



Neutral Citation Number: [2021] EWHC 1077 (Ch)

Case No: G80LS012

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
APPEALS

Combined Court Centre
1 Oxford Row
Leeds LS1 3BG

Date: 28 April 2021

Before :

MR JUSTICE SNOWDEN

(Vice-Chancellor of the County Palatine of Lancaster)

Between :

HELLFIRE ENTERTAINMENT LIMITED

**Claimant/
Appellant**

- and -

ACIMAR LIMITED

**Defendant/
Respondent**

Christopher McCauley (Direct Access Counsel instructed for the appeal hearing only)
for the **Claimant/Appellant**
James Davin (Direct Access Counsel) for the **Defendant/Respondent**

Hearing date: 9 March 2021

Approved Judgment

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is 10.30 a.m. on Wednesday 28 April 2021.

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MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

1. This is an appeal against the Order of District Judge Jackson (“the District Judge”) dated 31 March 2020 by which she struck out the Claimant’s claim pursuant to CPR r.3.4(2)(a) and recorded that the claim was totally without merit.

Background

2. The facts may be summarised briefly. The matter concerns land at 32 Queen Street, Huddersfield HD1 2SP (“the Property”). The Claimant, whose sole director is Mr. Adam Snowball, was established to operate a leisure and entertainment venue situated close to the Property. The Defendant is a company of which Mr. Waqar Malik is a director.
3. Between about 18 October 2018 and 29 October 2018 there were a series of emails (the “Emails”) between Mr. Malik and Mr. Ian Snowball concerning a potential purchase of the Property. Mr. Ian Snowball is the father of Mr. Adam Snowball, but he is not a director of the Claimant company.
4. The Claimant’s case is that these Emails constituted a concluded agreement between the Claimant company and the Defendant pursuant to which the Defendant was to purchase the Property and then transfer a joint ownership interest in the Property and outright ownership of an associated piece of leasehold land to the Claimant. The Claimant contends that, in reliance on this agreement, it undertook work which included preparations in relation to car parking facilities and clearing invasive knotweed from the Property.
5. The Defendant company purchased the Property on or about 2 November 2018 for about £170,000 using funds obtained from its own sources. The transfer was registered on 7 November 2018, and on 8 November 2018 Mr. Malik indicated to Mr. Ian Snowball that the Defendant did not intend to transfer any interest in the Property to him or any other person.
6. This eventually led to the proceedings being issued in 2019. By its Claim Form, the Claimant sought damages and specific performance for breach of the alleged agreement against the Defendant. Pleadings followed, and the Defendant denied that there was any concluded agreement between the parties. In particular, the Defence stated,

“Save that it is admitted that Mr. Malik and Mr. Ian Snowball entered into an email exchange commencing in or around 18 October 2018 pursuant to which the possibility of Mr. Snowball acquiring a 50% share in the subject Property was discussed, paragraph 3 of the particulars of Claim is denied. Subsequent correspondence included the possibility of Alex Snowball or the Claimant company purchasing an interest in the Property. No concluded agreement was ever reached.”
7. On 15 November 2019, District Judge Barraclough ordered the Claimant to file and serve a copy of the contract on which its claim was based. The Claimant did not

produce any written contract but instead produced a large number of email messages sent between Mr. Malik and Mr. Ian Snowball, including the Emails.

8. Those emails were before the District Judge at what was billed as a one hour directions hearing on 19 March 2020 (“the Directions Hearing”). The Claimant and the Defendant were represented by their respective directors, Mr. Alex Snowball and Mr. Malik. The hearing was very short. Having confirmed that the claim was to enforce an agreement for the Claimant company to purchase an interest in the Property from the Defendant, the following exchange took place,

“DISTRICT JUDGE JACKSON: A contract for the purchase of land to be enforceable must be in accordance with the law of the Property Act 1925 be in a deed, be in writing, contain or have within it references to allow you to obtain all terms and conditions of the contract and must be signed by both parties. Where is the deed? Emails are not a deed.”

...

“DISTRICT JUDGE JACKSON: According to the Law of Property Act 1925 as I have already said, a contract must be in writing, in a deed containing all of the terms or showing where the terms have been agreed by the parties and signed by both parties.

MR SNOWBALL: Okay, we did not have that.

DISTRICT JUDGE JACKSON: You did not have a document?

MR SNOWBALL: No.

DISTRICT JUDGE JACKSON: Then there is no contract to enforce, so the claim has to be struck out and it needs to be struck out on the grounds that it is totally without merit.”

9. From this exchange, and in particular the District Judge’s observation that a contract for purchase of land must be in writing, must contain the terms agreed and must be signed by both parties, it is evident that she intended to refer to s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 (“Section 2”). Section 2 provides,

“2.— Contracts for sale etc. of land to be made by signed writing.

(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.

(2) The terms may be incorporated in a document either by being set out in it or by reference to some other document.

(3) The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.

...”

10. The District Judge’s reference to a requirement for a deed and to the Law of Property Act 1925 appears to have been a reference to the requirement in section 52 of that Act that a conveyance of land or any interest therein must be by deed.

The Appeal

11. In addition to seeking an extension of time, the Claimant’s Notice and Grounds of Appeal contended that although the agreement which it made with the Defendant was for a joint purchase of land, there was no requirement for a deed. Further, it was contended that there was a procedural irregularity because:

- i) the hearing at which the claim had been struck out was a directions hearing and accordingly the Claimant had not instructed Counsel to attend;
- ii) Mr. Alex Snowball was not briefed to discuss the merits of the case;
- iii) the District Judge determined that the claim should be struck out without hearing legal representations from the Claimant; and
- iv) the decision to strike out the claim was “determined within approximately three minutes”.

12. The application for permission to appeal came before HHJ Davis-White QC. By an Order dated 24 April 2020 the application was adjourned and the Claimant was ordered to file and serve further information, including a skeleton argument. Paragraph 4 of the Order stated that:

“As well as the ground regarding procedural irregularity the Skeleton should set out clearly the legal arguments as to why the District Judge was wrong in law to hold that the Claimant’s claim was to be struck out and as being totally without merit.”

13. By a further Order of HHJ Davis-White QC dated 4 August 2020:

- i) the time for appealing was extended;
- ii) the Claimant was granted permission to appeal; and
- iii) the Claimant was ordered to file and serve draft amended Particulars of Claim that would have been relied upon to defeat a strike out application.

14. Although no reasons were given, taking the Orders dated 24 August 2020 and 4 August 2020 together, it may be surmised that HHJ Davis-White considered that one issue that might arise on the appeal was whether, instead of striking out the claim, the

District Judge should have allowed the Claimant an opportunity to bring forward a draft amended pleading to see if the claim could be saved by amendment.

15. Draft Amended Particulars of Claim (the “DAPOC”) were subsequently filed and served. The DAPOC set out a claim in breach of contract, a claim based on proprietary estoppel and a claim in unjust enrichment.
16. There have been further applications on both sides. By an application notice dated 11 August 2020 the Defendant applied to set aside the permission to extend the time to appeal. The Claimant then applied for an extension of time for service of an amended statement of case in the form of the DAPOC and to join further parties to the claim. Those applications were adjourned until the hearing of this appeal.

The issues on the appeal

17. CPR r.52.21(3) provides that:

“(3) The appeal court will allow an appeal where the decision of the lower court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.”

18. Having regard to the claims in the DAPOC, the main issues on the appeal are therefore:
 - i) Whether, as a matter of substance, the District Judge was wrong to strike out the Claimant’s claim.
 - ii) Whether, as a matter of procedure, the District Judge was wrong to strike out the Claimant’s claim at the Directions Hearing.
 - iii) Whether, if there was any procedural irregularity, the decision of the District Judge was unjust.

Was the District Judge wrong as a matter of substance to strike out the claim?

19. The Claim Form which was before the District Judge provided brief details of claim in the following terms:

“BREACH OF CONTRACT: Purchase of land and buildings – Acimar purchasing the freehold and renegeing [sic] on the contract for a joint purchase with Hellfire Entertainment Ltd.

REMEDY: Specific Performance and/or in the alternative: damages.”

20. The original Particulars of Claim were attached to the Claim Form and set out details of the agreement allegedly concluded between the Claimant and the Defendant. It was alleged that:

- i) on or around 18 October 2018 the Claimant and Defendant had entered into an agreement to purchase the Property;
 - ii) the Defendant would “front the purchase” and once the purchase was completed, the Claimant would then pay to the Claimant “one half of the final costs and be entered onto the deed [sic] as joint, 50/50, owners”;
 - iii) the agreement was “difficult for [the Defendant] and [the Claimant] to formalise to finality” because the Defendant’s representative was abroad; and
 - iv) the Defendant had refused to honour the agreement and had instead let the Property to a fast-food business.
21. It is evident from that summary that the only pleaded cause of action was in breach of contract, and that the relevant contract of which specific performance was sought was a contract under which the Defendant would, having purchased the Property itself, then to sell a 50% interest in it to the Claimant. This was plainly a contract for the sale and purchase of an interest in land which would only be enforceable by the Claimant if it satisfied the formality requirements set out in Section 2.
22. The Claimant had been given an opportunity to file and serve any contract upon which it was relying and the District Judge established from the director of the Claimant that there was in fact no such written contract. Therefore, even assuming that an agreement had been reached as alleged by the Claimant, the agreement was unenforceable and the claim in contract was bound to fail. As regards the substance of the claim, therefore, the District Judge’s decision was indisputably correct.
23. Although the District Judge referred to the 1925 Act and not to the 1989 Act at the Directions Hearing, I do not think that matters. She correctly referred to the legal requirement for a signed, written contract for the sale of an interest in land which contained all the terms agreed by the parties, and even if she misidentified the particular Act containing that requirement, the principles on which her reasoning was based were manifestly correct.

Was the District Judge wrong, as a matter of procedure, to strike out the claim at the Directions Hearing?

24. The Grounds of Appeal contend that the District Judge was wrong to strike out the claim at the Directions Hearing without allowing the Claimant an opportunity to instruct counsel and make legal submissions. That contention was founded in the fact that the parties had thought that they were attending a directions hearing and the Claimant had no prior warning of any intention on the part of the court to strike out its claim. It is also significant that although the Defendant had denied that a contract had been formed, the Section 2 point was not taken in its Defence.
25. Even though the court has a broad discretion to exercise its case management powers, and plainly can exercise the power to strike out a claim of its own initiative, I consider that there is obvious force in the point that the Claimant was taken by surprise by the approach of the District Judge.

26. Reference should also be made to the practice which is referred to in “Civil Procedure” (The White Book) (2020 Ed.) at paragraph 3.4.2 that:
- “Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out without first giving the party concerned an opportunity to amend”.
27. The authority cited in support of that proposition is Soo Kim v Youg Park [2011] EWHC 1781 (QB). In that case, Tugendhat J stated, at [40],
- “where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right.”
28. It might fairly be said that since the only claim identified in the Claim Form was a claim in contract which could not be enforced due to Section 2, even if the District Judge had gone through the exercise of considering whether the Claimant might have been able to put right the defect in its case, she would have found no reason to believe that such defect could be cured by an amendment to the Particulars of Claim. However, given that an amendment to the Claim Form was still possible, I think that would be an unduly narrow approach.
29. In my judgment, whilst entirely justified in raising the substantive point that she did, in light of the background to the Directions Hearing and the attendance at it of non-legally trained representatives, it was procedurally irregular for the District Judge not to have given the Claimant the opportunity to take legal advice on its position and on the order that the District Judge had indicated that she was minded to make.

Does the DAPOC disclose a sustainable claim for which permission to amend should be granted?

30. As I have indicated, however, the District Judge’s failure to allow an adjournment would only have been “unjust” within the meaning of CPR r.52.21(3)(b) if it deprived the Claimant of the opportunity to present a draft amended Claim Form and draft amended Particulars of Claim for which permission to amend would have been granted. If the result of giving the Claimant an adjournment would not have produced a sustainable claim form and statement of case, then no injustice was done.
31. As indicated above, that appears to have been the purpose for which HHJ Davis-White QC gave a direction that a draft amended pleading should be served for this appeal which would have been produced in response to a strike out application of which notice had been given. The DAPOC is what the Claimant has produced, and it is to that draft pleading that I therefore now turn.
32. As indicated, the DAPOC contains (i) a claim for breach of contract, (ii) a claim based on proprietary estoppel, and (iii) a claim in unjust enrichment. The foundation for the pleading is said to be a “Principal Agreement” which is identified as follows,

“2. Mr. W. Malik, a director of the Defendant, in the period up to 8 November 2018 and on the basis of his emails representations [sic] with Mr. I Snowball, on behalf of the Claimant, consistent with a course of conduct up to 8 November 2018, entered into a contractual agreement (“the Principal Agreement”) with the Claimant to purchase land and buildings ...at 32 Queen Street, Huddersfield HD1 2SP (the “Property”)...

3. The Principal Agreement was firstly for the Defendant to singularly acquire the leasehold title of the Property and shortly following completion of the purchase for the Claimant to acquire from the Defendant (and for the Defendant to allow the Claimant’s acquisition of) a leasehold interest in the Property, so holding in equal shares with the Defendant, as tenants in common.

4. Under the Principal Agreement, the Claimant, through Mr. I Snowball, would pay to the Defendant approximately 50% of the initial purchase price, (50% being £85,000) in addition to 50% of the associated costs.

5. Following the initial acquisition of the Property by the Defendant, and also the subsequent transfer to the Claimant enabling leasehold co-ownership as tenants in common, the Principal Agreement also provided for the onward transfer to the Claimant of a leasehold of part of the Property (the “Leasehold Land”).

6. [The Leasehold Land was defined].

7. The Claimant’s payment of the £85,000 was the agreed consideration for both interests in land that the Defendant agreed that the Claimant would obtain.

8. The Principal Agreement was confirmed by emails between the Claimant and the Defendant between 18 October 2018 and 31 October 2018.”

Preliminary: was the Claimant company involved?

33. For the Defendant, Mr. Davin raised an overarching point, which was that no facts were pleaded and no evidence had been adduced to support the proposition that it was the Claimant company (as distinct from Mr. Ian Snowball personally) that was involved in any of the events upon which reliance was placed in the DAPOC. Put in terms of the three claims made in the DAPOC, he contended that it would be essential for the Claimant company to show (i) that it was the contracting party to the Principal Agreement, (ii) that it was the person to which any relevant promises were made upon which an estoppel might be founded, and (iii) that it was the entity at the expense of which the Defendant was unjustly enriched. Mr. Davin contended that the Claimant company failed on all counts.

34. The critical background to such submission is that Mr. Ian Snowball was not a director of the Claimant company. As such, there could be no presumption that he had any authority to commit the Claimant company to any contract or to act on behalf of the company. Any such authority would have to have been conferred upon him by an appropriate organ of the company and the relevant facts in that regard ought to have been specifically pleaded.

35. As indicated above, the issue that Mr. Ian Snowball was not a director of the Claimant was raised in the Defence. In response, the Reply had acknowledged that he was not a director, but had then simply asserted, at paragraph 16,

“Whilst it is correct to say that [Mr Ian Snowball] is not a Director, that of course does not affect his ability to negotiate a contract on behalf of Claimant.”

That formulation did not, however, make a positive case, still less identify or plead any material facts, to explain precisely how Mr. Ian Snowball had been authorised by the Claimant company to negotiate on its behalf. Nor did it suggest that he had been authorised to bind the Claimant company to the alleged agreement with the Defendant.

36. Nor do the documents relied upon in the DAPOC provide the answer. Paragraph 20 of the DAPOC refers to a series of emails (exhibited as 1-69) which are stated to evidence the “formulation” [sic] of the Principal Agreement. Paragraphs 21 and 22 then identify a number of emails upon which reliance is specifically placed.

37. Those emails are, however, all between Mr. Malik and Mr. Ian Snowball, and Mr. Ian Snowball uses the first person singular throughout when referring to the proposed deal. So, for example, on 18 October 2018 Mr. Ian Snowball wrote,

“In terms of my suggestion for the way you and I to work together is that we buy it together then have separate interests so that we can each go our own way as we do have slightly different agendas.”

38. The first occasion on which there was any mention of a company associated with Mr. Ian Snowball was in an email from Mr. Malik on 24 October 2018, in which Mr Malik stated:

“Just bear in mind my father and I are directors of my company so for all intents and purposes they will probably prepare a contract with our names on. Let that unfold if we get it – and before completion we will get your name added so that 50% will go on our company and 50% in your name or your company name as you so choose.”

There was, however, no subsequent pleading or evidence of any such choice of contracting party being made by Mr. Ian Snowball or any communication of the identity of the Claimant company as the party which was to be added to the contract.

39. The first email mentioning the Claimant company was sent by Mr. Ian Snowball to Mr. Malik on 9 November 2018. In that email Mr. Ian Snowball stated,
- “...your family are desirous for you to renege on the agreement we entered into, and in place for them to effectively take our place (Hellfire Entertainment Ltd) (HEL)) and provide the funds, rather than take the funds HEL currently have set aside for the joint purchase....
- ...
- When considering that the agreement we entered into was that we would share the cost and returns of the building itself and that HEL would be given the rear parcel of land at no additional cost, it will be understood that HEL are giving away a lot of ground in this matter.”
40. That email post-dates the alleged formation of the contract as set out in the paragraphs of the DAPOC to which I have referred, it was sent a week after the Defendant had purchased the Property on 2 November 2018, and it post-dated Mr. Malik informing Mr. Ian Snowball that he did not regard himself as bound by any agreement. I therefore do not see that it could constitute any valid identification of the Claimant as the contracting party so as to conclude any agreement.
41. The need to identify the basis upon which the Claimant company rather than Mr. Ian Snowball personally was claiming to be the contracting party is not a point which has caught the Claimant unawares and which it has not had the opportunity to address. The Claimant was plainly alive to the point when the Reply was filed and the DAPOC produced. Notwithstanding that, the Claimant has not pleaded any relevant facts to justify the bare assertion that Mr. Ian Snowball was acting on behalf of the Claimant, and nor has it provided any evidence to that end.
42. In the circumstances, I accept Mr Davin’s submission that the Claimant has no real prospect of establishing on the basis of the DAPOC that it was either the contracting party in relation to the claim in contract, or the party to which any relevant promise was made for the purposes of the claim in proprietary estoppel. I also accept (and shall consider further below) that there is no basis in the materials that I have seen to support the proposition that the Claimant company was the entity that allegedly incurred time and costs undertaking or preparing to undertake works at the Property for the purposes of the claim in unjust enrichment.
43. I should for completeness record that my conclusion on the pleaded case and the materials adduced by the Claimant makes it unnecessary for me to consider a further submission by Mr. Davin (for which he sought to adduce further evidence), to the effect that at the relevant time in October /November 2018 Mr. Ian Snowball was an undischarged bankrupt and hence could not lawfully have been making decisions or entering into contracts on behalf of the Claimant company in any event.
44. My conclusion in this respect is fatal to the Claimant’s ability to bring a case as set out in the DAPOC. But I do not rely upon that point alone. The DAPOC is also

fatally flawed for other reasons connected with the various heads of claim made. It is to those that I now turn.

Breach of contract

45. The DAPOC in terms alleges and seeks to enforce a contract for the sale of an interest in land. Paragraph 3 of the DAPOC (above) is somewhat obscure as to precisely how the Claimant was to acquire “a leasehold interest in the Property, so holding in equal shares with the Defendant, as tenants in common”. However, since it clearly envisages a two stage process, it seems to be alleged that the Claimant was to acquire its 50% interest from the Defendant after the Defendant had completed the acquisition of the whole of the Property from the vendor.
46. That agreement is in reality no different from the one alleged in the original Particulars of Claim, and it would likewise fall foul of Section 2. I have not been given any explanation as to how any claim to enforce the alleged contract might be maintained in view of the statutory requirements. In my judgment, therefore, the breach of contract claim in the DAPOC is plainly unsustainable and even if there had been an adjournment of the Directions Hearing, leave to amend would not have been given.

Proprietary estoppel

47. A proprietary estoppel is said to arise on the basis of promises or representations made by a defendant to a claimant, on which the claimant acts to its detriment. In the instant case, the Claimant invokes what has been called the “promise-based” strand of proprietary estoppel. A summary of the relevant principles is set out in *Snell’s Equity* (34th Ed) at paragraph 12-036:

“[The principle] applies ... where A makes a promise that B has or will acquire a right in relation to A’s property and B, reasonably believing that A’s promise was seriously intended as a promise on which B could rely, adopts a particular course of conduct in reliance on A’s promise. If, as a result of that course of conduct, B would then suffer a detriment were A to be wholly free to renege on that promise, A comes under a liability to ensure that B suffers no such detriment.”

48. In Farrer v Miller [2018] EWCA Civ 172; [2018] 2 P. & C.R. DG3 Kitchin LJ considered whether an incomplete agreement might in principle give rise to a proprietary estoppel:

“65. ... It is not a requirement of a proprietary estoppel that the parties have reached an agreement. What is required is that the owner of the land has induced, encouraged or allowed the claimant to believe that he has or will acquire a right or interest in the land, and that right or interest must be clear enough in all the circumstances. In Thorner v Major [2009] 1 WLR 776, Lord Walker cited with approval Hoffmann LJ’s statement in Walton v Walton (1994) that:

“The promise must be unambiguous and must appear to have been taken seriously. Taken in context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made.””

49. Mr. McCauley argued that, even if the Principal Agreement was not enforceable for the reasons outlined above, there was nevertheless a sufficiently clear promise given by Mr. Malik to Mr. Ian Snowball that the Claimant and the Defendant would ultimately own the Property as tenants in common in equal shares and that the Claimant would be transferred the Leasehold Land. He contended that this amounted to a promise or assurance made by the Defendant to the Claimant that it would acquire an interest in land which was sufficiently certain for the purposes of a proprietary estoppel.
50. Mr. Davin’s primary argument was that, for the reasons set out above, the Claimant had no prospect of showing that the Defendant made any representation to the Claimant, as opposed to Mr. Ian Snowball personally. I have already considered and accepted that point above.
51. Mr. Davin also submitted that on an ordinary and natural reading of the Emails, the correspondence simply showed ongoing negotiations between those individuals in anticipation of a formal agreement, rather than any firm promise upon which the Claimant could reasonably have relied.
52. Subject to the overarching point that I have already accepted that there is no basis for finding that Mr. Ian Snowball was acting on behalf of the Claimant company, with some hesitation I accept that there would be a realistic prospect of a court finding that the basis upon which the Claimant was to acquire an interest in the Property and in the Leasehold Land was “clear enough in all the circumstances” for a proprietary estoppel (per Kitchin LJ in Farrer v Miller). I say “with some hesitation” because as indicated above, I remain unclear precisely how the parties intended to structure the transaction so as to achieve the “joint ownership” of the Property once it had been acquired by the Defendant, or the transfer of the Leasehold Land.
53. However, where I consider that this aspect of the Claimant’s case would plainly fail is that the Emails show clearly that the two individuals involved knew and agreed that there would have to be a formal legal agreement signed by both of them before either was bound. That much is apparent from an exchange of emails on Friday 26 October 2018. The first was by Mr. Ian Snowball to Mr. Malik and stated:

“Yeah got all of that – quite happy to transfer the money but as much as we trust each other there would have to be a signed agreement between us, however basic – then off we go.”

The response sent by Mr. Malik to Mr. Ian Snowball later on the same day stated:

“That’s absolutely fine. There should be at the least a few lines stating what we are doing and how that is signed with witnesses...”

54. As such, I do not believe that there is any realistic prospect of the Claimant succeeding in persuading a court that Mr. Ian Snowball, who had asked for the signed agreement in the first place, reasonably placed any serious reliance upon anything in the Emails. There is also no indication that the parties ever agreed to deviate from their agreement that a written and signed agreement would be required. Quite the reverse. It is clear from the emails on the following Monday, 29 October 2018, that Mr. Malik was actively consulting his solicitor and reporting to Mr. Ian Snowball how the arrangements might be structured.
55. The position that Mr. Ian Snowball and Mr. Malik in this regard can, it seems to me, be equated with the position in Cobbe v Yeomans Row [2008] 1 WLR 1752. One of the main grounds on which the claim failed in that case was that the parties in question were experienced in property matters and, as Lord Walker put it at [87], the claimant “was expecting to get a contract”.
56. The acts said to have been done by the Claimant in detrimental reliance on the alleged representations are set out in paragraphs 25 – 28 of the DAPOC. It is said that the Claimant spent time and incurred costs in carrying out and preparing to carry out “Works” and “Further Works”, including the preparation of car parking facilities and the clearance of invasive knotweed. Those Works and Further Works are, however, alleged to have been carried out “on or around end 2018”.
57. In itself, that would be a hopeless basis for a claim in detrimental reliance given that, even on its own case, the Claimant pleads that it knew that Mr. Malik was denying that the Defendant had made any binding promise or contract in relation to the Property by 8 November 2018. Thereafter, the Claimant could not reasonably have been relying on any alleged promise by Mr. Malik.
58. However, the DAPOC also refers to a series of emails dated between 27 and 29 October 2018. In those emails, in addition to Mr. Ian Snowball making a number of suggestions as to what might be done to create a car parking area in the future, he mentioned that on Saturday 27 October 2018 he was,
- “having a tidy around the back area and at the moment am getting rid of all the dead knotweed so it does not look as bad etc.”
- There is, however, no explanation in the DAPOC of why Mr. Ian Snowball’s activities in this regard should be regarded as a detriment suffered by the Claimant company.
59. I also do not see how the very limited extent of Mr. Ian Snowball’s activities over that late October weekend could conceivably amount to sufficient detrimental reliance so as to give rise to an estoppel requiring the Defendant to give effect to the alleged promises that had been made to transfer interests in the Property and the Leasehold Land.
60. Mr. McCauley also submitted that the Claimant had relied to its detriment on the promises made to it by the Defendant in refraining from bidding for the Property at auction. I do not accept that submission. That assertion is not pleaded in the DAPOC

and it appears that in the event the Defendant purchased the Property by private treaty before any auction took place.

61. I therefore conclude that the claim in proprietary estoppel in the DAPOC has no realistic prospects of success.

The claim in unjust enrichment

62. The editors of *Goff & Jones: The Law of Unjust Enrichment (9th Ed.)* set out the essential elements of a claim in unjust enrichment in the following terms (at para 1-09):

“A claimant must show three things to make out a claim in unjust enrichment: that the defendant was enriched, that his enrichment was gained at the claimant’s expense, and that his enrichment at the claimant’s expense was unjust.”

63. A claim in unjust enrichment cannot succeed, however, simply because a person does work to improve the property of another. There needs to be some factor making it unjust for the owner of the property to retain that benefit without compensating the claimant for the work done (what *Goff & Jones* calls a “justifying factor”). The relevant cases fall under the general heading of “failure of basis”, which *Goff & Jones* explains in paragraph 12-01 as follows,

“The core underlying idea of failure of basis is simple: a benefit has been conferred on the joint understanding that the recipient’s right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit. The condition might take one of a variety of forms. For instance, it might consist in the recipient doing or giving something in return for the benefit (hereafter referred to as “counter-performance”). Alternatively, the condition might be the existence of a state of affairs, or the occurrence of an event, for which the recipient has undertaken no responsibility.”

64. So, for example, a remedy in unjust enrichment can be granted where work is done on the basis that both parties jointly anticipate that a contract will be entered into between them, or that a particular factual situation will come into existence, but which does not, in the event, materialise. Examples of this type of case are the decision to award a remedy in unjust enrichment equal to the value of the services provided by the claimant in obtaining planning permission in respect of the defendant’s property in Cobbe v Yeomans Row [2008] 1 WLR 1752 at [40]-[41]; or the remedy in unjust enrichment granted in Barnes v Eastenders Cash & Carry [2015] AC 1 to a receiver for performing work at the request of the CPS where no assets of the company turned out to be available to pay for such work. In all such cases, however, there has to be some joint understanding as to the basis upon which the work is done and the benefits are being conferred.
65. Paragraph 52 of the DAPOC sets out various ways in which the Defendant is alleged to have been enriched in the instant case. These include, for example, a claim that the Defendant has been enriched by the alleged fact that the Property which it acquired was worth more than £170,000 and that it has received rental income from it. Such

matters are plainly not benefits that can conceivably be said to have been gained at the Claimant's expense, and any claim in unjust enrichment in relation to such matters is misconceived.

66. The only benefit which could conceivably have been said to have been obtained by the Defendant at the expense of the Claimant could be the benefit of the Works and Further Works that are alleged to have been carried out by the Claimant in relation to the Property. The information about such works is scanty, but they are alleged in paragraphs 25-28 of the DAPOC to have included unspecified work “to enable” future car parking at the Property, clearing an infestation of Japanese knotweed, the removal of stones and rubble from the Property, and preparing to undertake those works and purchasing materials. The dates upon which the Works and Further Works were done is simply given in the DAPOC as “on or around end 2018”.
67. In my judgment, however, that claim in unjust enrichment in respect of the Works and Further Works by the Claimant is lacking in sufficient particularity and is unsustainable for the following reasons.
68. First, for the reasons set out above, if and to the extent the Claimant relies upon any of the activities carried out by Mr. Ian Snowball (and in particular those over the weekend of 27-28 October 2018 concerning the removal of Japanese knotweed), there is no pleaded basis or evidence to suggest that such activities were done on behalf of, or the expense of, the Claimant company. Nor, for the same reasons, is there any basis for a finding that there was a joint understanding on the part of the Defendant that such activities were being done on behalf of the Claimant company. Mr. Ian Snowball seems to have been simply acting off his own bat.
69. Secondly, the allegation that such “Works” or “Further Works” were done “on or around end 2018” as alleged in the DAPOC suggests that they were done after Mr. Malik had made clear on 8 November 2018 that any interest in the Property and the Leasehold Land were not going to be transferred. After 8 November 2018 I therefore cannot see how it could be said that such works were done pursuant to any joint understanding that a contract between the parties was in existence or was still anticipated. Rather, any such works must have been done at the Claimant company's own risk that there was no binding contract, and that no such contract would materialise.
70. Taken together, those points leave no identification, either in the DAPOC or the evidence that I have seen, of any specific work or benefits conferred that would support an unjust enrichment claim.

A Pallant v Morgan equity?

71. At the hearing Mr McCauley submitted that the facts pleaded or in evidence could give rise to a constructive trust of the Property and the Leasehold Land in accordance with the principles set out in Pallant v Morgan [1953] Ch 43. In this regard he relied on Farrer v Miller in which, he said, permission had been given to amend a case in order to plead a Pallant v Morgan equity on similar facts.
72. Such an argument was not, however, included within the DAPOC served in accordance with the order of HHJ Davis-White QC. Nor was it included in any draft

pleading produced at the hearing of the appeal before me. Whatever its possible merits, I therefore consider that such an argument provides no answer to the striking out of the claim. Even on the basis of the practice which I have identified of permitting an adjournment for a party to attempt to save its case by producing an amended pleading, there does actually need to be an amended pleading raising the relevant argument which the court can consider and, if justified, for which it can give permission to amend. It is not sufficient for a party whose existing claim is unsustainable to assert vaguely that if given (even more) time it could come up with a sustainable case.

Conclusion

73. For the reasons set out above, I therefore conclude that the claim as formulated in the original Claim Form and Particulars of Claim was rightly struck out by the District Judge. I also conclude that the claims contained in the DAPOC have no real prospect of success, so that even if the District Judge had adjourned the hearing to give the Claimant the opportunity to bring forward a draft amended pleading to attempt to save its case, permission to amend would not have been granted. Accordingly, even if there was some procedural irregularity in the District Judge's decision to strike out the claim immediately, that did not cause any injustice to the Claimant.
74. I therefore dismiss the appeal. It is therefore unnecessary for me to consider the other applications which are before the Court.