit of the work would ultimately belong to Watersheds1.
6. For the purposes of the application (to which I will come) it may be taken as a fact that Watersheds1 was insolvent (or at the very least, of doubtful solvency) by 1 March 2012: this is what is pleaded in paragraph 16 of the Particulars and Points of Claim served by Watersheds1 and its liquidator, though it will be in issue at any trial. In essence, Watersheds1 continued to incur liabilities (for example, under the lease of its former business premises) though the income generating work was now being done through WCP.
7. On 24 September 2012 Mr Buzzoni told his accountant Mr Stephenson that he intended “to redeem the equity in [Watersheds 1]” (by which he meant that Watersheds1 was to be liquidated or otherwise dissolved) and that a new company was to be formed as soon as possible and the names swapped. On 25 September 2012 Mr Stephenson incorporated another company called Nosnehpetsj Ltd and effected the name swap on 11 October 2012. I will call this new company “Watersheds2”. The commercial purpose of Watersheds 2 is obscure. It may be that Mr Buzzoni was

trying to avoid some potential claim on the assets of Watersheds1 but to retain such goodwill as attached to its name.

8. In January 2013 an application was made (I think by the company itself) to strike Watersheds 1 off the register of companies. After some delay Watersheds1 was dissolved on 4 February 2014; only to be restored to the register at the suit of a creditor on 28 August 2014.
9. On 1 February 2013 Mr Buzzoni sent Mr Stephenson an e-mail saying:-

“I notice the accounts of [WCP] show in note 9 that it is a subsidiary of [Watersheds1]. That is not right. Could you change it before they go to the revenue.”

It is not at present clear to what “accounts” of WCP Mr Buzzoni was referring (save that they were ones which were due to be but had not at that point been sent to HMRC). But the Annual Return dated 19 April 2013 shows Mr Buzzoni as the registered holder of the Ordinary Shares in WCP and states that Watersheds1 had transferred those shares to Mr Buzzoni on 26 September 2012 (i.e. apparently before Mr Buzzoni’s e-mail of 1 February 2013). It is common ground that no consideration was given for any transfer of the Ordinary Shares in WCP by Watersheds1 to Mr Buzzoni.

10. In May 2015 Mr Buzzoni reiterated to Mr Stephenson, the accountant, that the Annual Return for WCP had been wrong for 3 years. But by this time Watersheds1 was the subject of a winding-up petition in the County Court at Northampton and it was compulsorily wound up on 13 July 2015: no corrective returns were filed (though Mr Buzzoni’s accountant may have attempted to do so).
11. On 27 March 2018 Watersheds1 (acting by its liquidator) commenced proceedings against WCP and against Mr Buzzoni in relation to dealings with the Ordinary Shares and the Prefs, including an allegation that the transfer of the Ordinary Shares in WCP from Watersheds1 to Mr Buzzoni for no consideration was a breach of fiduciary duty. There is going to be a trial of the issues concerning the Prefs. But on 18 January 2019 WCP and Mr Buzzoni issued an application seeking to avoid a trial of the issues relating to the Ordinary Shares (either under CPR 3.4(2) because the Particulars and Points of Claim disclosed no reasonable grounds for bringing the claim or under CPR 24 because “the Claimant has no real prospect of succeeding on that claim and the Defendants know of no other reason for the claim to be disposed of at trial”).
12. The principles upon which the Court acts in exercising its jurisdiction under these procedural rules are well settled and well known and it is unnecessary in this judgment to provide yet another summary of them. They would have been well known to the former Chief Registrar, Mr Stephen Baister, who heard the application sitting as a Deputy ICC Judge (“the judge”).
13. For the reasons given in a succinct extempore judgment the judge declined (with reluctance and misgivings) to strike out or to give summary judgement for the defendant (Mr Buzzoni) on the claims relating to the Ordinary Shares and he gave permission to the liquidator to amend Watersheds1’s statement of case in the light of

the arguments canvassed at the hearing. At the heart of his judgment lie three assessments:-

- a) The Annual Returns and the Abbreviated Accounts must have been approved by Mr Buzzoni (a chartered accountant) and they undoubtedly show the Ordinary Shares in WCP as belonging legally and beneficially to Watershed1. It was not clear that the position recorded in the approved documents was incorrect.
 - b) There are very few documents relating to the circumstances (i) in which the Annual Returns and Abbreviated Accounts came to be prepared and (ii) in which the Ordinary Shares came to be transferred from Watersheds1 to Mr Buzzoni and “much might emerge later”.
 - c) One should not exclude the possibility that cross-examination may well reveal something not apparent from the documentation. (I think that here the judge must have had in mind (i) the oddity of the Ordinary Shares being *transferred* by Watershed1 to Mr Buzzoni (which entails Watershed1 having some transferable interest); (ii) the transfer appearing to take place in the September before Mr Buzzoni notified his accountant of what he perceived to be an error; and (iii) a submission of Counsel for the liquidator. That submission was “*If Mr Buzzoni’s evidence is that: “this was all a “cock-up” and I keep making these “cock-ups in ways that seem to have helped myself”and if Mr Stephenson says “Well, I cocked up as well”, if the judge believes them, then we are in difficulties and probably will not succeed”*”).
14. In making those assessments the judge gave some weight to a tax computation which supported a claim by Watersheds1 to group tax relief in the sum of about £258,000: it was submitted that for such a claim to be maintainable the Ordinary Shares in WCP had actually to belong to Watersheds1. The judge thought that it was not beyond the scope of possibility that there was some sort of tax exercise going on which did involve the transfer of shares back and forth. It is now known that the claim for group relief was maintainable by reference to the Prefs, and that “tax advantage” was not a relevant consideration.
15. The appeal (brought with the permission of the judge) is against those case management decisions. The appeal, of course must identify an error of law made by the judge below, though, of course, both taking into account irrelevant matters and arriving at an outcome which is outside the range of reasonable outcomes are such errors. Here the thrust of the appeal is that the judge was “overly cautious”.
16. Counsel for Mr Buzzoni presented a tightly knit analysis. That analysis had impressed the judge and I, too, thought it powerful. The burden lies on Watersheds1 to prove that on the transfer of the Ordinary Shares in WCP from Watersheds1 to Mr Buzzoni value was extracted from Watersheds1. The share register of WCP has always shown Mr Buzzoni as the registered holder of the Ordinary Shares. That is prima facie evidence of title: s.127 Companies Act 2006 (“CA2006”). Title to shares passes only on registration.: Re Fry [1946] Ch 312. A transfer of shares cannot be registered unless a proper instrument of transfer has been delivered to the company: s.770 CA2006. No executed transfer from Mr Buzzoni to Watersheds1 has ever been found. No transfer from Mr Buzzoni has ever been registered. It is only in WCP’s Annual

Return and in Watershed1's Abbreviated Accounts that someone other than Mr Buzzoni is shown as the owner of the Ordinary Shares. The liquidator must therefore assert that Mr Buzzoni held the legal title to the Ordinary Shares as nominee or constructive trustee. Nomineeship could only arise under an express trust. The liquidator does not plead facts to support such a trust. The mere fact that WCP's Annual Return and Watershed1's Abbreviated Accounts show that Watershed 1 is the beneficial owner of the shares does not of itself suffice to show that Mr Buzzoni intended to create a bare trust of the shares. How a constructive trust might have arisen is not clear, but it is to be assumed that it is based upon an intended gift of the shares by Mr Buzzoni to Watershed1. But equity will not perfect an imperfect gift (unless the donee has done all within his or her power to effect the transfer and the remaining acts can be performed by the donee, as in Re Rose [1952] Ch. 499 or Pennington v Waine [2002] 2 BCLC 448). This case cannot fall within that exception to the general rule for it depends upon Mr Buzzoni having executed a transfer which has simply not been registered. But no signed transfer can be found.

17. Impressive as this argument is, I do not consider that either striking out or summary judgement is warranted. An alternative analysis is not fanciful, and on the presently available material the issue ought in any event to be disposed of at trial.
18. I hold that the judge did take into an account an irrelevant matter in giving weight to the "tax computation" argument in his assessment. In fairness to the judge, the point was not as clear at the hearing as it has subsequently become.
19. In exercising the discretion afresh, I reach the same view as the judge and would make the same order, for the following reasons:-
 - a) There will be a substantial trial of issues concerning the Prefs, so that only a modest saving is achieved by summarily disposing of the arguments about the Ordinary Shares;
 - b) The key issue is whether Mr Buzzoni gave a truthful documentary account of the ownership of the Ordinary Shares or made repeated (but unexplained) mistakes;
 - c) Only limited and evidently partial disclosure has been given (of those documents which support Mr Buzzoni's case) and the circumstances in which and basis upon which he came to approve a succession of documents confirming the beneficial ownership of the Ordinary Shares and then to reverse the position ought (even under the current disclosure regime) to be explored before a final conclusion is reached;
 - d) The documents that have been disclosed in support of Mr Buzzoni's case are not themselves internally consistent (the e-mail of 1 February 2013 complaining of an error is written long after the error was apparently "corrected");
 - e) If the constructive trust is founded on the perfection of an imperfect gift it is not necessarily the case that the donor must have done all in his or her power to effect the transfer (including executing a share transfer form) there being a broader principle that the circumstances may establish that it would be

unconscionable for the donor to recall the “gift”, and those circumstances should be examined;

- f) Given the factual background I have briefly recounted I do not accept that the only type of constructive trust that might arise is one founded upon an imperfect gift;
 - g) Nor do I accept that it “beggars belief” that Mr Buzzoni would want to acknowledge that the Ordinary Shares in WCP belonged beneficially to Watersheds1 (the acknowledgement dates from 2010, some years after WCP had taken over the business of Watersheds1, and years before Mr Buzzoni incorporated Watersheds2 or tried to have Watersheds 1 struck off);
 - h) Where the sole director of an insolvent company has transferred to himself for no consideration assets shown in its accounts as belonging to the company the Court should in general hesitate before deciding that the transaction does not need to be scrutinised at a trial.
20. If (and this is not clear) the judge’s decision to grant the liquidator permission to amend was influenced by his assessment of the “tax computation” argument I would remake the decision in the same sense. The difficulty which the liquidator faces is created by the inadequacies of Mr Buzzoni’s record keeping as sole director of Watersheds1 and WCP and his disavowal of the accuracy of the records he did create. It is unsurprising that the material factual allegations might need refinement in the light of Mr Buzzoni’s defence.
21. I therefore dismiss the appeal.
22. I invite Counsel to agree (a) directions for the determination of costs issues on written submissions; (b) any necessary revisions to the directions timetable (or a means of disposing of issues on written submissions or by adjournment to an ICC Judge).
23. I do not require attendance of legal representatives when judgment is handed down.