



Neutral Citation Number [2023] EWHC 1986 (Ch)

CR 2022 004719

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST
IN THE MATTER OF LONDON SOUTH WEST SW LIMITED (IN
ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL
Date: 02/08/2023

Before :

ICC JUDGE BARBER

Between :

(1) JACOB BEAKE
(2) PAUL DAVID ALLEN
(ACTING AS THE JOINT ADMINISTRATORS OF
LONDON SOUTH WEST SW LIMITED)

Applicants

- and -

(1) JAMIE RICHARD CHAPMAN
(2) BODMAN HOUSE MANAGEMENT LIMITED

Respondents

Mr Reuben Comiskey (instructed by **Harrison Clark Rickerbys**) for the Applicants
Mr Michael Phillis (instructed on a direct access basis) for the First Respondent

Hearing date: 22 June 2023

Approved Judgment

This judgment was handed down remotely by email and MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.30 a.m. on 2 August 2023

ICC Judge Barber

1. On 22 June 2023 I ordered the First Respondent to execute on behalf of the Second Respondent a lease of Flat 2 Bodman House, 1 Bishops Hall, Kingston upon Thames KT1 1AS and to deliver up the original executed lease to the Applicants' solicitors by 4pm on 26 June 2023. This judgment sets out my reasons for making that order.

Evidence

2. For the purposes of this hearing, I have read the following witness statements together with their respective exhibits:

- (1) First witness statement of Paul Allen dated 1 June 2023;
- (2) Second witness statement of Paul Allen dated 21 June 2023;
- (3) First witness statement of Mr Chapman dated 21 June 2023.

I have also considered other documents in the bundle and supplemental bundle prepared for use at the hearing, to which reference will be made where appropriate.

Background

3. London South West SW Limited ('the Company') was incorporated on 25 July 2019 as a special purpose vehicle for the development and sale of residential flats situated at 11-13 Thames Street, Kingston-Upon-Thames, London KT1 1PH ('the Property'). The First Respondent ('Mr Chapman') has been the sole director of the Company since its incorporation.
4. The freeholder and head landlord of the Property is Rose Portfolio Limited. The Company is the lessee under a building lease dated 5 December 2019 ('the Head Lease'). The Head Lease provides for a term of 999 years at a premium of £4m plus VAT and an annual rent of £10. It includes an obligation on the Company to redevelop the Property.
5. The redevelopment involved the creation of 26 residential flats. The Company has been marketing leaseholds of these flats and is the lessor of 25 of them. The individual flat owners all have sub-leases granted by the Company.

Bodman House Management Limited

6. The Second Respondent ('Bodman') was incorporated on 7 October 2020. The purpose of its incorporation was to act as the management company for the Property. Mr Chapman has been sole director and sole shareholder of Bodman since incorporation.
7. Bodman provides services to the premises demised under the Head Lease and collect rents/service charges from the sub-lessees. Parts of these are then remitted to the Head Landlord to satisfy service charges falling due under the Head Lease.

Administration

8. The Applicants were appointed as Joint Administrators of the Company by order dated 13 January 2023. The order was made on the application of the administrators of two creditors of the Company known as Accumulate Capital Limited and Accumulate London SW Limited (together ‘the Secured Creditors’).
9. By the time that the Company entered administration, 25 of the 26 residential flats at the Property had already been sold. An offer for the remaining flat, Flat 2, had been accepted on 28 November 2022 but the sale on that flat had yet to complete.
10. The timing of the administration application was triggered by a winding up petition presented in November 2022 by another creditor, QOB. The administrators of the Secured Creditors were concerned that a winding up order would prevent (or at the very least materially impede) the offer for Flat 2 progressing to completion. Flat 2 was the last remaining realisable asset of the Company of any significant value. The administrators of the Secured Creditors formed the view that the appointment of administrators in respect of the Company would be the best available route to enable the prompt sale of Flat 2.
11. Accordingly, a letter of demand was issued to the Company on 12 December 2022. The administration application was filed with the court on 13 December 2022, supported by the petitioner, QOB. Following an initial hearing in December 2022 at which directions for evidence were given, a final order appointing administrators was granted on 13 January 2023 and the winding up petition was dismissed.

The Leases

12. The sale of each sub-lease (‘Lease’) by the Company was on the same terms. Examples of the documents relating to previously sold flats are exhibited to Mr Allen’s first witness statement. In summary:

(1) A memorandum was produced for the purchaser’s solicitor. This provided as follows (with emphasis in the original):

(i) at para 1, “**it is not possible to accept amendments** to the Contract documents except those directed to any errors of drafting which may have escaped our notice. **No further amendments can now be accepted as the Vendors will only sell on the basis of their standard Contract**”; and

(ii) at para 7, “The Building referred to in the [Head] Lease together with its associated services will be maintained by the Management Company, Bodman House Management Limited, which will be handed over to the residents after the last flat in the Building has been granted.”

(2) The Contract for Sale was attached to the Memorandum. This provided, at clause 13(a), (again, with emphasis in the original) that the purchaser would:

“Pay ONE POUND (£1.00) for One Ordinary Share of **BODMAN HOUSE MANAGEMENT LIMITED (Company Number 12933880)** (hereafter called “the [Management] Company”) and also deliver to the Seller a signed Authority as to

membership and serving as a Director of the [Management] Company in the forms provided by the Seller's Solicitors and if required will act as Director or Secretary of that Company".

(3) Prior to administration, on a sale of a flat in the Property, the Lease would be executed by the Company, the purchaser(s) and Bodman (defined in the Lease as "the Management Company"). The relevant parts, as they apply to Bodman, are as follows:

(i) Clauses 5-7 contain covenants as between Tenant, Landlord and Management Company;

(ii) Schedule 4 contains the Tenant Covenants, including to pay rent and service charges to the Management Company;

(iii) Part 1 of Schedule 6 contains the Landlord Covenants, including an obligation at para 2.1 to ensure that all Leases are granted in substantially the same form; and

(iv) Part 2 of Schedule 6 contains the Management Company Covenants, including an obligation to provide the services (subject to payment of the service charge by the tenant).

13. All flats were marketed and sold on the basis that the purchasers would have control over the provision of services and associated costs once the sale of all flats in the Property had completed.
14. Flat 2 was the only flat which had not been sold prior to the appointment of administrators on 13 January 2023. An offer had been agreed on 28 November 2022 and a firm of solicitors had been instructed by the Company to draw up the necessary documents. This was all done while Mr Chapman was in control of the Company.
15. The Administrators have since had to amend the contractual documentation relating to Flat 2 in certain minor respects, to reflect the fact that the flat is now being sold by the company in administration. The amendments are limited to those necessitated by this change in status. Nothing turns on this.
16. The contract of sale (as so amended) was agreed at the end of March 2023 between the Company, the Joint Administrators and the buyers. At the same time (end of March 2023), the draft Lease was circulated for signature to the parties to the Lease, these being the Company, the Administrators, the buyers and Bodman.
17. Mr Chapman refused to sign the Lease relating to Flat 2 on behalf of Bodman. He gave no good reason for this. He had signed all the other Leases on Bodman's behalf. Prior to the Company entering administration, he had also found the buyers for Flat 2, agreed a price and instructed solicitors to draw up the relevant documentation for the purchase.
18. There were no material changes after the Company entered into administration. The buyers remained the same. The price remained the same (although in the latest version it had been reduced from £570,000 to £566,500, in line with the buyers' reduced offer, accepted pre-administration). The documentation, save for the minor revisions referred to at paragraphs 15 and 16 above, in all other respects remained the same.

Approved Judgment

19. The reason for Mr Chapman's refusal to execute the last Lease (of Flat 2) is clear from the evidence before me: he was attempting to use that Lease as a bargaining chip, for his own personal purposes. The administrators of the Secured Creditors had called in a personal guarantee executed by Mr Chapman and had served a bankruptcy petition upon him. Mr Chapman considered that his role as sole director and sole shareholder of Bodman gave him leverage in that context. In this regard I was taken to an email dated 21 April 2023 from Ben Richards of FRP Advisory to Laura Upshall and others, reporting the outcome of a telephone conversation with Mr Chapman that day, which stated as follows:

‘Jamie returned one of my calls today and frustratingly is not agreeing to sign off on behalf of the management company. He was quite clear that he is looking to use signing the lease as a leverage for the wider position, in which we understand claims are being pursued against him personally by our secured creditor, Accumulate.’

20. The Applicants' solicitors wrote to Mr Chapman by letter dated 15 May 2023, warning him that this application would be issued if he continued to refuse to execute the remaining Lease on behalf of Bodman. The letter sought confirmation that Mr Chapman would cause Bodman to execute the Lease by midday on 19 May 2023. This prompted no constructive response.
21. Having made no progress in persuading Mr Chapman to execute the final lease on behalf of Bodman, the Applicants have had no option but to issue this application.

Hearing of 16 June 2023

22. The application was listed for hearing on 16 June 2023. In its current form it was served by email and first-class post on 9 June 2023. Mr Chapman did not respond to the application prior to the hearing date.
23. Mr Chapman appeared at the hearing on 16 June 2023 by Mr Phillis of Counsel. Mr Phillis told the court that Mr Chapman sought an adjournment of 14 days in order to provide instructions. His explanation for Mr Chapman's lack of involvement up to that point was the illness of Mr Chapman's brother-in-law, who had died the previous day.
24. The Applicants agreed to an adjournment on the basis of an undertaking offered by Mr Chapman that he would by 21 June 2023 deliver a copy of the Lease of Flat 2 signed by him on behalf of Bodman to the Applicants' solicitors, to be held pending determination of the application or agreement of the parties in the meantime. On that undertaking, the court adjourned the matter 'to be reheard [sic] in the interim list as soon as the court receives notification from either party (such notification to be sent by email)'.
25. In the event, Mr Chapman did not comply with his undertaking. He delivered a copy of the Lease in the wrong form and after the deadline provided in the undertaking.
26. Mr Allen prepared his second witness statement dated 21 June 2023 and requested that the matter be relisted in the ICCJ Interims list on 22 June or 23 June 2023. In the event,

the only hearing slot available that week was on 22 June 2023. Mr Phillis, the barrister instructed for Mr Chapman, was not available the following week.

27. Mr Chapman filed a witness statement dated 21 June 2023 in response to Mr Allen's second witness statement. Whilst professionally drawn and running to three pages, Mr Chapman's witness statement did not raise any facts and matters suggesting a substantive defence at all, even in broad outline. Instead, it sought to challenge the Applicants' contention that the matter was urgent and sought an adjournment until the week commencing 10 July 2023.

Hearing of 22 June 2023

28. At the hearing before me on 22 June 2023, Mr Chapman again attended by Mr Phillis and requested an adjournment. In summary, Mr Phillis maintained that the matter had been re-listed at short notice, that it was not sufficiently urgent to warrant immediate disposal, and that he required more time to take fuller instructions.

Adjournment Application: Discussion and Conclusions

29. In my judgment, on the evidence which I have read and the submissions which I have considered, (i) this matter is sufficiently urgent to warrant immediate disposal and (ii) no persuasive reasons have been put forward in favour of a further adjournment.
30. On the evidence before me, there is in my judgment a significant risk that the Company will lose the current buyers for Flat 2 if the matter is adjourned.
31. The buyers made an offer to purchase Flat 2 as long ago as 29 November 2022. Their offer, subsequently reduced to £566,500, remains the best offer received for Flat 2 to date.
32. From the correspondence it is clear that the buyers expected to exchange and complete as long ago as January 2023. It had to be explained to them at that stage that a secured creditor was on the brink of appointing administrators over the Company. This held matters up for a short period as the sale documentation then had to be adapted to comply with relevant insolvency legislation.
33. The parties have been ready to complete since March 2023. Mr Richards, a member of the Applicants' team, has attempted to contact Mr Chapman on numerous occasions following circulation of the finalised contract for sale on 24 March 2023 to ensure prompt execution of the Lease. Mr Chapman has deliberately stalled, for no legitimate reason.
34. The correspondence in evidence, passing between Ben Richards, the agents Stack and Bonner and the buyers/their solicitors, demonstrates clearly the buyers' increasing frustration with the delay. The correspondence in evidence shows a pattern of frequent requests for updates on the situation.
35. By 16 May 2023, the buyers emailed Stack and Bonner stating (with emphasis added):

‘We are willing to wait additional [sic] 2 to 4 weeks to sort this out and arrive at completion. I really hope this will not take so long....’.

36. On the same date, the buyers' solicitors wrote (with emphasis added):
- ‘Can you please keep us advised of the ongoing progress with the proceedings *so that we don't lose any further confidence*’.
37. By his witness statement Mr Chapman maintained that the Applicants' evidence does not go far enough. He observed that there had been no suggestion in Mr Allen's second witness statement that the Applicants had gone back to the buyers after the first hearing to ask how the buyers would feel about allowing more time. In my judgment this is an unrealistic (and somewhat provocative) stance for Mr Chapman to adopt, viewed in context.
38. It is clear from the evidence before me that the Applicants' team and their agents have done their utmost to reassure the buyers in an effort to ensure that they do not withdraw from the sale. The buyers have waited 5 months since indicating that they were ready to exchange and complete. The maximum further period of '2-4 weeks' indicated in May 2023 has now expired. There is in my judgment now a significant risk that any further delay will result in the buyers withdrawing from the sale. In my judgment the Applicants do not have to go back and ask the buyers how they would feel about allowing more time to know what the answer will be.
39. On the evidence before me I am satisfied that a withdrawal of these buyers is likely to cause loss to the insolvent estate. The Applicants have been advised by Stack and Bonner that the amount offered by the buyers is unlikely to be matched or beaten now that the Company is in administration. Should the sale fall through, this is likely to result in a lower offer for Flat 2 in the future, resulting in a reduced return for the Company's secured creditors.
40. Against that must be balanced the question of what purpose would be served by an adjournment. In this regard I remind myself that when considering an application for an adjournment, the court must have regard to the overriding objective, which includes not only including CPR 1.1(2)(a) (ensuring that the parties are on an equal footing and can participate fully), but also (inter alia) CPR 1.1(2)(d) (ensuring that matters are dealt with expeditiously and fairly) and CPR 1.1(2)(e) (allotting to the case an appropriate share of the court's resources, taking into account the needs of other cases).
41. Mr Chapman has known that he was required to execute the Lease relating to Flat 2 since March 2023 at the latest. In this regard I refer to paragraphs 17 to 19 above. At no stage in the run up to the hearing before me has Mr Chapman put forward, even in summary form, any legitimate basis for refusing to sign the Lease. Quite the contrary; in April 2023 he made clear that his refusal to execute the Lease was a conscious tactical decision, taken for his own personal purposes.
42. On the evidence as a whole, I consider it legitimate to conclude that if Mr Chapman had any legitimate grounds for refusing to sign the final Lease relating to Flat 2, having, prior to the Company's entry into administration, (i) signed all the other Leases, (ii) agreed terms in principle (including price) with the present buyers of Flat 2, and (iii) *instructed solicitors to draw up the requisite sale documentation with a view to completing* a sale of Flat 2 to the current buyers, he would have articulated those grounds by now.

Approved Judgment

43. He was expressly warned by a letter from the Applicant's solicitors in May 2023 of the consequences that would follow if he did not sign. Then, if not before, one would expect him to raise any legitimate grounds relied upon, if only in layman's terms. None were raised.
44. Even after service on him of the present application and the evidence in support, Mr Chapman did not indicate any arguable defence in correspondence. No legitimate grounds for refusal were articulated at the hearing of 16 June either, even though Mr Chapman was represented by Counsel at that hearing.
45. I acknowledge that at the time of the hearing of 16 June, Mr Chapman had very recently lost his brother-in-law. Whilst this was undoubtedly an extremely unfortunate family event, however, it does not excuse the state of play by the time of the hearing before me. By that stage, as confirmed by Mr Chapman's witness statement dated 21 June 2023, Mr Chapman had had 'multiple conversations' with Mr Phillis and had given him 'some level of background'. If there was a defence open to Mr Chapman, one would expect the facts and matters relevant to that defence to be at least mentioned, in summary form, in Mr Chapman's witness statement; yet none were mentioned. Moreover, if any such defence existed, one would expect Mr Phillis, having had the benefit of 'multiple conversations' with Mr Chapman, to be able at the hearing before me to sketch out, if only in thumbnail terms, what the defence was. When asked during the course of submissions, however, Mr Phillis put forward no persuasive grounds which would entitle Mr Chapman on Bodman's behalf to refuse to sign the final Lease in an interlocking scheme of this nature. In fairness he was in an unenviable position in this regard, given the matters addressed in paragraphs 17 to 19 and 42 above.
46. For all these reasons, I shall refuse Mr Chapman's application to adjourn and proceed to final disposal. In my judgment, the matter is urgent and no good purpose would be served by an adjournment.

Final Disposal

47. On the evidence before me, I am satisfied that the Applicants have made out their case for injunctive relief.
48. Mr Chapman owes his status as shareholder and director of Bodman entirely to his status as director of the Company.
49. On the evidence before me, I am satisfied that Mr Chapman holds the single issued share in Bodman on trust for the Company, pending completion of the sale of the final flat in the Property and the issue of shares to the leaseholders in accordance with the terms of sale.
50. On the evidence as a whole, it is clear that Mr Chapman has been attempting to use execution of the final Lease as leverage in a personal dispute between him and the administrators of a connected company who have served a bankruptcy petition on him. This is a plain breach of the fiduciary duties owed by him to the Company and to Bodman.
51. Whether seen as an exercise of the court's inherent jurisdiction to assist the administrators as officers of the court in getting in and dealing with the Company's

Approved Judgment

property (Re Sabre International [1991] BCC 694) or as an exercise of the court's jurisdiction to restrain a trustee from committing a breach of trust (Lewin para 40-016, Marshall v Sladden (1851) 64 ER 916), or indeed both, I am satisfied that this court has jurisdiction to grant the relief sought.

52. I am further satisfied on the evidence before me that it is appropriate for the court to grant such relief in the circumstances of this case.

Conclusion

53. For all these reasons, I have ordered Mr Chapman to execute on behalf of Bodman the Lease of Flat 2 and to deliver up the original executed Lease to the Applicants' solicitors by 4pm on 26 June 2023.
54. I have also ordered Mr Chapman to pay the Applicants' costs of this application, summarily assessed in the sum of £20,000 plus VAT.
55. I shall hear submissions on any consequential relief or directions required at the handing down of this judgment.

ICC Judge Barber