



Neutral Citation Number: [2023] EWHC 1444 (Ch)

Case No: PT-2022-001096

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS & PROBATE LIST

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 14 June 2023

Before :

MR DAVID HALPERN KC SITTING AS A HIGH COURT JUDGE

Between :

1. MYCK DJURBERG **Claimant**

- and -

(1) THAMES PROPERTIES (HAMPTON)
LIMITED
(2) RODRIGUEZ DOLL
(3) GREGORY COLLIER

Defendants

The **Claimant** in person
Mr Steven Woolf (instructed by **Gunnercooke LLP**) for the **Defendants**

Hearing date: 12 June 2023

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 remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10:30 am on 14 June 2023

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MR DAVID HALPERN KC SITTING AS A DEPUTY HIGH COURT JUDGE

Mr David Halpern KC :

1. This is an application by the Defendants to strike out a claim by Mr Djurberg or for reverse summary judgment. There is also an application by the Defendants for an extended civil restraint order against Mr Djurberg, but at the request of Mr Steven Woolf, who appears for the Defendants, I have not yet heard that application.
2. Mr Djurberg has drafted his own Claim Form and Particulars of Claim (“**POC**”) and represented himself before me, assisted by his son who is a law student. He is convinced that the Defendants in this case are both dishonest and violent. For example, he says in his POC that: “*The Defendants are known for acting outside the law and will stop at nothing to take advantage of others. The Second Defendant has a serious crime recorded for theft and other crimes including use of weapons where he has served prison time*”. These are very serious allegations but are wholly unparticularised. The POC are deeply unsatisfactory in many respect and, if they were permitted to survive, might require radical pruning. However, that is not the nature if the application that is before me today, which is a root-and-branch attack on the entire claim.
3. Mr Djurberg adopted a similarly unfocused and scattergun approach to his submissions. He told me that he is dyslexic and is being treated for depression. It is obvious that he feels passionately about his claim against the Defendants and it is understandable that he is unable to bring the objectivity that a professional adviser would bring. However, he is also an experienced litigant and showed a very detailed knowledge of some areas of the law (as appears below).
4. I remind myself of the approach which the court takes to litigants in person, as explained by Lord Sumption in *Barton v. Wright Hassall LLP* [2018] 1 WLR 1119 at [18]:

“In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR rule 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him: *R (Hysaj) v Secretary of State for the Home Department* [2015] 1 WLR 2472, para 44 (Moore-Bick LJ); *Nata Lee Ltd v Abid* [2015] 2 P & CR 3. At best, it may affect the issue “at the margin”, as Briggs LJ observed (para 53) in the latter case, which I take to mean that it may increase the weight to be given to some other, more directly relevant factor.”
5. The drafting of the POC and the style and content of Mr Djurberg’s submissions make it difficult to separate the wheat from the chaff and to see whether there is a properly arguable claim buried in the Claim Form and POC. On the one hand, it is right to make allowances for the Claimant’s difficulties but on the other hand it would not be just to allow the Claim to survive if I am satisfied that it is fanciful.

Background facts

6. In order to make sense of the Claim Form and POC, I need to refer to some background facts. Mr Djurberg was previously the registered freehold proprietor of The Chalet, Hampton Court Road, East Molesey, Surrey, together with the neighbouring property known as Hampton Riviera Boatyard (I refer to them together as the “**Properties**”). Both have river frontages and there are mooring and pontoons projecting into the Thames, although these are not included within the registered titles. The Properties were repossessed by receivers appointed by Mr Djurberg’s mortgagees and were sold to the First Defendant (“**TPH**”), who is now the registered proprietor. The Second and Defendants are directors of TPH.
7. Although it does not appear from his POC, Mr Djurberg was bankrupted on 21 September 2021, and remains undischarged, as he confirmed to me at the hearing.
8. The most important background document is a professionally drafted Settlement Agreement and Release made on 18 July 2022 (the “**Agreement**”) between TPH, Mr Djurberg and his son (referred to as “*Lord Dovydas Silickas Djurberg*”):
 - (1) After referring to a claim brought by TPH for trespass, Recital C says: “*The parties have settled their differences and have agreed terms for the full and final settlement of their Claim in returning for the Occupiers [i.e. Mr Djurberg and his son] relinquishing all rights which they purport to have over the Property and to hand over possession of the Property to Party A [i.e. TPH]*”.
 - (2) The Agreement is conditional upon immediate payment of £217,990.71 by TPH to solicitors acting for Mr Djurberg’s son (no doubt there was no payment to Mr Djurberg because he was an undischarged bankrupt). This sum was duly paid.
 - (3) Clause 3.3 states: “*Party A shall allow the Occupiers a reasonable period of time to store any personal effects, possession and pets (up to four weeks from the date of this agreement) at the Property (provided no nuisance is caused) following satisfaction of the Condition. The Occupiers shall be permitted access to the Property between 7am and 8pm daily to retrieve such items without delay and upon prior arrangement with Party A.*”
9. There is no evidence of any written complaint by Mr Djurberg about breach of the Agreement at any time before December 2022, when he became aware that the Properties were being marketed for sale by TPH’s estate agent.

The Claim Form and POC

10. With that background, I can now turn to the Claim Form, sealed on 15 December 2022, which reads as follows (uncorrected):

“(1) A claim for the immediate return of all stored at the Chalet and HRB property to the owners and or beneficiaries and any related or consequential declarations and or relief

(2) A claim in conversion, wrong interference with goods under Tort (interference with good Act 1977) in relation to furniture fixtures and fittings, working tools and utensils, outdoor furniture plants and landscape materials owned by the claimant and or other beneficiaries and stored in the Chalet and HRB in summer 2022, some currently stored other disposed illegally

(3) Claims for breach of agreement or agreements relating to rights of access to premises known as fingers pontoons and or marina and against the interference of the operation of the moorings by the claimant to date

(4) A claim for declaration as to the nature as to the claimants rights in relation to and or the interest in the Licensed Premises and or the neighbouring properties and or ancillary rights and any appropriate consequential orders (for rectification registration or otherwise)

(5) In terms of remedy the claimants seek: (1) Consequential Orders (2) Permanent Injunction restraining any interference by Ds with the moorings (3) damages and further relief (4) Costs”.

11. Turning to the POC dated 12 December 2022, paragraph 9 refers to an agreement of 19 July “*that his mooring business would not be affected and his family compensated as per evidence attached*”. This appears to be a reference to the Agreement of 18 July 2022, which Mr Djurberg confirmed to me that he and his son had signed. However, that Agreement makes no reference to his mooring business. The only evidence attached to the POC comprises two pages of photographs of the Properties prepared by Absolute Homes plc, estate agents instructed by TPH to market the Properties in about November 2022.
12. Paragraph 10 states: “*The claimant was not aware that the defendants had intention to deprive the claimant and his family access to the property as they changed all locks including the main gates. Five days later the defendants locked the family out deprive of access and from collecting their own belongings and even their food ...*” Paragraph 11 states that Mr Djurberg and his son attended the Properties on 25 July but were assaulted by Mr Doll, and that on 27th July they were locked out for good.
13. Paragraph 12 states that “*The claimant was later made aware that the defendants had breached the agreement in all its forms including but not limited its confidentiality. The detail of these breaches will form part of the skeleton argument and disclosure to follow.*” No further particulars have been volunteered.
14. Paragraph 13 states that some property was stolen by the defendants; however, no particulars are given. The paragraph also pleads that serious damage was caused, presumably by the Defendants, to Mr Djurberg’s mooring facility, but again no particulars are given. The pleaded basis of this “mooring facility” appears to be an allegation that Mr Djurberg holds a licence granted by the Crown Estate to use the moorings adjacent to the Properties. There is no allegation of damage to his alleged mooring business.
15. Paragraph 17 states that “*the claimant has lost a vast amount of personal belongings that were left behind by the trustees for the claimant. These were items of the claimants “tools of work” utensils of the claimants, livelihood, basic furniture and goods requires for the claimant to survive and support his family, all of it destroyed and other stolen by the defendants.*” The reference to “trustees” appears to be a reference to Mr Djurberg’s trustees in bankruptcy, and the paragraph is clearly drafted with a detailed knowledge of s.283(2) of the Insolvency Act 1986, which excludes from the definition of the bankrupt’s property:

“(a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family." (my underlining).

16. Paragraph 19 values the stolen assets stolen as being in the region of £750,000.

The Claimant's evidence and submissions

17. No list of assets is attached to the POC. However, Mr Woolf took me to a 10-page document headed "*The Chalet Estate – Hampton Riviera (The Marina) Inventory 2017*". This contains asterisks to indicate in relation to some, but not all, of the items that they remain in the Defendants' possession and/or have been damaged by them or disposed of by them. Mr Djurberg confirmed in his submissions to me that he relies on this list. It is not clear to me whether he relies on the whole list, e.g. it includes a historic houseboat said to be worth £900,000, which is more than the entire value of the Claim at £750,000.

18. He also relies on the photographs attached to the POC, which were produced by the Defendants' estate agent (see paragraph above). These show that a small number of items which Mr Djurberg says are his assets were still in the Properties in or about November 2022, in particular, plant pots, birdcages, a dining table and chairs and two floating pontoons.

19. In addition he took me to the following evidence (none of which is pleaded, nor properly evidenced in a witness statement), viz:

(1) A brochure he says he produced in about 2016 or 2017 showing the furniture and other assets at the Properties and some additional photographs which he says he took in about 2016 showing furniture and plant pots at the Properties.

(2) Three pages of photographs headed "*Stolen Property by the Defendants*". No narrative is provided with these photographs, but Mr Djurberg informed me that they were taken by him in or about 2017. They do not establish that these items were in the Properties in July 2022, nor that they were subsequently stolen, destroyed or damaged by the Defendants.

(3) One page of photographs headed "*Damage to Property by Defendants*", again with no narrative. He told me he took these in late July or August 2022.

(4) A WhatsApp message from TPH's removal agent to him timed at 10:35 (no date given) between himself and TPH's removal agent, saying:

"There were no sofas present when we arrived this morning, my understanding is they were cut up and skipped according to my men. We managed to retrieve 12 plants. We have invoiced you this morning please can we you arrange payment so we can finalise delivery"

and a further message from the agent at 11:34 (apparently on the same day), saying:

"There are 16 plants in total we are able to move without the use of a crane. I hope to bring them over this Thursday along with the sofas and draw and door. Cost will be £600 plus Vat."

I understand the reference to cost to be the cost of removal. These messages are not consistent with any refusal to allow Mr Djurberg to remove assets.

- (5) A recording of an extract of a conversation which he told me was between himself and the Defendants on 19 July 2022. This was part of what appeared to be an amicable discussion about the removal of “white goods”, i.e. fridges and freezers. At best this shows that Mr Djurberg wished at that time to remove the white goods; it does not show that the Defendants prevented him from doing so.
 - (6) A video which appeared to show him being denied entry to the Properties on one occasion. This appears to be the high point of his evidence, and I refer to it below. He accepted that he had no further evidence of being denied entry.
20. He also told me that he, his son and two others (his godson Craig Davis and Jade Davis) were locked inside the house as prisoners from 19 to 27 July. This was the first occasion this had been mentioned: it does not appear in the POC or in any written evidence I have seen. When I asked him why it was not in the POC, he said that it was because it forms no part of these proceedings. At this point, if not before, he appears to have lost contact with reality. I have considered whether I should simply ignore this wild and unsubstantiated allegation on the basis that it forms no part of his Claim Form or POC. However, I have concluded that, since he wishes me to rely on the evidence summarised in paragraphs 17. to above, which is also not included in the POC, I must take into account everything which he has said to me.

The Defendants’ evidence

21. The Defendants rely on the second witness statement of Mr Collier. His evidence is that:
- (1) He met with Mr Djurberg and his son at the Properties on 19 July 2022. All that remained at the Properties were a few large items of furniture (such as a dining table) and boxes of possessions. The meeting was amicable.
 - (2) Thereafter the locks were changed, but Mr Djurberg was permitted access on numerous occasions over the next few weeks to collect his belongings. The only occasion when he was denied access was when his Rottweiler (which had remained at the Properties) broke free and he was not permitted access for about 24 hours until the dog had been restrained. This is the occasion referred to in paragraph 19.(6) above.
 - (3) The very heavy dining table was left behind because the trustees in bankruptcy decided that it was not worth removing.
 - (4) Mr Djurberg did not seek any further access after early to mid-August 2022 and made no complaint until December 2022.

The application for summary judgment

22. The Defendants’ application is to strike out the Claim or alternatively for reverse summary judgment. In his oral submissions Mr Woolf sensibly concentrated on the latter, recognising that there were no grounds for striking out the Claim as a whole (as distinct from possibly excising particular parts of it).
23. I therefore turn to the well-known summary given by Lewison J (as he then was) in *EasyAir Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15], which I quote in full as this is a hearing with a litigant in person:

“i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: *Swain v Hillman* [2001] 2 All ER 91;

ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];

iii) In reaching its conclusion the court must not conduct a “mini-trial”: *Swain v Hillman*;

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.”

24. The Defendants’ application is for reverse summary judgment, and accordingly the burden of proof is on the Defendants to satisfy the court that the Claim has no realistic prospect of success.
25. The biggest part of the claim is for the value of the assets which have allegedly been misappropriated or damaged. This requires Mr Djurberg to establish each of the following:
 - (1) That the assets were in the Properties on 18 July 2022;

- (2) That they are assets of substantial value;
 - (3) That he owned them;
 - (4) That they were not removed by him during such time as he was permitted to have access; and
 - (5) That he wished to remove them but was prevented from doing so, and that they have been destroyed, damaged or misappropriated by the Defendants.
26. As regards (1) and (2), he has not provided satisfactory evidence of what assets were in the Properties on 18 July 2022, still less that they were of substantial value. In response to Mr Woolf's submission that no invoices had been produced to show the purchase or cost of any item, he had two responses. One was that his papers were removed by his trustees in bankruptcy, although he then accepted that he had recovered most, but not all, of his papers in December 2022. He gave no good reason why he could not have produced at least some invoices or proof of ownership over the last six months. The second was that he was not obliged to give disclosure at this early stage in the litigation.
27. As regards (3), he has not provided any evidence to show that these assets (if they existed) were his. All his property passed automatically to his trustee in bankruptcy, subject to the exceptions in s. 283(2). The list of assets referred to in paragraph 17. above includes a very small number of tools, but their total value is about £5,000. Most of the rest is furniture, but it is fanciful to suggest that furniture that is "*necessary for satisfying the basic domestic needs*" of Mr Djurberg and his family could be worth £750,000. He asked the court to infer that the trustee had relinquished any claim to these assets, but produced no evidence to this effect
28. As regards (4) and (5), this depends on his evidence that he was excluded from the Properties. The only evidence to this effect is the video referred to in paragraphs 19.(6) and above. However, that is satisfactorily explained in Mr Collier's evidence. There is no evidence of any further exclusion, nor (as I would have expected) of any complaint between August and December 2022 about having been excluded. In my judgment, this alone would be fatal, even if he was able to show a credible case in relation to (1) to (3).
29. Although Mr Djurberg is right that this case has not yet reached the stage of disclosure, it is not sufficient for him to rely on this as an excuse for not providing any cogent evidence to support his case, given the cogency of the evidence against his case. I am satisfied that his case in relation paragraphs (1) and (2) of the Claim Form (i.e. in relation to the assets allegedly stolen or damaged) does not carry any degree of conviction but is fanciful.
30. I turn to paragraphs (3) and (4) of the Claim Form, which relate to alleged mooring rights. He began his submissions by telling me that he was an expert on the law relating to mooring rights and that he had the benefit of a licence from the Crown Estate in relation to mooring. We did not get to the bottom of this allegation, but what is clear is that: (i) he never had registered title to any moorings, (ii) the pontoons might well be chattels and not fixtures, although this is not clear, but there is no evidence that he was denied the right to remove them, nor that they have been removed or destroyed or damaged, and (iii) any licence he had to use the moorings must have been ancillary to his former ownership of the adjacent land and has not survived the loss of his title.
31. The only agreement which he has pleaded is the Agreement (which he mistakenly says was dated 19 July 2022). He pleads that it was agreed that his mooring business would not be affected, but no such term appears in the Agreement.

32. At one stage in his submissions he told me that the mooring licence was relevant because his boats had been stolen from it, but he then said that these boats were the subject of a different set of proceedings and therefore not relevant. There is no pleaded case and no evidence as to any damage to his alleged mooring business.
33. I am satisfied that the claim in relation to the mooring licence is also fanciful.
34. Finally, he claims an injunction and damages. On 24 January 2023 Miles J dismissed his application for an injunction (I have not seen the judgment, but only the order). I am told that Mr Djurberg is seeking permission to appeal. If permission to appeal is refused, that of course leaves an extant claim for damages but I am satisfied that his entire claim is fanciful and should be dismissed.

Disposition

35. For the reasons set out above, I grant reverse summary judgment on the Claim to the Defendants. I will hear the parties as to any consequential matters on a date to be arranged, and I will then hear the application for an extended civil restraint order.
36. Pursuant to CPR 52.3(2)(a) I formally adjourn the hearing of this application to the hearing which will deal with consequential matters, and I extend the time for any application for permission to appeal to 21 days from the date of that hearing.