

[2015] EWHC 3281 (Comm)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Tuesday 19th May 2015

BEFORE:

MR JUSTICE PHILLIPS

Case No: 2014-828
[Now 2014-000441]

BETWEEN:

IAN ALMOND & OTHERS

Claimants

and

MEDGOLF PROPERTIES LIMITED & OTHERS

Defendants
Case No: 2013-1309
[Now 2013-000541]

LIJANA ARMAILAITE & OTHERS

Claimants

- and -

MEDGOLF PROPERTIES LIMITED & OTHERS

Crown copyright©
(Transcript of the Handed Down Judgment of
WordWave International Limited
Trading as DTI
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Defendants

MR A MILNER (instructed by **Highgate Hill Solicitors**) appeared on behalf of the
Claimants

MR H WEBB (instructed by **Jeffrey Green Russell**) appeared on behalf of the Third &
Nineteenth Defendants in Case No. 2013-000541

Judgment (2)
Approved

1. MR JUSTICE PHILLIPS: As set out in the judgment I delivered a few moment ago, certain of the claimants in these two actions apply for default judgment.
2. I have already dealt with the one point raised substantively in opposition by two of the defendants in action 2013-1309. Mr Webb, who appears for those defendants, makes no further substantive points, firstly, because he accepts that he may not have the right to do so; and secondly, because he does not in any event wish to say anything which might prejudice any position his clients may wish to take at a later date in relation to jurisdiction.
3. The question, therefore, is whether I am satisfied of matters set out in paragraphs 4.1 and 4.3 of Practice Direction to CPR Part 12. On the evidence I am satisfied that the claim form and Particulars of Claim have been served on the defendants, I am satisfied that the defendants have not filed an acknowledgment of service and that the relevant period for doing so has expired. I am also satisfied that the defendants have not satisfied the claim and equally that the defendants have not formally admitted liability. I have also considered the question of jurisdiction and, for the reasons set out in Mr Milner's skeleton argument, I am satisfied that this court has jurisdiction, that there is no other court with exclusive jurisdiction and that the claimants have an entitlement to their judgment.
4. The one matter which must be given particular attention is that the claimants seek rescission of the contracts they entered into with the developer defendants, that being a discretionary remedy. The first point which Mr Milner properly draws to my attention is that the contracts in question have been assigned to certain bank defendants. There

might be an argument that the claimants in question are not entitled to rescind contracts where they have assigned the benefit to a third party. However, Mr Milner relies upon the decision in Football Bataco Limited v Snoot Enterprises [2011] 1 WLR 1978 when Briggs J held:

"I consider that the requirement in rule 12.11(1) that it must appear to the court that the claimant is entitled to judgment needs to be interpreted in the light of the aggregation of the prescribed circumstances in which an application under Part 23 (rather than a mere request) is required. I do not consider that rule 12.11(1) requires the court to second-guess an assertion in the particulars of claim that, as a matter of law, the facts alleged provide the claimant with a cause of action. Rather, the purpose of the requirement for an application is either to enable the court to tailor the precise relief so that it is appropriate to the cause of action asserted, or otherwise to scrutinise the application in particular circumstances calling for more than a purely administrative response. It is in those respects that it must appear to the court either that the applicant is entitled to the default judgment sought, or to some lesser or different default judgment."

5. I am satisfied that the claimants are entitled to the relief sought. The judgment rescinding the contracts will not necessarily bind the banks; they can properly maintain that the contracts remain effective in their hands. Only the non-appearing developers will be bound to recognise the order for rescission.
6. Secondly, rescission of the contracts will in practice benefit the banks because restitution by the developers is, at least in many cases, the only realistic way in which the banks are likely to obtain repayment of their loans.
7. Thirdly, the third party rights can in any event only operate as a bar to rescission when a third party is innocent. In this case it is the claimants' pleaded case that the banks are

not innocent, but, on the contrary, have knowledge of and/or procured and/or instigated the misrepresentations made by others and/or themselves made similar misrepresentations.

8. I note that in the Taylor case, to which I referred in my earlier judgment, Popplewell J granted rescission of the relevant contracts by way of default judgment in similar circumstances. Therefore I am prepared to make the orders for the default judgment as sought and, insofar as necessary, I exercise my discretion in favour of granting rescission, being satisfied that it is the appropriate remedy in these circumstances.
9. Therefore I invite Mr Milner to revise his draft order to make it plain that certain of the claimants, who are based in Dubai, do not apply for default judgment. Once that is clarified, I will make the order as sought.